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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AH88

Dairy Product Price Support Program and Dairy Indemnity Payment Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule specifies regulations for the Dairy Product Price Support Program (DPPSP), which has replaced the Price Support Program for Milk, and amends regulations for the Dairy Indemnity Payment Program (DIPP). The two programs are authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) through 2012. The DPPSP supports the price of cheddar cheese, butter, and nonfat dry milk by providing a standing offer from Commodity Credit Corporation (CCC) to purchase those products at specific support prices. This rule specifies the minimum price support levels for cheddar cheese, butter, and nonfat dry milk. This rule also specifies the minimum price at which CCC may sell dairy products from inventory. DIPP indemnifies dairy farmers and manufacturers of dairy products for losses suffered due to contamination of milk and milk products. This rule extends DIPP through 2012 and amends the method through which DIPP payments will be disbursed in the event that available appropriated funds are insufficient to pay all claims. That method is changing from a pro rata method to a first-come, first-paid basis.

DATES: *Effective Date:* July 16, 2010.

FOR FURTHER INFORMATION CONTACT: *For Dairy Product Price Support Program:* Milton Madison, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), Mail Stop 0516, 1400 Independence Ave., SW., Washington, DC 20250–0516; *phone:* (202) 690–0050; *fax:* (202) 690–1480, or *e-mail: Milton.madison@wdc.usda.gov.*

For Dairy Indemnity Payment Program: Danielle Cooke, Special Programs Manager, Price Support Division, FSA, USDA, Mail Stop 0512, 1400 Independence Ave., SW., Washington, DC, 20250–0512; phone (202) 720–1919; fax (202) 690–1536; or *e-mail: Danielle.Cooke@wdc.usda.gov.*

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SUPPLEMENTARY INFORMATION:

Background

The 2008 Farm Bill (Pub. L. 110–246) requires amendments to the regulations for the Dairy Product Price Support Program as authorized, and DIPP as reauthorized and extended through 2012. The changes for each of the programs are explained below.

Dairy Product Price Support

Section 1501 of the 2008 Farm Bill (7 U.S.C. 8771) authorizes the Dairy Product Price Support Program, completely replacing the Price Support Program for Milk. The 2008 Farm Bill does not fundamentally change the basic structure or goals of the previous program, which required CCC to support milk prices through the purchase of dairy products. The 2008 Farm Bill specifies the minimum CCC purchase prices for cheddar cheese, butter, and nonfat dry milk; previously only the support price for milk was specified. The 2008 Farm Bill also includes new provisions that CCC is implementing in this rule to reduce the dairy product purchase prices if CCC purchases exceed certain threshold quantities. Those threshold quantities specified in the 2008 Farm Bill are sufficiently large that it is unlikely the minimum support prices will be impacted.

This rule in 7 CFR part 1430, subpart A, specifies rules for the DPPSP consistent with the 2008 Farm Bill and with current purchase requirements of the agency in the wake of the new and mandatory legislation.

This rule provides a definition of "net removals" of dairy products from the market through the Dairy Product Price Support Program and the Dairy Export Incentive Program (authorized in 15 U.S.C. 713a–14). Section 1501 of the 2008 Farm Bill, which specifies how net removals are calculated, is the basis for the definition. CCC uses the amount of net removals during a 12 month period to determine whether CCC purchases have exceeded the threshold quantities for reduced support prices. The definition is consistent with the definition USDA uses in the monthly World Agricultural Supply and Demand Estimates (WASDE) report on the milk market.

The requirements for dairy products to be eligible for CCC purchase, specified in § 1430.102, "Eligible Products," are similar to the requirements in the regulations for the previous Price Support Program for Milk. The eligibility requirements have been reorganized for clarity. A definition of "eligible offeror" is added by this rule. The term "eligible offeror" is used in the current regulations but is not defined; this rule adds a definition that clarifies the eligible types of persons or legal entities who may sell dairy products to CCC. To be eligible, the offeror must be the manufacturer of the commodity offered or a marketing cooperative for the manufacturer. The definition of "eligible offeror" is a discretionary change; all other provisions in this rule for the Dairy Product Price Support Program are required by the 2008 Farm Bill or were established for the previous Price Support Program for Milk.

This rule implements the 2008 Farm Bill dairy product purchase prices in § 1430.103, "Purchase Prices." The prices specified in this regulation are minimum support prices; they are specified using the "not less than X cents per pound" language from the 2008 Farm Bill. The minimum purchase prices are the same as the purchase prices CCC established under the Price Support Program for Milk, so the new purchase price requirements will have little effect on the extent of dairy price support or on program administration unless the purchase prices are set above the minimums.

The 2008 Farm Bill requires the Secretary of Agriculture to pay uniform prices for dairy products across the United States. Therefore, the support price for each type of dairy product applies to all regions of the United States.

As required by the 2008 Farm Bill, this rule specifies purchase threshold quantities, which, if exceeded, would decrease the minimum allowable CCC purchase prices for dairy products. As explained below, these purchase threshold quantities are very large and are unlikely to be exceeded, so the lower support prices are unlikely to ever be permitted.

As specified in the 2008 Farm Bill and in this rule, if CCC cheddar cheese purchases over a 12 month period, less unrestricted sales by CCC, exceed 200 million pounds, but do not exceed 400 million pounds, then the purchase price may be reduced by 10 cents per pound during the immediately following month. If the cheese purchases, less unrestricted sales, exceed 400 million pounds, then the purchase price may be reduced by 20 cents per pound during the immediately following month. The largest CCC total fiscal year (FY) annual cheese purchase in the last 10 years was 42 million pounds in FY 2003. Cheese purchases by CCC have not exceeded 200 million pounds since FY 1988.

If CCC butter purchases over a 12 month period, less unrestricted sales, exceed 450 million pounds, but not more than 650 million pounds, then the purchase price may be reduced 10 cents per pound during the immediately following month. If the butter purchases, less unrestricted sales, exceed 650 million pounds, then the purchase price may be reduced by 20 cents per pound during the immediately following month. The highest CCC total fiscal year butter purchase in the last 10 years was 12 million pounds in FY 2003. Butter purchases by CCC have not exceeded the minimum purchase threshold of 450 million pounds since FY 1992.

If CCC nonfat dry milk purchases over a 12 month period, less unrestricted sales, exceed 600 million pounds, but not more than 800 million pounds, then the purchase price may be reduced 5 cents per pound during the immediately following month. If the nonfat dry milk purchases, less unrestricted sales, exceed 800 million pounds, then the purchase price may be reduced by 10 cents per pound during the immediately following month. The largest nonfat dry milk CCC purchase in the past 10 years was 656 million pounds in FY 2002, which slightly exceeded the minimum purchase threshold.

Section 1430.103(b) provides that CCC may offer to purchase cheddar cheese, butter, fortified nonfat dried milk, or fortified instant nonfat dry milk in consumer-sized ready-to-consume packages at a premium to the purchase prices for cheddar cheese, butter, and nonfat dry milk announced in accordance with § 1430.103(a). Any funds expended to buy products processed into such packages in excess of the announced price for the cheddar cheese, butter, and nonfat dry milk would not be considered a price support expense and would have to be apportioned under section 416(a) of the Agricultural Adjustment Act of 1949.

Section 1430.103(c) provides that CCC may offer to purchase block and barrel cheddar cheese with a lower moisture content than is specified in § 1430.102(c), as evidenced by the grading certificate, at a higher price than is announced in accordance with § 1430.103(a). The formula for determining the premium price for lower moisture cheddar cheese would be specified in the CCC purchase announcement. Although a similar provision did not appear in the Price Support Program for Milk regulations, the former regulation provided that CCC purchases were subject to purchase announcements and those announcements did allow for low moisture purchases and price adjustments.

Section 1430.104, "Sales from Inventories," implements the requirement in the 2008 Farm Bill that CCC may not sell its dairy product inventory for unrestricted use at less than 110 percent of CCC's purchase price. The CCC purchase price used in this calculation is the support price before the price was reduced for any purchase quantity thresholds. Section 1430.104 also specifies that CCC may sell its dairy product inventory for restricted use, which is more common than sales for unrestricted use, at an unspecified price. CCC conducts restricted use sales from time to time, such as sales for casein manufacturing or livestock feed use.

In addition to the changes discussed above, this rule reorganizes 7 CFR part 1430 for clarity, but the remaining provisions are substantially similar to those for the previous program.

Dairy Indemnity Payment Program

The purpose of DIPP is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products that were removed from commercial markets because such milk or milk products contained certain harmful pesticide residues, chemicals, or toxic substances, or were contaminated by nuclear radiation or fallout.

Section 1505 of the 2008 Farm Bill amends 7 U.S.C. 450l to extend DIPP authorization through 2012, without changing any provisions of the program. This rule amends 7 CFR part 760, subpart A, to reflect the extension by updating the authority citation using the U.S. Code citation.

This rule is changing the method by which DIPP funds will be distributed if the available appropriated funds are not sufficient to pay all claims. This is a discretionary change; it is not required by the 2008 Farm Bill. This change will allow payments to be made as claims arise by implementing a "first-come, first-paid" system. This will provide enhanced relief over the alternative of delaying all claims to the end of the year to determine whether the demand will exceed the supply of funds, requiring pro-rated partial payments. If the funds are not sufficient to pay all claims, Congress would need to determine whether to enhance the appropriation for later years. The alternative method of pro-rating claims based on available funding would likely result in no one receiving immediate payment even though in most years the funds are sufficient to cover all claims. The adoption of a first-come, first-paid basis should be in keeping with the general nature and history of the program.

Also, section 1601(c)(2) of the 2008 Farm Bill exempts this rule from Paperwork Reduction Act (44 U.S.C. Chapter 35) requirements, therefore, this rule removes § 760.34 that specified the OMB control number for the previous information collection approval.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking. Therefore, these regulations are made effective by this rule without a prior proposed rule or prior public comment.

Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866

and therefore this rule has not been reviewed by OMB.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act because USDA is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The changes required by the 2008 Farm Bill that are identified in this rule do not change the structure or goals of the program and can be considered administrative in nature. Therefore, FSA has determined that NEPA does not apply to this final rule and no environment assessment or environmental impact statement will be prepared.

Executive Order 12372

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

Executive Order 12988

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

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not have tribal implications that preempt tribal law.

Unfunded Mandates

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

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this final rule applies is 10.053—Dairy Indemnity Payments.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects

7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

7 CFR Part 1430

Dairy products, Fraud, Penalties, Price support programs, Reporting and recordkeeping requirements.

■ For the reasons discussed above, 7 CFR parts 760 and 1430 are amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart A—Dairy Indemnity Payment Program

■ 1. Revise the authority citation for 7 CFR part 760, subpart A, to read as follows:

Authority: 7 U.S.C. 450j–l.

■ 2. Revise § 760.33 to read as follows:

§ 760.33 Availability of funds.

(a) Payment of indemnity claims will be contingent upon the availability of FSA funds to pay such claims. Claims will be, to the extent practicable within funding limits, paid from available funds, on a first-come, first-paid basis, based on the date FSA approves the application, until funds available in that fiscal year have been expended.

(b) DIPP claims received in a fiscal year after all available funds have been expended will not receive payment for such claims.

§ 760.34 [Removed]

■ 3. Remove § 760.34.

PART 1430—DAIRY PRODUCTS

■ 4. Revise the authority citation for part 1430 to read as follows:

Authority: 7 U.S.C. 7982, 8771, and 8773; and 15 U.S.C. 714b and 714c.

■ 5. Revise 7 CFR part 1430, subpart A, to read as follows:

Subpart A—Dairy Product Price Support Program

Sec.
1430.100 Applicability.
1430.101 Definitions.
1430.102 Eligible products.
1430.103 Purchase prices.
1430.104 Sales from inventories.

Subpart A—Dairy Product Price Support Program

§ 1430.100 Applicability.

During the period beginning on January 1, 2008, and ending December 31, 2012, the Secretary of Agriculture will support the price of cheddar cheese, butter, and nonfat dry milk by providing a standing offer to purchase those products from eligible offerors. The products must be made from cow's milk produced in the United States. Purchases are subject to the terms and conditions in CCC's purchase announcements.

§ 1430.101 Definitions.

For purposes of this subpart, the following definitions apply:

CCC means the Commodity Credit Corporation, USDA.

Eligible offeror means the person, firm, corporation, or other legal entity obligated by the purchase agreement with CCC. The product must not have been sold before to another party and the offeror must be the manufacturer of the dairy product offered or a marketing cooperative for the manufacturer.

Net removals means, for a given period of time, the total dairy product

purchased by CCC through the program in this subpart plus the quantity of the product exported through the Dairy Export Incentive Program (as authorized in 15 U.S.C. 713a–14), less the quantity sold by CCC for unrestricted use.

§ 1430.102 Eligible products.

(a) To be eligible for the program in this subpart, the products must be manufactured from dairy cow's milk produced in the United States, and must not have been previously owned by CCC. Dairy cow in this instance means an animal of the kind that produces the majority of dairy products in the United States and not, for example, cows of other species of animals such as yaks or oxen.

(b) Products will be purchased only from eligible offerors of the product, and only in carlot weights.

(c) The products purchased must be of the following grades and moisture content, as evidenced by USDA-issued inspection certificates:

(1) Block cheddar cheese must be U.S. Grade A or higher, and the moisture content must not exceed 38.5 percent;

(2) Barrel cheddar cheese must be U.S. Extra Grade, and the moisture content must not exceed 36.5 percent;

(3) Butter must be U.S. Grade A or higher;

(4) Nonfat dry milk must be U.S. Extra Grade, and the moisture content must not exceed 3.5 percent.

(d) CCC may require other terms and conditions of purchase, as specified in CCC's purchase announcement.

§ 1430.103 Purchase prices.

(a) CCC will offer to purchase products at the following prices for all regions of the United States:

(1) Cheddar cheese in blocks for not less than $1.13 per pound; unless

(i) Net removals of cheese for a period of 12 consecutive months exceed 200,000,000 pounds, but do not exceed 400,000,000 pounds, in which case the CCC block cheese purchase price will be not less than $1.03 per pound, during the immediately following month, or

(ii) Net removals of cheese for a period of 12 consecutive months exceed 400,000,000 pounds, in which case the CCC block cheese purchase price will be not less than $0.93 per pound during the immediately following month;

(2) Cheddar cheese in barrels for $0.03 per pound less than the cheddar cheese block price;

(3) Butter for not less than $1.05 per pound; unless

(i) Net removals of butter for a period of 12 consecutive months exceed 450,000,000 pounds, but do not exceed 650,000,000 pounds, in which case the CCC butter purchase price will be not less than $0.95 per pound during the immediately following month, or

(ii) Net removals of butter for a period of 12 consecutive months exceed 650,000,000 pounds, in which case the CCC butter purchase price will be not less than $0.85 per pound during the immediately following month; and

(4) Nonfat dry milk for not less than $0.80 per pound, unless

(i) Net removals of nonfat dry milk for a period of 12 consecutive months exceed 600,000,000 pounds, but do not exceed 800,000,000 pounds, in which case the CCC nonfat dry milk purchase price will be not less than $0.75 per pound during the immediately following month, or,

(ii) Net removals of nonfat dry milk for a period of 12 consecutive months exceed 800,000,000 pounds, in which case the CCC nonfat dry milk purchase price will be not less than $0.70 per pound during the immediately following month.

(b) CCC may offer to purchase cheddar cheese, butter, fortified nonfat dry milk, or fortified instant nonfat dry milk in consumer-sized ready-to-consume packages at a premium to the purchase prices for cheddar cheese, butter and nonfat dry milk specified in paragraph (a) of this section. Any such offers will be made through CCC's purchase announcements, and such offers may be limited by quantity and to a specific time period.

(c) CCC may offer to purchase cheddar cheese with a lower moisture content than is specified in § 1430.102(c) at a premium to the prices specified in paragraph (a) of this section. Any such offers will be made through CCC's purchase announcements, and such offers may be limited by quantity and to a specific time period.

§ 1430.104 Sales from inventories.

(a) CCC may sell any dairy product purchased as specified in this subpart for unrestricted use at the market price prevailing for that product at the time of sale, except that the sale price will not be less than 110 percent of the purchase price specified in § 1430.103(a), before any price reduction for the amount of CCC net removals of the dairy products.

(b) CCC may sell or distribute dairy products purchased under this section for restricted use when such sale is determined to maximize the return to CCC on its purchases.

Signed in Washington, DC, on July 8, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–17409 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

[NRC–2010–0157]

RIN 3150–AI87

Public Records

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its regulations to change the fees for search and review of agency records by NRC personnel. This document is necessary to inform the public of these changes.

DATES: *Effective Date:* August 16, 2010.

FOR FURTHER INFORMATION CONTACT: Becky Wood at 301–415–6968, e-mail *Becky.Wood@nrc.gov,* or in writing to the Nuclear Regulatory Commission, Office of Information Services, Mail Stop TWFN–5F09, Washington, DC 20555–0001.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Federal Rulemaking Web site: Supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0157.

SUPPLEMENTARY INFORMATION:

Background

These changes are necessary due to the Biennial Review of Fees for the Freedom of Information Act, as required by the Chief Financial Officer's Act of 1990 and Office of Management and Budget (OMB) Circular No. A–25. Specifically, 10 CFR part 9, section 9.37(a) will be changed from GG–7/7 to GG–7/6 and 9.37(c) will be changed from ES–4 to ES–Maximum.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.).*

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are administrative in nature and do not involve any provisions that would impose backfits as defined in 10 CFR chapter I.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 9

Freedom of Information Act Regulations, Privacy Act Regulations, Government Sunshine Act Regulations, and Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities.

Rulemaking Procedure

Because this amendment constitutes a minor administrative change to the regulations, the notice and comment provisions of the Administrative Procedure Act do not apply under 5 U.S.C. 553(b)(B).

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR part 9.

PART 9—PUBLIC RECORDS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Subpart A also issued 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570.

Subpart B is also issued under 5 U.S.C. 552a.

Subpart C is also issued under 5 U.S.C. 552b.

■ 2. In § 9.37, paragraphs (a) and (c) are revised to read as follows:

§ 9.37 Fees for search and review of agency records by NRC personnel.

* * * * *

(a) Clerical search and review at a salary rate that is equivalent to a GG–7/step 6, plus 16 percent fringe benefits;

* * * * *

(c) Senior executive or Commissioner search and review at a salary rate that is equivalent to an ES–Maximum, plus 16 percent fringe benefits.

Dated at Rockville, Maryland, this 6th day of July, 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010–17372 Filed 7–15–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2009–0538]

RIN 3150–AI75

List of Approved Spent Fuel Storage Casks: NUHOMS® HD Revision 1; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the NUHOMS® HD cask system listing within the list of approved spent fuel storage casks to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1030. The NRC is taking this action because the applicant identified that a certain Technical Specification (TS) for Boral characterization was not written precisely and in a manner that could be readily and demonstrably implemented. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the Safety Analysis Report (SAR), are not precisely quantified in that it requires that "the average size of the boron carbide particles in the finished product is approximately 50 microns after rolling." Use of language such as "average" and "approximately" is imprecise, and no ranges or statistical variations are specified. The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

DATES: The direct final rule published May 6, 2010 (75 FR 24786), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION: On May 6, 2010 (75 FR 24786), the NRC published in the **Federal Register** a direct final rule that would have amended its regulations in 10 CFR 72.214 to revise the NUHOMS® HD System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the CoC. Amendment No. 1 would have modified the present cask system by adding Combustion Engineering 16x16 class fuel assemblies as authorized contents, reducing the minimum off-normal ambient temperature from −20 °F to −21 °F, expanding the authorized contents of the NUHOMS® HD System to include pressurized water reactor fuel assemblies with control components, reducing the minimum initial enrichment of fuel assemblies from 1.5 weight percent uranium-235 to 0.2 weight percent uranium-235, clarifying the requirements of reconstituted fuel assemblies, adding requirements to qualify metal matrix composite neutron absorbers with integral aluminum cladding, deleting use of nitrogen for draining the water from the dry shielded canister (DSC) and allowing only helium as a cover gas during DSC cavity water removal operations, and making

corresponding changes to the technical specifications.

The NRC also published a companion proposed rule on May 7, 2010 (75 FR 25120). A correction notice was published on May 17, 2010 (75 FR 27401), to correctly specify an effective date of July 21, 2010. The direct final rulemaking and the companion proposed rulemaking were published in the **Federal Register** on different dates instead of being published concurrently on the same date.

The rulemaking is being withdrawn because the applicant identified that a certain TS for Boral characterization was not written precisely and in a manner that could be readily and demonstrably implemented. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the SAR, are not precisely quantified in that it requires that "the average size of the boron carbide particles in the finished product is approximately 50 microns after rolling." Use of language such as "average" and "approximately" is imprecise, and no ranges or statistical variations are specified.

The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

Dated at Rockville, Maryland, this 8th day of July, 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010–17425 Filed 7–15–10; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2201

Regulations Implementing the Freedom of Information Act

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission (OSHRC) revises its regulations implementing the Freedom of Information Act (FOIA). The regulations have been updated to reflect the amendments to the FOIA from the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), as well as changes in OSHRC's own policies and procedures.

DATES: This rule is effective on August 16, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer D. Marr, FOIA Public Liaison, or Robert M. Kahn, Office of the General Counsel, *via telephone:* (202) 606–5410, or via *e-mail: jmarr@oshrc.gov* or *rkahn@oshrc.gov.*

SUPPLEMENTARY INFORMATION: OSHRC is publishing a final rule revising its regulations implementing the FOIA. On April 28, 2010, OSHRC published for comment a notice of proposed rulemaking (NPRM) in the **Federal Register** that proposed revisions to OSHRC's regulations at 29 CFR part 2201, implementing the FOIA, 5 U.S.C. 552, as amended. 75 FR 22320, Apr. 28, 2010. Interested persons were afforded an opportunity to participate in the rulemaking process through submission of written comments on the NPRM. OSHRC received no public comments. OSHRC has reviewed the proposed regulations and adopts them in this final rule.

I. Background

OSHRC makes several substantive and technical revisions to its regulations implementing the FOIA (5 U.S.C. 552, as amended) that fall within two general categories. First, OSHRC modifies its existing FOIA regulations to reflect the amendments to the FOIA contained in the OPEN Government Act, Public Law 110–175, 121 Stat. 2524. The OPEN Government Act amended various FOIA administrative procedures, such as when an agency may toll the statutory time for responding to FOIA requests and how to indicate exemptions authorizing deletion of materials under the FOIA on the responsive record.

Second, as a result of the Chief FOIA Officer's review of OSHRC's FOIA operations, OSHRC revises its regulations to further clarify its policies and procedures relating to the processing of FOIA requests and the administration of its FOIA operations. These revisions include changes to the description of the OSHRC reading rooms and to OSHRC fee policies.

II. Section-by-Section Analysis

In 29 CFR 2201.3, OSHRC revises the description of the Chief FOIA Officer's duties in paragraph (a) to reflect the more detailed description of those duties set forth under the OPEN Government Act. 5 U.S.C. 552(k). Additionally, OSHRC adds a description of the FOIA Public Liaison's duties in paragraph (c) to reflect the responsibilities described in the OPEN Government Act. 5 U.S.C. 552(a)(6)(B)(ii), (l). In paragraph (d) OSHRC revises the FOIA Service Center's contact information. OSHRC also revises paragraph (d) to add information about status requests provided by the FOIA Service Center. 5 U.S.C. 552(a)(7)(B).

In 29 CFR 2201.4, OSHRC revises paragraph (c) to clarify the type of records publicly available in the e-FOIA Reading Room and where to access them. OSHRC changes paragraph (d) to explain the procedures for using OSHRC's on-site e-FOIA Reading Room. OSHRC also revises its definition of "Representative of the news media, or news media requester" in paragraph (e) to reflect the definition provided in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(ii). OSHRC also adds definitions of "Exceptional circumstances" and "Record" to paragraph (e), based on the description of these terms in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(viii), (f)(2).

In 29 CFR 2201.6, OSHRC revises paragraph (a) to add the tolling requirements set forth in the OPEN Government Act. 5 U.S.C. 552(a)(6)(A)(ii). Following the new requirement in the OPEN Government Act, OSHRC revises its procedure for making deletions within records as set forth in paragraph (g) to include, where technically feasible, marking the exemption under which each deletion is made. 5 U.S.C. 552(b). OSHRC also creates a new paragraph (h) describing how OSHRC assigns tracking numbers to incoming FOIA requests and notifies a requester of the tracking number assigned to the request. 5 U.S.C. 552(a)(7)(A). In addition, OSHRC creates a new paragraph (i) to indicate that when searching for responsive records, OSHRC will ordinarily consider only records in its possession as of the date it begins its search. Finally, OSHRC makes minor grammatical corrections to paragraphs (c) and (d)(3).

In 29 CFR 2201.7, OSHRC revises the copying fee provision in paragraph (b)(1) and the search fee provision in paragraph (b)(2) to reflect the new requirements for each in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(viii). OSHRC revises paragraph (e) to consider requests for which fees are likely to exceed $25 received only after the requester agrees to pay the actual or estimated fee.

In 29 CFR 2201.10, OSHRC updates paragraph (a) to reflect the new maintenance of statistics requirements in the OPEN Government Act. 5 U.S.C. 552(e).

III. Analysis of Comments Received

OSHRC received no comments to the proposed rules.

IV. Statutory and Executive Order Reviews

Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995: OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Paperwork Reduction Act

OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

Regulatory Flexibility Act

The Commission has determined under the Regulatory Flexibility Act, 5 U.S.C. 606(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has certified to the Chief Counsel for Advocacy of the Small Business Administration, that these rules will not have a significant economic impact on a substantial number of small entities. The Commission makes a large amount of information available to the public, including small entities, on its Web site pursuant to the FOIA and other public disclosure requirements. In this regard, the Commission has available on its Web site copies of the Commission's procedural rules, final Commission decisions since 1972, final administrative law judges' decisions since 1993, administrative law judges' decisions pending Commission review, strategic plans, performance reports, budget reports, as well as other information that may be of interest to the public. Small entities, like any other individual or entity, may request under the FOIA other information from the Commission's files that has not been generally made available to the public. The FOIA establishes a fee structure to cover the direct costs of the government in searching for, reviewing, and duplicating requested records. The Commission's final rule is fully consistent with the FOIA's requirements. For these reasons, a Regulatory Flexibility Statement and Analysis has not been prepared.

Congressional Review Act

In compliance with the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), this rule has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 29 CFR Part 2201

Freedom of information.

Signed at Washington, DC, on July 9, 2010.

Thomasina V. Rogers,

Chairman.

■ For the reasons set forth in the preamble, OSHRC amends 29 CFR part 2201 as follows:

PART 2201–REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 2201 is revised to read as follows:

Authority: 29 U.S.C. 661(g); 5 U.S.C. 552.

■ 2. Section 2201.3 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 2201.3 Delegation of authority and responsibilities.

(a) The Chairman delegates to the Chief FOIA Officer the authority to act upon all requests for agency records. The Chief FOIA Officer shall, subject to the authority of the Chairman:

(1) Have agency-wide responsibility for efficient and appropriate compliance with this section;

(2) Monitor implementation of the FOIA throughout the agency and keep the Chairman and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) Recommend to the Chairman such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve implementation of this section;

(4) Review and report to the Attorney General, through the Chairman, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section; and

(5) Facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's FOIA handbook, and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply.

* * * * *

(c) The Chief FOIA Officer shall designate the FOIA Public Liaison(s), who shall serve as the supervisory official(s) to whom a FOIA requester can raise concerns about the service the FOIA requester has received following an initial response. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(d) OSHRC establishes a FOIA Requester Service Center that shall be staffed by the FOIA Disclosure Officer(s) and FOIA Public Liaison(s). The address and telephone number of the FOIA Requester Service Center is 1120 20th Street, NW., 9th Floor, Washington, DC 20036–3457, (202) 606–5700. The FOIA Requester Service Center is available to provide information about the status of a request to the person making the request using the assigned tracking number (as described in § 2201.6(h)), including:

(1) The date on which the agency originally received the request; and

(2) An estimated date on which the agency will complete action on the request.

■ 3. Section 2201.4 is amended:

■ a. By revising paragraphs (c) introductory text, (c)(1), (3), (4), and (5);

■ b. By revising paragraph (d); and

■ c. In paragraph (e) by revising the definition of "Representative of the news media, or news media requester" and adding, in alphabetical order, the definitions "Exceptional circumstances" and "Record".

The revisions and additions read as follows:

§ 2201.4 General policy and definitions.

* * * * *

(c) *Record availability at the OSHRC e-FOIA Reading Room.* The records of Commission activities are publicly available for inspection and copying, and may be accessed electronically through the Commission's Web site at *http://www.oshrc.gov/foia/foia_reading_room.html.* These records include:

(1) Final decisions, including concurring and dissenting opinions, remand orders, as well as Administrative Law Judge decisions pending OSHRC review, issued as a result of adjudication of cases;

* * * * *

(3) Agency policy statements and interpretations adopted by OSHRC and

not published in the **Federal Register**, if any;

(4) Administrative staff manuals that affect a member of the public, if any;

(5) Copies of records that have been released to a person under the FOIA that, because of the subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

* * * * *

(d) *Record availability at the OSHRC on-site e-FOIA Reading Room.* Any member of the public may, upon request, access OSHRC's e-FOIA Reading Room via a computer terminal at the OSHRC National Office, located at 1120 20th St., NW., 9th Floor, Washington, DC 20036–3457. Such a request must be made in writing to the FOIA Requester Service Center, and indicate a preferred date and time for the requested access. OSHRC reserves the right to arrange a different date and time with the requester, if necessary.

(e) * * *

Exceptional circumstances does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

* * * * *

Record means any information that would be an OSHRC record subject to the requirements of the FOIA when maintained by OSHRC in any format, including an electronic format, and any such OSHRC record that is maintained for OSHRC by an entity under Government contract, for the purposes of records management.

Representative of the news media, or news media requester is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. For purposes of this definition, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by, or free distribution to, the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but OSHRC shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

* * * * *

■ 4. Section 2201.6 is amended by revising paragraphs (a), (c), (d)(3), and (g), and adding paragraphs (h) and (i) to read as follows:

§ 2201.6 Responses to requests.

(a) *Responses within 20 working days.* The FOIA Disclosure Officer will either grant or deny a request for records within 20 working days after receiving the request. The 20-day period shall not be tolled by the agency except in the following cases. In these cases, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

(1) The agency may toll the 20-day period once while awaiting information that it has reasonably requested from the requester under this section. The agency may make more than one request to the requester for information not related to issues regarding fee assessment, but can only toll the 20-day period once; or

(2) The agency may toll the 20-day period as many times as are necessary to clarify any issues regarding fee assessment.

* * * * *

(c) *Additional extension.* The FOIA Disclosure Officer shall notify the requester in writing when it appears that a request cannot be completed within the allowable time (20 working days plus a 10-working-day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing.

(d) * * *

(3) A requester should assume, unless otherwise notified by the Commission, that its request is in the first track of processing. The Commission will notify a requester when its request is placed in the second track for processing and that notification will include the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified in writing. In the case of a request expected to take more than 30 working days for action, a requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to a requester as documents are obtained by the FOIA Disclosure Officer from the supplying offices.

* * * * *

(g) *Deletions.* The FOIA Disclosure Officer shall provide to the requester in writing a justification for deletions within records. The amount of information deleted from records shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the place in the record where the deletion is made, and the exemption under which the deletion is made, shall be marked.

(h) *Tracking numbers.* The FOIA Disclosure Officer shall assign an individualized tracking number to each request received for processing and provide to each person making a request the tracking number assigned to the request. For any response that will take ten or more days to process, OSHRC will send the requester a postcard indicating the request's receipt date and its assigned tracking number.

(i) *Determining responsive records.* In determining which records are responsive to a request, OSHRC ordinarily will include only records in its possession as of the date it begins its search for them. If any other date is used, OSHRC shall inform the requester of that date.

■ 5. Section 2201.7 is amended by
■ a. Revising paragraphs (b)(1) and (b)(2) introductory text;
■ b. Adding paragraph (b)(2)(v); and
■ c. Revising paragraph (e).

The revisions and addition read as follows:

§ 2201.7 Fees for copying, searching, and review.

* * * * *

(b) * * *

(1) *Copying fee.* The fee per copy of each page shall be calculated in accordance with the per-page amount established in OSHRC's fee schedule. See Appendix A to this part. For other forms of duplication, direct costs of producing the copy, including operator time, shall be calculated and assessed.

Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use. No copying fee shall be charged for educational, scientific, or news media requests if the agency fails to comply with any time limit in § 2201.6, provided that no unusual or exceptional circumstances (as those terms are defined in § 2201.6(b) and § 2201.4(e), respectively) apply to the processing of the request.

(2) *Search fee.* Search fees shall be calculated in accordance with the amounts established in OSHRC's fee schedule. See Appendix A to this part. Commercial requesters shall be charged for all search time, except as described below. Search fees shall be charged even if the responsive documents are not located or if they are located but withheld on the basis of an exemption. However, search fees shall be limited or not charged as follows:

* * * * *

(v) *Failure to comply with time limits.* No search fee shall be charged if the agency fails to comply with any time limit in § 2201.6, provided that no unusual or exceptional circumstances (as those terms are defined in § 2201.6(b) and § 2201.4(e), respectively) apply to the processing of the request.

* * * * *

(e) *Fees likely to exceed $25.* If the total fee charges are likely to exceed $25, the FOIA Disclosure Officer shall notify the requester of the estimated amount of the charges, unless the requester has indicated a willingness to pay fees up to the estimated amount. The notification shall offer the requester an opportunity to confer with the FOIA Disclosure Officer to reformulate the request to meet the requester's needs at a lower cost. In cases in which a requester has been notified that actual or estimated fees amount to more than $25, the request shall not be considered received and further work shall not be done on it until the requester agrees to pay the actual or estimated total fee. Any such agreement shall be memorialized in writing.

* * * * *

■ 6. Section 2201.10 is amended by:
■ a. Revising paragraphs (a)(3), (5), and (7);
■ b. Redesignating paragraphs (a)(8), (10), and (11) as paragraphs (a)(16) through (a)(18);
■ c. Removing paragraph (a)(9); and
■ d. Adding new paragraphs (a)(8) through (a)(15).

The revisions and additions read as follows:

§ 2201.10 Maintenance of statistics.

(a) * * *

(3) A complete list of all statutes that the agency used to authorize the withholding of information under 5 U.S.C. 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes and the number of occasions on which each statute was relied upon;

* * * * *

(5) The number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average number of days that these requests had been pending before the agency as of that date;

* * * * *

(7) The median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;

(8) The average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(9) Based on the number of business days that have elapsed since each request was originally received by the agency—

(i) The number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;

(ii) The number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) The number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) The number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(10) The average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(11) The median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(12) Data on the 10 active requests with the earliest filing dates pending at the agency, including the amount of time that has elapsed since each request was originally received by the agency;

(13) Data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(14) The number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(15) The number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

* * * * *

[FR Doc. 2010–17369 Filed 7–15–10; 8:45 am]

BILLING CODE 7600–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0621]

RIN 1625–AA08

Special Local Regulations for Marine Events; Port Huron to Mackinac Island Sail Race

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will enforce a special local regulation for the annual Port Huron to Mackinac Island Sail Race. This action is necessary to safely control vessel movements in the vicinity of the race starting point and provide for the safety of the general boating public and commercial shipping. During this period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander (PATCOM).

DATES: This rule is effective from 9 a.m. through 4 p.m. on July 17, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–XXXX and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting

USCG–2010–XXXX in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. 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 concerning this temporary rule, call or e-mail Mr. Frank Jennings, Jr., Auxiliary and Boating Safety Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH, via e-mail at: *frank.t.jennings@uscg.mil* or by phone at: (216) 902–6094. 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 rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the special local regulation pertaining to this annual race was previously published in the Code of Federal Regulations. The special local regulation was inadvertently removed during the most recent revision to 33 CFR 100.901. Based on the hazards associated with marine regattas within Port Huron and the short amount of time until the event, delaying publication of this regulation would be contrary to the public interest.

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**. These special local regulations were inadvertently removed during the most recent revision to 33 CFR 100.901. Because this is an annual race, held in the same location, local maritime interests are already familiar with the provisions of these regulations. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this operation and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

Special local regulations are necessary to safely control vessel movements in the vicinity of the race starting point and provide for the safety of the general boating public and commercial shipping. The Captain of the Port Sector Detroit has determined that the start of the Port Huron to Mackinac Island Sail Race does pose significant risks to public safety and property. The likely combination of congested waterways, vessels engaged in a regatta, and fast currents could easily result in serious injuries or fatalities.

Discussion of Rule

The Coast Guard will enforce special local regulations for the annual Port Huron to Mackinac Sail Race from 9 a.m. until 4 p.m. on July 17, 2010. The special local regulations apply to the waters of the Black River, St. Clair River and lower Lake Huron from:

Latitude	Longitude
42[deg]58.8[min] N	082[deg]26[min] W, to
42[deg]58.4[min] N	082[deg]24.8[min] W, thence northward along the International Boundary to
43[deg]02.8[min] N	082[deg]23.8[min] W, to
43[deg]02.8[min] N	082[deg]26.8[min] W, thence southward along the U.S. shoreline to
42[deg]58.9[min] N	082[deg]26[min] W, thence to
42[deg]58.8[min] N	082[deg] 26[min] W.

[DATUM: NAD 83].

In order to ensure the safety of spectators and participating vessels, the special local regulations will be in effect for the day of the start of the event. The Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer. The PATCOM may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

In the event these special local regulations affect shipping, commercial vessels may request permission from the PATCOM to transit the area of the event by hailing call sign "Coast Guard Patrol Commander" on Channel 16 (156.8 MHZ).

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.

Special local regulations pertaining to this annual race were previously published in the Code of Federal Regulations. These special local regulations were inadvertently removed by the U.S. Coast Guard during the most recent revision to 33 CFR 100.901. Because this race is held annually in the same location, local maritime interests are already familiar with the provisions of this regulation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Black River, St. Clair River and lower Lake Huron from 9 a.m. until 4 p.m. July 17, 2010.

These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only 7 hours on a

weekend when the majority of vessel traffic transiting the area is recreational. Vessel traffic will be allowed to pass through the area of the race start with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will issue maritime advisories widely to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could 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 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 affect 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

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

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

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves the enforcement of special local regulations, pursuant to 33 CFR

100, for the annual Port Huron to Mackinac Island Sail Race, July 17, 2010 at 9 a.m. to July 17, 2010 at 4 p.m. This action is necessary to safely control vessel movements in the vicinity of the start of the race and provide for the safety of the general boating public and commercial shipping. Regulations will be in effect for seven hours on the day the event starts. The Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander.

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, Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 100.T09–0659 is added to read as follows:

§ 100.T09–0659 Special Local Regulations for Marine Events; Port Huron to Mackinac Island Sail Race.

(a) *Location.* The special local regulations apply to the waters of the Black River, St. Clair River and lower Lake Huron from:

Latitude	Longitude
42[deg]58.8[min] N	082[deg]26[min] W, to
42[deg]58.4[min] N	082[deg]24.8[min] W, thence northward along the International Boundary to
43[deg]02.8[min] N	082[deg]23.8[min] W, to
43[deg]02.8[min] N	082[deg]26.8[min] W, thence southward along the U.S. shoreline to
42[deg]58.9[min] N	082[deg]26[min] W, thence to
42[deg]58.8[min] N	082[deg] 26[min] W.

[DATUM: NAD 83].

(b) *Effective period.* This rule is effective from 9 a.m. to 4 p.m. on July 17, 2010.

(c) *Regulations.* (1) In accordance with the general regulations in section 100.35 of this part, the Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the PATCOM and when so directed by that officer.

(2) Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules in this subparagraph shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The PATCOM may establish vessel size and speed limitations and operating conditions. The PATCOM may restrict vessel operation within the regatta area to vessels having particular operating characteristics. The PATCOM may terminate the marine event or the operation of vessel at any time it is deemed necessary for the protection of life and property.

Dated: July 2, 2010.

M.N. Parks,

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

[FR Doc. 2010–17339 Filed 7–15–10; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0589]

RIN 1625–AA00

Safety Zone; Fireworks Display, Potomac River, Charles County, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon specified waters of the Potomac River. All persons and vessels are prohibited from transiting the zone, except as authorized by the Coast Guard Captain of the Port Baltimore. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a discharge barge located near Dumfries, Virginia. This safety zone is intended to protect the maritime public in a portion of the Potomac River.

DATES: This rule is effective from 7:30 p.m. on July 24, 2010 through 11 p.m. on July 25, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0589 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0589 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 Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, e-mail *Ronald.L.Houck@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 it is contrary to 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 objectives because immediate action is needed to protect persons and vessels against the hazards associated with a fireworks display on navigable waters. Such hazards include premature detonations, dangerous projectiles and falling or burning debris.

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

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled event.

Discussion of Rule

Prince William Marine Sales, of Woodbridge, Virginia, will sponsor a fireworks display from a barge located in the Potomac River near Dumfries, Virginia scheduled on Saturday, July 24, 2010 at 9:30 p.m., and if necessary due to inclement weather, on Sunday, July 25, 2010 at 9:30 p.m.

The Coast Guard is establishing a temporary safety zone on certain waters of the Potomac River, within a 500 feet radius of a fireworks discharge barge in approximate position latitude 38°34′07″ N., longitude 077°15′32″ W., located approximately 650 feet east of the pierhead at Tim's Rivershore Restaurant in Dumfries, Virginia (NAD 1983). The temporary safety zone will be enforced from 7:30 p.m. through 11 p.m. on July 24, 2010, and if necessary due to inclement weather, from 7:30 p.m. through 11 p.m. on July 25, 2010. The effect of this temporary safety zone will be to restrict navigation in the regulated area during the fireworks display. No person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of the Potomac River outside the safety zone. Notification of the temporary safety zone will be provided to the public via 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. Although this safety zone will restrict some vessel traffic, there is little vessel traffic associated with commercial fishing, and recreational boating in the area can transit waters outside the safety zone. In addition, the effect of this rule will not be significant because the safety zone is of limited duration and limited size. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

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 operate, transit, or anchor in a portion of the Potomac River, located at Dumfries, VA, from 7:30 p.m. through 11 p.m. on July 24, 2010, and if necessary due to inclement weather, from 7:30 p.m. through 11 p.m. on July 25, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. In addition, before the effective periods, the Coast Guard will issue maritime advisories widely available to users of the waterway to allow mariners to make alternative plans for transiting the affected area.

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 establishing a temporary 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0589 to read as follows:

§ 165.T05–0589 Safety Zone; Fireworks Display, Potomac River, Charles County, MD.

(a) *Regulated Area.* The following area is a safety zone: All waters in the Potomac River, within a 500 feet radius of a fireworks discharge barge in approximate position latitude 38°34′07″ N., longitude 077°15′32″ W., located approximately 650 feet east of the pierhead at Tim's Rivershore Restaurant in Dumfries, Virginia (NAD 1983).

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port Baltimore.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at 410–576–2693 or on VHF–FM marine band radio channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions. Captain of the Port Baltimore* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 7:30 p.m. through 11 p.m. on July 24, 2010, and if necessary due to inclement weather, from 7:30 p.m. through 11 p.m. on July 25, 2010.

Dated: June 30, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010–17342 Filed 7–15–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket EPA–R10–OAR–2010–0432; FRL–9171–4]

Finding of Attainment for PM_{10} for the Mendenhall Valley PM_{10} Nonattainment Area, AK

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA finds that the Mendenhall Valley nonattainment area in Alaska attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) as of December 31, 1995.

DATES: This rule is effective on September 14, 2010, without further notice, unless EPA receives adverse comment by August 16, 2010. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0432, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: body.steve@epa.gov.*
- *Mail:* Steve Body, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. *Attention:* Steve Body, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–0432. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA 98101.

FOR FURTHER INFORMATION CONTACT: Steve Body at *telephone number:* (206) 553–0782, *e-mail address: body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us" or "our" are used, we mean EPA. Information is organized as follows:

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I. Background
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E. What PM_{10} planning has occurred for the Mendenhall Valley PM_{10} nonattainment area?
II. EPA's Analysis
A. What does the air quality data show as of the December 31, 1995 attainment date?
B. Does more recent air quality data also show attainment?
III. Statutory and Executive Order Reviews

I. Background

A. PM_{10} NAAQS

The NAAQS are levels for certain ambient air pollutants set by EPA to protect public health and welfare. PM_{10}, or particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, is among the ambient air pollutants for which EPA has established health-based standards. On July 1, 1987 (52 FR 24634), EPA promulgated two primary standards for PM_{10}: a 24-hour standard of 150 micrograms per cubic meter (μg/m³) and an annual PM_{10} standard of 50 μg/m³. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards.

Effective December 18, 2006, EPA revoked the annual PM_{10} standard but retained the 24-hour PM_{10} standard. 71 FR 61144 (October 17, 2006). The 24-hour PM_{10} standard is attained when the expected number of days per calendar year with a 24-hour concentration in excess of the standard, as determined in accordance with 40 CFR part 50, appendix K, is equal to or less than one.[1] 40 CFR 50.6 and 40 CFR part 50, appendix K.

B. Designation and Classification of PM_{10} Nonattainment Areas

Areas meeting the requirements of section 107(d)(4)(B) of the Clean Air Act (CAA or the Act) were designated nonattainment for PM_{10} by operation of law and classified "moderate" upon enactment of the 1990 Clean Air Act Amendments. *See generally* 42 U.S.C. 7407(d)(4)(B). These areas included all former Group I PM_{10} planning areas identified on August 7, 1987 (52 FR 29383), as further clarified on October 31, 1990 (55 FR 45799), and any other areas violating the NAAQS for PM_{10} prior to January 1, 1989. A **Federal Register** notice announcing the areas

[1] An exceedance is defined as a daily value that is above the level of the 24-hour standard (150 μg/m³) after rounding to the nearest 10 μg/m³ (*i.e.* values ending in 5 or greater are to be rounded up). Thus, a recorded value of 154 μg/m³ would not be an exceedance since it would be rounded to 150μ/m³ whereas a recorded value of 155 μg/m³ would be an exceedance since it would be rounded to 160 μ/m³. *See* 40 CFR part 50, appendix K, section 1.0.

designated nonattainment for PM_{10} upon enactment of the 1990 Amendments, known as "initial" PM_{10} nonattainment areas, was published on March 15, 1991 (56 FR 11101) and a subsequent **Federal Register** document correcting the description of some of these areas was published on August 8, 1991 (56 FR 37654). The Mendenhall Valley PM_{10} nonattainment area was one of these initial moderate PM_{10} nonattainment areas.

All initial moderate PM_{10} nonattainment areas had the same applicable attainment date of December 31, 1994. Section 188(d) provides the Administrator the authority to grant up to two one-year extensions to the attainment date provided certain requirements are met. States containing initial moderate PM_{10} nonattainment areas were required to develop and submit to EPA by November 15, 1991, a state implementation plan (SIP) revision providing implementation of reasonably available control measures (RACM), including reasonably available control technology (RACT), and a demonstration of whether attainment of the PM_{10} NAAQS by the December 31, 1994 attainment date was practicable. *See* section 189(a).

C. How does EPA make attainment determinations?

All PM_{10} nonattainment areas are initially classified "moderate" by operation of law when they are designated nonattainment. *See* section 188(a). Pursuant to sections 179(c) and 188(b)(2) of the Act, we have the responsibility of determining within six months of the applicable attainment date whether, based on air quality data, PM_{10} nonattainment areas attained the PM_{10} NAAQS by that date. Determinations under section 179(c)(1) of the Act are to be based upon the area's "air quality as of the attainment date." Section 188(b)(2) is consistent with this requirement.

Generally, we determine whether an area's air quality is meeting the PM_{10} NAAQS for purposes of section 179(c)(1) and 188(b)(2) based upon data gathered at established state and local air monitoring stations (SLAMS) and national air monitoring stations (NAMS) and recently renamed National Core (NCore) monitoring stations in the nonattainment areas and entered into the EPA's national data base, now called Air Quality System (AQS). Data entered into the AQS has been determined to meet Federal monitoring requirements (*see* 40 CFR 50.6, 40 CFR part 50, appendix J, 40 CFR part 53, 40 CFR part 58, appendix A) and may be used to determine the attainment status of areas. We will also consider air quality data from other air monitoring stations in the nonattainment area provided that the stations meet the Federal monitoring requirements for SLAMS. All data are reviewed to determine the area's air quality status in accordance with our guidance at 40 CFR part 50, appendix K.

Attainment of the 24-hour standard is determined by calculating the expected number of days in a year with PM_{10} concentrations greater than 150 ug/m3. The 24-hour standard is attained when the expected number of days with levels above 150 ug/m3 (averaged over a three year period) is less than or equal to one. Three consecutive years of air quality data are generally required to show attainment of the 24-hour standards for PM_{10}. *See* 40 CFR part 50 and appendix K.

D. What is the attainment date for the Mendenhall Valley PM_{10} nonattainment area?

The original attainment date for the Mendenhall Valley PM_{10} nonattainment area was December 31, 1994. On September 12, 1994, (60 FR 47276) the attainment date was later extended to December 31, 1995, under the authority of section 188(d) of the Act.

E. What PM_{10} Planning has occurred for the Mendenhall Valley PM_{10} nonattainment area?

After the Mendenhall Valley PM_{10} nonattainment area was designated nonattainment for PM_{10}, the Alaska Department of Environmental Conservation (ADEC), began in the early 1990s to prepare the technical elements needed to bring the area into attainment and meet the planning requirements of title I of the CAA. Based on these technical products ADEC developed and implemented control measures on PM_{10} sources in the Mendenhall Valley PM_{10} nonattainment area. The State submitted these control measures to EPA on June 22, 1993, as a moderate PM_{10} nonattainment SIP revision under section 189(a) of the Act. The control measures submitted by the State include a comprehensive residential wood combustion program and controls on fugitive road dust. EPA took final action to approve the State's moderate PM_{10} SIP on March 24, 1994, (59 FR 13885).

II. EPA's Analysis

A. What does the air quality data show as of the December 31, 1995 attainment date?

Whether an area has attained the PM_{10} NAAQS is based exclusively upon measured air quality levels over the three calendar years *See* 40 CFR part 50 appendix K. For an area with a December 31, 1995, attainment date, data reported for calendar years 1993, 1994 and 1995 is considered. EPA also considered air quality data reported for the period subsequent to the attainment date to the present to demonstrate the area continued to attain the PM_{10} NAAQS.

The State of Alaska operated two PM_{10} SLAMS monitoring sites in the Mendenhall Valley PM_{10} nonattainment area during 1992 through 1995: Floyd Dryden High School and Trio Street. Both sites meet Federal siting requirements and are appropriate for monitoring the area's compliance with the PM_{10} NAAQS. (See EPA's letters approving Alaska's annual network review.) The Trio Street site ceased operation in 1997. The Floyd Dryden Middle School site continued operation through 2009.

Floyd Dryden Middle School Site

The Floyd Dryden site recorded two values above the level of the 24 hour PM10 NAAQS (exceedances) in February 1992. These values were flagged by ADEC as exceptional events due to high winds, but AQS does not show that R10 concurred on these flags. Thus, these two daily values are included in the expected exceedance calculations. Outside of these two exceedances there have been no other exceedances of the daily PM_{10} standard at the Floyd Dryden Middle School site from February 1992 through December 31, 2009.

There were a number of years for which the number of reported daily values did not meet the 75% data completeness criteria required for making attainment determinations: 1998, 2000, 2003, 2008, and 2009. Therefore an affirmative attainment determination can only be made for a subset of these years; 1992–94, 1993–95, 1994–96, 1995–97, 2004–06, and 2005–07. The 1993–1995 expected exceedance rate is 0.0 which likewise demonstrates attainment with the NAAQS by the attainment date.

Trio Street Site

The Trio Street site recorded five PM_{10} exceedances in 1992 and three in 1993. Of these eight total exceedances, only the four recorded in the first quarter 1992 were flagged by ADEC as high wind exceptional events. The AQS does not show that Region 10 concurred on these high wind events and therefore the data cannot be excluded from expected exceedance calculations. There were no exceedances from 1994 through 1997 when the site ceased operation. For the time period of

January 1, 1992 to June 30, 1997, the Trio Street site met the 75% quarterly data completeness requirement. Thus, there is sufficient data to make an attainment determination. The expected exceedance calculation for years 1993–95 was 1.0, which demonstrates attainment. An expected exceedance rate of greater than 1.0 would be a violation of the NAAQS.

B. Does more recent air quality data also show attainment?

Although the attainment date for the Mendenhall Valley PM_{10} nonattainment area is December 31, 1995, and the air quality data used to judge attainment by that date includes all data collected in calendar years 1993, 1994, and 1995, EPA has also reviewed the air quality data collected at the State monitoring sites from January 1996 through December 2009. As discussed above, there have been no exceedances recorded at the Floyd Dryden site since 1992 and no exceedances recorded at the Trio Street site from 1994 through 1997, when it ceased operation. Thus, the area continues to be in compliance with the 24 hour PM_{10} NAAQS during this period.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 14, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: June 22, 2010.

Dennis J. McLerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2010–17417 Filed 7–15–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 99–87, RM–9332; FCC 10–119]

Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission issued an Order ("*Order*") waiving certain of its rules pertaining to the January 1, 2011 interim deadlines associated with the narrowbanding of private land mobile radio licensees in the 150–174 MHz and 421–512 MHz bands. The Commission denied relief with respect to the interim licensing deadlines, but granted relief in part with respect to certain interim equipment deadlines.

DATES: Effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Melvin Spann, *Melvin.Spann@FCC.gov,* Wireless Telecommunications Bureau, (202) 418–1333, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WT Docket No. 99–87 and RM–9332, FCC 10–119, adopted on June 29, 2010 and released June 30, 2010. The Commission waives certain of its rules pertaining to the January 1, 2011 interim deadlines associated with the narrowbanding of private land mobile radio licensees in the 150–174 MHz and 421–512 MHz bands. The full text of

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

1. In this order, we grant in part and deny in part a petition filed by the National Public Safety Telecommunications Council (NPSTC) requesting a stay of the January 1, 2011 interim deadlines associated with the narrowbanding of private land mobile radio (PLMR) licensees in the 150–174 MHz and 421–512 MHz bands. In previous orders, the Commission set January 1, 2013 as the final deadline for PLMR licensees in these bands to migrate to narrowband (12.5 kHz or narrower) technology, and January 1, 2011 as the deadline for certain interim measures relating to licensing and equipment. For the reasons set forth herein, we deny NPSTC's request with respect to the interim licensing deadlines, but we grant the requested relief in part with respect to certain interim equipment deadlines.

2. In a 1995 *Report and Order and Further Notice of Proposed Rule Making,* at 10 FCC Rcd 10076, 10077 para. 1 (1995), in this proceeding, the Commission adopted rule changes to promote the efficient use of the PLMR service and facilitate the introduction of advanced technologies. To promote the transition to a more efficient narrowband channel plan, the Commission provided, *inter alia,* that "only increasingly efficient equipment" would be approved. The Commission did not set a date after which it would no longer approve equipment with a wideband (25 kHz) mode, or after which such equipment could no longer be manufactured or used. The Commission contemplated that, as systems reached the end of their service life and new radios were needed, users would migrate to the narrower bandwidth multi-mode radios in order to avoid the adjacent-channel interference that could occur from systems using the adjacent narrowband channels.

3. Subsequently, the Commission determined that the 1995 rules failed to provide adequate incentive to realize the Commission's spectrum efficiency goals in these bands, and stronger measures would be required to bring about a timely transition to narrowband technology. The Commission therefore amended the rules to provide that, by January 1, 2013, Industrial/Business and Public Safety Radio Pool licensees in the 150–174 MHz and 421–512 MHz bands must migrate to 12.5 kHz channel bandwidth, or utilize a technology that achieves equivalent efficiency.

4. The Commission also adopted interim deadlines to facilitate this transition to narrowband technology. Specifically, beginning January 1, 2011: (1) The manufacture, import, or certification of equipment capable of operating with only one voice path per 25 kHz of spectrum, *i.e.,* equipment that includes a 25 kHz mode, will be prohibited; (2) the Commission will no longer accept applications for new wideband 25 kHz operations, or modification applications that expand the authorized contour of existing 25 kHz stations; and (3) the Commission will no longer accept applications for certification of equipment that cannot operate in 6.25 kHz mode or with equivalent efficiency. Since that time, the Commission has reiterated its commitment to the narrowbanding transition, as demand for scarce PLMR spectrum continues to grow.

5. NPSTC states that it fully supports the 2013 deadline for licensees to transition to narrowband technology, but it requests a stay of the 2011 deadlines. It argues that enforcement of the prohibition on new or expanded 25 kHz licenses, and on the manufacture, import, or certification of equipment that includes a 25 kHz mode, will hamper public safety interoperability during the final two years of the transition, and requests that these deadlines be stayed until January 1, 2013. NPSTC also contends that the prohibition on certification of equipment that does not include 6.25 kHz capability will unnecessarily raise equipment costs, and should be stayed until January 1, 2015. NPSTC argues that the Commission's stay of these deadlines would not prevent or deter licensee implementation of narrowband technology prior to 2013, or prevent manufacturers from voluntarily including 6.25 kHz efficiency in new equipment.

6. The Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau sought comment on NPSTC's request. Commenters generally favor an extension of the interim measures relating to equipment manufacture, importation, and certification; but are split with regard to extending the interim licensing deadlines. Commenters agree that any action should apply equally to Industrial/Business and Public Safety licensees.

7. While NPSTC describes its petition as a stay request, we believe that it is more accurately characterized as a request for a temporary waiver of the 2011 deadlines. Pursuant to § 1.925(b)(3) of our rules, we may grant a request for waiver if it is shown that (a) the underlying purpose of the rules would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (b) in view of unique or unusual factual circumstances, application of the rules would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. We remain committed to bringing about a timely transition to narrowband technology in the PLMR services, in order to alleviate congestion in this crowded spectrum. Nevertheless, for the reasons set forth below, we find that a waiver is warranted with respect to certain aspects of NPSTC's request, and we accordingly grant the request in part and deny it in part. Specifically, we: (1) Extend the timeframe for manufacturing or importing equipment that includes a 25 kHz mode, but not the deadline for prohibiting certification applications for equipment that includes a 25 kHz mode; (2) maintain the deadline for new or expanded 25 kHz operations; and (3) extend the timeframe for certifying equipment that is not capable of operating in 6.25 kHz mode, but only until 2013, rather than 2015 as requested by NPSTC. Consistent with the comments we have received, all narrowbanding deadlines will continue to apply equally to Industrial/Business and Public Safety licensees.

8. *Manufacture or import of equipment with a 25 kHz mode.* NPSTC argues that prohibiting the manufacture or import of equipment that includes a 25 kHz mode will effectively prevent existing systems from replacing or adding radios during the last two years of the narrowbanding transition, which would hamper interoperability between systems (or different parts of the same system) that are at different stages of the narrowbanding conversion. When the Commission adopted the 2011 deadlines, it specifically stated that the narrowbanding schedule was designed to avoid complicating efforts to establish public safety interoperability. Moreover, we agree that it would be contrary to the public interest to prevent licensees from keeping 25 kHz systems in full working order until they complete the migration

to narrowband technology. Relief arguably is not necessary to avoid an equipment shortage, given that the rules do not prohibit the marketing and sale of existing inventories of 25 kHz-capable equipment after January 1, 2011. Nonetheless, we believe that a temporary waiver of the prohibition on manufacture or import of 25 kHz-capable equipment is appropriate, in order to ensure that necessary equipment remains available during the narrowbanding transition. We therefore grant a blanket waiver of § 90.203(j)(10) until January 1, 2013.

9. *Certification of equipment with a 25 kHz mode.* With respect to new certifications of equipment capable of operating in 25 kHz mode, however, we conclude that a waiver would not be appropriate. Permitting the continued manufacture and import of existing 25 kHz-capable models is sufficient to ensure that adequate supplies remain available in order to maintain existing systems during the narrowbanding transition. In contrast, there is no convincing evidence or argument upon which to conclude that certifying new types of 25 kHz-capable equipment is necessary for maintaining those systems, or that it would otherwise be in the public interest to expand the range of available 25 kHz-capable equipment as the 12.5 kHz migration deadline approaches. We therefore decline to grant a waiver of § 90.203(j)(4).

10. *New or expanded 25 kHz operations.* We also deny NPSTC's request with respect to the deadline in § 90.209(b)(6) for applications for new 25 kHz operations, or modification applications that expand the authorized contour of existing 25 kHz stations. NPSTC argues that prohibiting new or modified 25 kHz licenses will hamper interoperability between systems. The relief requested, however, is much broader, and would permit new or expanded 25 kHz operations for any reason. The interim deadlines were intended to encourage licensees to begin planning and implementing migration to narrowband technology well before January 1, 2013. We conclude that continuing to authorize new or expanded 25 kHz operations after January 1, 2011 generally would be contrary to the public interest, and would otherwise undermine our goals in establishing the narrowbanding transition deadlines in the first instance. As 25 kHz licensees migrate to narrowband technology, spectrum becomes available to other licensees to relieve congestion. We decline to take any action that would leave spectrum encumbered by 25 kHz operations longer than necessary. In situations where authorizing new or expanded 25 kHz operations would further the public interest, case-by-case relief may be considered through the waiver process.

11. *Certification of equipment lacking a 6.25 kHz mode.* Finally, NPSTC argues that requiring applications for equipment certification to specify 6.25 kHz capability as of January 1, 2011 will increase equipment costs with no accompanying benefit for 12.5 kHz or 25 kHz licensees. NPSTC also notes that a public safety interoperability standard for 6.25 kHz operation is still under development, and argues that compelling the purchase of more expensive equipment that may need to be replaced once a standard is adopted would burden public safety resources. NPSTC therefore requests that this requirement be extended to January 1, 2015, which would align it with the deadline requiring manufacturers of 700 MHz public safety band equipment to certify, manufacture, market, and import only equipment with a 6.25 kHz capability. In the *Third Report and Order* at 72 FR 19387, April 18, 2007, in this proceeding, the Commission agreed with NPSTC and others that it would be premature to take regulatory action toward a migration to 6.25 kHz technology before standards for such equipment are developed. Because the standards still have not been finalized, we agree with NPSTC that the deadline for complying with the 6.25 kHz requirement in § 90.203(j)(5) should be delayed. We do not, however, believe that it is necessary to move this deadline to the same date as the 700 MHz deadline. Because our intent is to avoid any impediment to 150–174 MHz or 421–512 MHz licensees' migration to 12.5 kHz technology, we grant a waiver of § 90.203(j)(5) only until January 1, 2013.

12. For the aforementioned reasons, we grant the NPSTC request in part and deny it in part. We recognize the concerns of NPSTC and some commenters that enforcing certain interim deadlines as of January 1, 2011 could hamper operations during the final two years of the transition and unnecessarily raise equipment costs. Consequently, we:

- Waive until January 1, 2013 the deadline for ceasing manufacture or import of equipment that includes a 25 kHz mode, but deny the request to stay the deadline for prohibiting certification applications for 25 kHz-capable equipment;
- Decline to waive the deadline for seeking new or expanded 25 kHz operations; and
- Waive until January 1, 2013 the deadline for certifying equipment that is not capable of operating in 6.25 kHz mode.

We emphasize our commitment to the January 1, 2013 deadline for migrating to narrowband technology, which the Commission first adopted in 2003 and subsequently affirmed, in order to promote the efficient use of PLMR spectrum and facilitate the introduction of advanced technologies.

13. Accordingly, *it is ordered* pursuant to sections 4(i), 11, 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), and 303(r), that the Request for Stay filed by the National Public Safety Telecommunications Council on September 29, 2009 *is granted in part* and *denied in part,* to the extent set forth above.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–17422 Filed 7–15–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090428799–9802–01]

RIN 0648–BA05

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Inseason Adjustments to Fishery Management Measures

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule makes inseason adjustments to trawl fishery management measures for petrale sole taken with selective flatfish and multiple trawl gears in the U.S. exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California, North of 40° 10.00' N. lat. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), is intended to prevent exceeding the 2010 OY for petrale sole.

DATES: Effective at 0001 hours local time on July 16, 2010. Comments on this

final rule must be received no later than 5 p.m., local time on August 16, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–BA05, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- Fax:206–526–6736, Attn: Gretchen Hanshew
- Mail: William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Gretchen Hanshew.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required 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.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (Northwest Region, NMFS), 206–526–6147, fax: 206–526–6736, *gretchen.hanshew@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the **Federal Register**'s Web site at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's (the Council or PFMC) Web site at *http://www.pcouncil.org/*.

Background

On December 31, 2008, NMFS published a proposed rule to implement the 2009–2010 specifications and management measures for the Pacific Coast groundfish fishery (73 FR 80516). The final rule to implement the 2009–2010 specifications and management measures for the Pacific Coast Groundfish Fishery was published on March 6, 2009 (74 FR 9874). This final rule was subsequently amended by inseason actions on April 27, 2009 (74 FR 19011), July 6, 2009 (74 FR 31874), October 28, 2009 (74 FR 55468), February 26, 2010 (75 FR 8820), May 4, 2010 (75 FR 23620), July 1, 2010 (75 FR 38030). Additional changes to the 2009–2010 specifications and management measures for petrale sole were made in two final rules: on November 4, 2009 (74 FR 57117), and December 10, 2009 (74 FR 65480). NMFS issued a final rule in response to a duly issued court order on July 8, 2010 (75 FR 39178). These specifications and management measures are at 50 CFR part 660, subpart G.

Limited Entry Non-whiting Trawl Fishery Management Measures

Changes to the groundfish management measures implemented by this action were recommended by the Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its June 11–17, 2010, meeting in Foster City, CA. Among other actions, the Council recommended reducing the bi-monthly cumulative limits for petrale sole in the limited entry non-whiting trawl commercial fisheries to respond to updated fishery information and other inseason management needs. On July 1, 2010, NMFS published a rule (75 FR 38030) that reduced the bi-monthly trip limits for petrale sole coastwide, effective July 1, 2010. The reductions to trip limits are intended to slow catch of petrale sole and stay below the 2010 petrale sole OY, and are described in more detail in the preamble to the July 1, 2010 rule.

The July 1, 2010, rule mistakenly omitted reductions to the bi-monthly cumulative limits for petrale sole for vessels using selective flatfish trawl gears and multiple trawl gears North of 40 10.00' N. lat. This rule reduces the petrale sole bi-monthly trip limits for these gear types, as were recommended by the Council, to keep the projected catch of petrale sole below the 2010 petrale sole OY.

These reductions to petrale sole trip limits must be implemented as quickly as possible. Even a short delay in implementation could allow vessels to take the entire two-month limit for period 4 (July-August). These changes are intended to reduce the catch of petrale sole in order to keep the total mortality of petrale sole within its 2010 OY. The reduction to trip limits also slightly reduces the projected impacts to co-occurring overfished species.

Estimated mortality of overfished and target species are the result of management measures designed to meet the Pacific Coast Groundfish FMP objective of achieving, to the extent possible, but not exceeding, OYs of target species, while fostering the rebuilding of overfished stocks by remaining within their rebuilding OYs.

Based on the considerations outlined above, the Council recommended and NMFS is implementing the following changes to cumulative limits in the limited entry non-whiting trawl fishery North of 40° 10.00' N. lat.: reduce petrale sole cumulative limits caught with selective flatfish trawl gear and multiple trawl gears from "9,500 lb (4,309 kg) per 2 months" to "6,300 lb (2,858 kg) per 2 months" in July-December.

The lower bi-monthly cumulative limit for petrale sole taken with selective flatfish and multiple trawl gears is being implemented during a bi-monthly period (See the DATES section). Vessels fishing with selective flatfish or multiple trawl gears that have taken more than 6,300 lb of petrale sole since July 1, 2010, must have begun their landing by the effective date of this rule. Land or landing means "to begin transfer of fish, offloading fish, or to offload fish from any vessel. Once transfer of fish begins, all fish aboard the vessel are counted as part of the landing." Vessels fishing with selective flatfish or multiple trawl gears that have not already taken at least 6,300 lb of petrale sole since July 1, 2010 may land no more than 6,300 lb of petrale sole (including the amount that has been taken prior to the effective date of this rule) during this two-month period (July-August).

Classification

This rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

These actions are taken under the authority of 50 CFR 660.370(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under

5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30–day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its June 11–17, 2010, meeting in Foster City, CA. The Council recommended that these changes be implemented on or as close as possible to July 1, 2010. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach, without exceeding, the OYs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California.

These decreases to bi-monthly cumulative limits for petrale sole in the limited entry trawl fishery must be implemented in a timely manner to prevent exceeding the 2010 petrale sole OY, and prevent premature closure of fisheries that impact petrale sole. These measures are intended to reduce impacts to petrale sole, a species for which a severely reduced OY was implemented for 2010 (74 FR 65480). These changes must be implemented in a timely manner, as quickly as possible. Bi-monthly cumulative limits cover a two-month period, so if implementation is delayed, then fishermen could harvest the prior higher limit before the revised lower limit is effective. Decreases to cumulative limits for other flatfish and Dover sole in the limited entry trawl fishery have already been implemented.

Delaying these changes would keep management measures in place that are not based on the best available data, which could lead to exceeding OYs or early closures of the fishery if harvest of groundfish exceeds levels projected for 2010. Such delay would impair achievement of the Pacific Coast Groundfish FMP objective of approaching, but not exceeding, OYs.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: July 13, 2010.

Carrie Selberg,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Table 3 (North) to part 660, subpart G, is revised to read as follows:

BILLING CODE 3510–22–S

Table 3 (North) to Part 660, Subpart G -- 2010 Trip Limits for Limited Entry Trawl Gear North of 40°10' N. Lat.
Other Limits and Requirements Apply -- Read § 660.301 - § 660.399 before using this table

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		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[6/]:						
1	North of 48°10' N. lat.	shore - modified[7/] 200 fm line[6/]	shore - 200 fm line[6/]	shore - 150 fm line[6/]		shore - 200 fm line[6/]	shore - modified[7/] 200 fm line[6/]
2	48°10' N. lat. - 45°46' N. lat.	75 fm line[6/] - modified[7/] 200 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - 150 fm line[6/]	100 fm line[6/] - 150 fm line[6/]	75 fm line[6/] - 200 fm line[6/]	75 fm line[6/] - modified[7/] 200 fm line[6/]
3	45°46' N. lat. - 40°10' N. lat.			75 fm line[6/] - 200 fm line[6/]	100 fm line[6/] - 200 fm line[6/]		
	Selective flatfish trawl gear is required shoreward of the RCA; all trawl gear (large footrope, selective flatfish trawl, and small footrope trawl gear) is permitted seaward of the RCA. Large footrope and small footrope trawl gears (except for selective flatfish trawl gear) are prohibited shoreward of the RCA. Midwater trawl gear is permitted only for vessels participating in the primary whiting season.						
	See § 660.370 and § 660.381 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.390-660.394 and §§ 660.396-660.399 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California.						
4	**Minor slope rockfish[2/] & Darkblotched rockfish**	6,000 lb/ 2 months		2,000 lb/ 2 months			
5	**Pacific ocean perch**	1,500 lb/ 2 months					
6	**DTS complex**						
7	Sablefish						
8	large & small footrope gear	20,000 lb/ 2 months		24,000 lb/ 2 months	21,000 lb/ 2 months		
9	selective flatfish trawl gear	9,000 lb/ 2 months					
10	multiple bottom trawl gear [8/]	9,000 lb/ 2 months					
11	Longspine thornyhead						
12	large & small footrope gear	24,000 lb/ 2 months					
13	selective flatfish trawl gear	5,000 lb/ 2 months					
14	multiple bottom trawl gear [8/]	5,000 lb/ 2 months					
15	Shortspine thornyhead						
16	large & small footrope gear	18,000 lb/2 months					
17	selective flatfish trawl gear	5,000 lb/ 2 months					
18	multiple bottom trawl gear [8/]	5,000 lb/ 2 months					
19	Dover sole						
20	large & small footrope gear	110,000 lb/ 2 months			100,000 lb/ 2 months		
21	selective flatfish trawl gear	65,000 lb/ 2 months					
22	multiple bottom trawl gear [8/]	65,000 lb/ 2 months					

TABLE 3 (North)

Table 3 (North). Continued

TABLE 3 (North) con't

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
23	**Whiting**						
24	midwater trawl	Before the primary whiting season: CLOSED. -- During the primary season: mid-water trawl permitted in the RCA. See §660.373 for season and trip limit details. -- After the primary whiting season: CLOSED.					
25	large & small footrope gear	Before the primary whiting season: 20,000 lb/trip. -- During the primary season: 10,000 lb/trip. -- After the primary whiting season: 10,000 lb/trip.					
26	**Flatfish** (except Dover sole)						
27	Arrowtooth flounder						
28	large & small footrope gear	150,000 lb/ 2 months					
29	selective flatfish trawl gear	90,000 lb/ 2 months					
30	multiple bottom trawl gear [8/]	90,000 lb/ 2 months					
31	Other flatfish [3/], English sole, starry flounder, & Petrale sole						
32	large & small footrope gear for Other flatfish [3/], English sole, & starry flounder	110,000 lb/ 2 months	110,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		100,000 lb/ 2 months
33	large & small footrope gear for Petrale sole	9,500 lb/ 2 months					6,300 lb/ 2 months
34	selective flatfish trawl gear for Other flatfish [3/], English sole, & starry flounder	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		60,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		
35	selective flatfish trawl gear for Petrale sole						
36	multiple bottom trawl gear [8/]	90,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.	60,000 lb/ 2 months, no more than 9,500 lb/ 2 months of which may be petrale sole.		60,000 lb/ 2 months, no more than 6,300 lb/ 2 months of which may be petrale sole.		
37	**Minor shelf rockfish [1/], Shortbelly, Widow & Yelloweye rockfish**						
38	midwater trawl for Widow rockfish	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting, combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
39	large & small footrope gear	300 lb/ 2 months					
40	selective flatfish trawl gear	300 lb/ month		1,000 lb/ month, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month
41	multiple bottom trawl gear [8/]	300 lb/ month		300 lb/ 2 months, no more than 200 lb/ month of which may be yelloweye rockfish			300 lb/ month

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
42	**Canary rockfish**						
43	large & small footrope gear	CLOSED					
44	selective flatfish trawl gear	100 lb/ month		300 lb/ month		100 lb/ month	
45	multiple bottom trawl gear 8/	CLOSED					
46	**Yellowtail**						
47	midwater trawl	Before the primary whiting season: CLOSED. -- During primary whiting season: In trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month. Mid-water trawl permitted in the RCA. See §660.373 for primary whiting season and trip limit details. -- After the primary whiting season: CLOSED.					
48	large & small footrope gear	300 lb/ 2 months					
49	selective flatfish trawl gear	2,000 lb/ 2 months					
50	multiple bottom trawl gear 8/	300 lb/ 2 months					
51	**Minor nearshore rockfish & Black rockfish**						
52	large & small footrope gear	CLOSED					
53	selective flatfish trawl gear	300 lb/ month					
54	multiple bottom trawl gear 8/	CLOSED					
55	**Lingcod** 4/						
56	large & small footrope gear	1,200 lb/ 2 months		4,000 lb/ 2 months			
57	selective flatfish trawl gear			1,200 lb/2 months			
58	multiple bottom trawl gear 8/						
59	**Pacific cod**	30,000 lb/ 2 months		70,000 lb/ 2 months			30,000 lb/ 2 months
60	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
61	**Other Fish** 5/	Not limited					

TABLE 3 (North) con't

1/ Bocaccio, chilipepper and cowcod are included in the trip limits for minor shelf rockfish.
2/ Splitnose rockfish is included in the trip limits for minor slope rockfish.
3/ "Other flatfish" are defined at § 660.302 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
4/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.
5/ "Other fish" are defined at § 660.302 and include sharks, skates (including longnose skate), ratfish, morids, grenadiers, and kelp greenling. Cabezon is included in the trip limits for "other fish."
6/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.391-660.394. This RCA is not defined by depth contours, and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to the RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
7/ The "modified" fathom lines are modified to exclude certain petrale sole areas from the RCA.
8/ If a vessel has both selective flatfish gear and large or small footrope gear on board during a cumulative limit period (either simultaneously or successively), the most restrictive cumulative limit for any gear on board during the cumulative limit period applies for the entire cumulative limit period.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2010–17435 Filed 7–15–10; 8:45 am]

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Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 701

Emergency Conservation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Record of Decision.

SUMMARY: This document presents the Record of Decision (ROD) regarding the changes made to the Emergency Conservation Program (ECP). ECP provides emergency funding to owners, operators, and tenants of farms and ranches who suffered damage to their certain lands as a result of a natural disaster. Under the Proposed Action, Farm Service Agency (FSA) could expand ECP eligibility to other types of farmland, namely land that is timberland, or is a roadbed on an area of land that is eligible for ECP, and also farmsteads, feedlots, and grain bins. To implement the Proposed Action, FSA would develop a proposed rule to expand upon current regulations to reflect changes to the policy that currently only extends the ECP to traditional cropland and forage land. Any proposal to change any rule would be subject to public comment and to consideration and rejection as the circumstances, further reflection, and public comments might warrant. In the interim, however, FSA is inviting comments on the ROD. The ECP Supplemental Environmental Impact Statement (SEIS) tiers from the Emergency Conservation Programmatic Environmental Impact Statement completed in 2003 and published in the **Federal Register** on March 4, 2004. The SEIS analyzes the impacts of the Proposed Action on the nation's environmental resources and economy. The No Action alternative (continuation of current ECP with no modifications) is also analyzed and to provide an environmental baseline.

DATES: We will consider comments that we receive by August 16, 2010. We will consider comments submitted after this date to extent possible.

ADDRESSES: We invite you to submit comments on this ROD and requests for copies of the Final SEIS (FSEIS) by any of the following methods:

- *Mail:* Matthew T. Ponish, National Environmental Compliance Manager, USDA FSA CEPD, Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513.
- *Hand Delivery or Courier:* Deliver comments to the above address.

All written comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. The ECP FSEIS including appendices and this ROD are available on the FSA Environmental Compliance Web site at: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd.*

FOR FURTHER INFORMATION CONTACT: Matthew T. Ponish, National Environmental Compliance Manager, phone: (202) 720–6853, or e-mail: *Matthew.Ponish@wdc.usda.gov,* or mail: Matthew T. Ponish, USDA FSA CEPD, Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513. More detailed information on ECP is available from FSA's Web site: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=ecp.* The ECP FSEIS including appendices and this ROD are available on the FSA Environmental Compliance Web site at: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd.* Copies of the FSEIS may be obtained from Matt Ponish at the above address.

SUPPLEMENTARY INFORMATION:

The Decision

After reviewing comments from interested individuals and other State and Federal agencies, FSA has decided to develop regulations in a manner consistent with the Proposed Action, which could include expanding land eligibility to include timberland, farmsteads, feedlots, farm roads, farm buildings, or grain bins. This decision was made after comparing the overall environmental impacts and other relevant information with regard to the reasonable alternatives considered in the ECP SEIS. The following briefly describes the purpose and need for the proposed changes and the alternatives considered.

Purpose and Need for the Proposed Action

The purpose of the Proposed Action is to expand the eligibility requirements of the current ECP. The need for the proposed change would be to better assist producers in recovering from a natural disaster.

Overview of Current ECP

ECP currently identifies cropland, hayland, and pastureland as eligible land for benefits in the event of natural disasters. The goal of ECP is to provide financial assistance to agricultural producers to restore agricultural lands to a productive state following a natural disaster, and to carry out emergency water conservation and water enhancing measures during periods of severe drought. Producers can apply for one time cost-share and technical assistance for authorized activities under the following emergency conservation (EC) practices:

(EC 1) Removing debris from farmland;

(EC 2) Grading, shaping, releveling, or similar measures;

(EC 3) Restoring permanent fences;

(EC 4) Restoring conservation structures and other similar installations;

(EC 5) Emergency wind erosion control measures;

(EC 6) Drought emergency measures;

(EC 7) Other emergency conservation measures; and

(EC 8) Field windbreaks and farmstead shelterbelt emergency measures.

ECP provides financial and technical assistance to producers for restoring agricultural land to normal production following a natural disaster. Regulatory procedures for implementing ECP are addressed in 7 CFR part 701 and further outlined in internal guidance for FSA State and county offices under FSA Handbook 1–ECP. The following natural disasters are covered by ECP:

- Hurricane or typhoon;
- Tidal waves;
- Tornado;
- Earthquakes;
- High winds, including micro-bursts;
- Volcanic eruptions;
- Storms, including ice storms;
- Landslides;
- Floods;
- Mudslides;
- High water;

- Severe snowstorms;
- Wind-driven water;
- Drought;
- Wildfire; and
- Other natural phenomenon.

Following a disaster event, FSA county committees (COC) or authorized responsible agency officials generally visit the site and make an assessment of the damage to verify that it meets the minimum ECP requirements. The COC then obtains concurrence from the FSA State committee before approving the disaster to qualify the area for ECP and requesting financial assistance from the national office. During periods of severe drought, the determination to implement ECP is made by the FSA National headquarters. For the land to be eligible, the damage must:

- Create new conservation problems which, if not treated, would impair or endanger the land;
- Materially affect the productivity of the land;
- Represent unusual damage that, except for wind erosion, does not occur frequently; or
- Be so costly to repair that Federal assistance is required to return the land to productive agricultural use.

To be eligible for ECP, an owner, operator, or tenant must contribute part of the cost for implementing the approved practice and must also have an interest in the farm. American Indian Tribes or individuals that own eligible land are eligible for ECP benefits. Consistent with a number of other programs and so that the funds will go to private producers who are in need, Federal agencies, States, political subdivisions of States, State agencies, and districts with taxing authority are not eligible for ECP benefits.

The land offered for assistance must be located in the county in which ECP has been approved, be normally used for farming or ranching operations, and be expected to have annual agricultural production. Eligible land, under current rules, is broadly defined as cropland, hayland, and pastureland. Additionally, lands eligible under ECP includes those lands that are:

- Protected by levees or dikes built to U.S. Army Corps of Engineers, Natural Resource Conservation Service, or similar standards, that were effectively functioning before the disaster;
- Protected by permanent or temporary vegetative cover;
- Used for commercially producing orchards, citrus groves, and vineyards;
- Used for producing agricultural commodities;
- Where conservation structures are installed, including waterways, terraces, sediment basins, diversions, windbreaks, etc. not funded by other conservation programs;
- In Christmas tree plantations;
- Devoted to container-grown nursery stock if the nursery stock is grown commercially for wholesale purposes and is grown on land in containers for at least one year ("retail producers" usually do not produce sufficient quantities of product for sale to be considered producers in the same sense as those that produce other agricultural commodities in bulk);
- In field windbreaks or farm shelterbelts where the practice is to remove debris and correct damages caused by the disaster; and
- Lands on which facilities are located in irrigation canals or facilities that are located on the inside of the canal's banks as long as the canal is not a channel subject to flooding.

In general, ECP funds are held in reserve at the national level and allocated after a natural disaster has occurred and ECP has been authorized. Funds are allocated to FSA State offices based on an estimate of funds needed to begin implementing the program and funding availability. The FSA State offices then allocate funds to the appropriate FSA county offices. The funds are then distributed to owners, operators, and tenants applying for ECP benefits.

Owners, operators, and tenants applying for ECP assistance can receive reimbursement for up to 75 percent of the cost of activities covered under the approved conservation practices. The total cost-share provided to an individual person or entity per natural disaster cannot exceed $200,000. In addition, duplicate payments by rule are prohibited as well as being unnecessary to correct the producer's problem and therefore if payments such as cost-share or other benefits have been provided through other FSA emergency or conservation programs for the same or similar expenses for the same land, then financial assistance cannot be provided through ECP.

Limited resource producers may receive financial assistance for up to 90 percent of the cost of the covered activities. The definition of a "limited resource producer" is:

> Any producer with direct or indirect gross farm sales no more than $100,000 in each of the previous two years and has a total household income at or below the national poverty level for a family of four or less than 50 percent of the county median household income in each of the previous two years.

These kinds of determinations are made for other farm programs and they use an index. The process is described at a website used by the Natural Resources and Conservation Service at *http://www/lfrrtool.sc.egov.usda.gov* and information will be available at local offices of the FSA for any person who feels that this provision may apply to them.

Alternatives Considered

FSA reviewed the following alternatives prior to making this decision. The first table describes several alternatives considered, but eliminated from further study and the rationale for their elimination. These alternatives were determined not to be reasonable as explained in the table. The second table shows alternatives determined to be reasonable that were evaluated in detail in the ECP SEIS.

LIST OF ALTERNATIVES ELIMINATED FROM FURTHER STUDY

Alternative	Rationale for elimination
Expand eligibility to include land supporting horses used for recreation, commercial, or other purposes (such as race horses).	Agricultural programs have traditionally not treated those activities as "agricultural" production for purposes of "farm" programs; this alternative was therefore considered for purposes of this exercise to be beyond the scope of the agency's authority. This issue can, however, be revisited when actual regulations are proposed for the program.
Make ECP available only in natural disasters declared by the President or Secretary of Agriculture.	There are insufficient records to allow, without great cost, a substantial analysis of this option and given the history of this program this option was seen as being unduly limiting given that unlike other disaster related statutes there is no specific provision limiting this program to those areas that have been, as such, officially the subject of a Presidential or Secretarial disaster declaration.

LIST OF ALTERNATIVES ELIMINATED FROM FURTHER STUDY—Continued

Alternative	Rationale for elimination
Combine ECP with Emergency Watershed Protection Program (EWP).	EWP is administered by a different agency, the Natural Resources Conservation Service, to undertake community-level emergency measures to control runoff and prevent soil erosion to safeguard lives and properties from floods, drought, or any watershed damaged by natural disaster. ECP is directed at farm level aid and therefore the programs do not appear to be sufficiently compatible to warrant analysis and considering community-based efforts is beyond the scope of this SEIS.

LIST OF REASONABLE ALTERNATIVES CONSIDERED

Alternative	Description
No Action	Serving as the baseline for comparison of the Proposed Action, the No Action Alternative is continuation of ECP as currently configured.
Proposed Action	Expanding eligible farmland to include timberland, farmsteads, feedlots, farm roads, farm buildings, and grain bins meets the Proposed Action's purpose and need, and there is sufficient information to perform a meaningful analysis.

Based upon the analyses and conclusions presented in the Draft and Final SEISs, FSA has identified the Proposed Action as the preferred alternative. Within the context of the Proposed Action's purpose and need, this alternative is both environmentally responsible and reasonable to implement.

Public Involvement

Responses to the FSEIS public comments and FSA's analyses supporting this Record of Decision are presented in the following discussion.

A public notice announcing a "Notice of Intent to Prepare an Environmental Impact Statement: Request for Comments" was published in the **Federal Register** on October 24, 2007 (72 FR 60312); the comment period ended December 24, 2007. Locations for holding public scoping meetings were chosen based upon a density model of where ECP was used the most and areas that received the most ECP funding since 2002. Following the Notice of Intent, a public announcement was placed in local newspapers in cities selected for public scoping meetings in September and October of 2007. Public scoping meetings were held in seven States at the locations and dates in the table below. The meetings consisted of a presentation on the proposed changes, a description of the existing program and preliminary alternatives, followed by a comment period that was recorded by court reporters. A project website was created where interested persons could access information on the proposed changes, the places and times of meetings, and for making comments online. Few comments were received; the comments were generally supportive of ECP. A substantive comment concerned making the costs eligible for removing livestock that died as a result of a disaster to an appropriate disposal location as reburial onsite may be a water quality hazard. Prior to preparing and publishing a Draft SEIS (DSEIS), FSA undertook preparatory studies to determine the basic parameters for conducting the analyses. These included determining which environmental resources, if any, could be eliminated from further analysis in the DSEIS, and which alternatives were determined to be reasonable. Public notice announcing the availability of the DSEIS was published in the **Federal Register** on May 27, 2008 (73 FR 30376), and copies of the DSEIS were mailed to 17 Federal agencies. The public comment period ended on June 29, 2008.

LIST OF PUBLIC SCOPING MEETINGS

State, town	Date of meeting	Time of meeting	Meeting location
Alabama, Mobile	September 13, 2007	6:30 p.m	Jon Archer Agricultural Center, 1070 Schillinger Road.
California, Dixon	October 29, 2007	6:30 p.m	USDA FSA Office, 1170 N. Lincoln St., Suite 109.
Florida, Naples	September 14, 2007	5:30 p.m	Double Tree Guest Suites, 12200 Tamiami Trail North.
Georgia, Atlanta	September 17, 2007	6:30 p.m	Hyatt Place Atlanta Airport, 1899 Sullivan Road.
Louisiana, Franklinton	October 25, 2007	6:30 p.m	LSU Southeast Research Station, 41217 Bethel Road.
Missouri, Columbia	October 22, 2007	6:30 p.m	FSA State Office, Parkdale Center, Suite 232 601 Business Loop, 70W.
Texas, Amarillo	October 24, 2007	6:30 p.m	Texas A&M University Research & Extension Center, District Office, 6500 Amarillo Blvd. West.

Comments were received from two Federal agencies and one State agency. FSA compiled and reviewed all of the comments submitted. Changes to the DSEIS, in response to agency and public comment, included providing consistency in language on the nature of consultation with the U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act, coordination of FSA personnel with those of the Federal Emergency Management Agency (FEMA) in response to disasters, the potential for certain practices to spread invasive plant species, and the potential that wildlife displaced may not have access to suitable habitat. Substantive comments will be further considered by FSA in the development of future policy; the issues include:

- Removal rather than burial of livestock that died as a result of a disaster,
- Addressing long-term needs with short-term disaster relief efforts, and
- Insect infestations as an addition to the list of eligible disasters.

Impacts Summary

The FSEIS outlines and compares all of the alternatives potential impacts. Both beneficial and adverse effects were identified for activities authorized by ECP that would now be implemented on the new land categories as described in the Proposed Action. Removing debris, shaping and leveling land, re-establishing vegetation, and restoring conservation structures after a natural disaster, as allowed under the existing ECP would now also have long-term benefits for vegetation and wildlife on timberlands and farmsteads included in the Proposed Action. Re-establishing permanent vegetation and conservation structures would ultimately improve local water quality, reduce soil erosion, and enhance wildlife habitat by promoting biological diversity on these new land categories. Beneficial impacts to surface water quality, groundwater quality, forest health, forest-related resources, floodplains, and wetlands would be realized from implementation of the conservation practices established on farmsteads and timberlands. Re-establishing vegetation, wind control measures, and releveling land would all reduce erosion potential and protect the area from soil loss. Restoration activities that include mechanical removal of debris, using heavy equipment to shape and level land, and ground preparations for installing vegetation, would not be substantially different than similar activities on agricultural lands.

However, wildlife may be temporarily displaced during restoration, or displaced long term until habitat structure is re-established after a disaster. It is possible that due to the scope of the damage caused by a natural disaster that no suitable habitat is nearby, or nearby habitat may already have established wildlife at a capacity that cannot sustain additional animals in the long term. Of the new categories of farmland included in the Proposed Action, timberland has the most potential for having undisturbed land. Establishing access roads and restoration of timberland areas would temporarily remove vegetation in the immediate area and have the potential for spreading invasive plant species. This activity also has the potential to increase soil erosion that may increase sedimentation of nearby waters. The use of heavy machinery, especially in timberland areas, could compact soils, impairing water infiltration and vegetation growth.

The Proposed Action to expand the program eligibility to timberland, farmsteads, and farm buildings would increase the potential for encountering a historic property. The use of heavy equipment could negatively affect historic properties through ground disturbance.

Potential benefits and adverse impacts to these sites would be the same as those described in the current ECP. Most of the above possible adverse impacts may be controlled by employing best management practices that minimize this potential, such as washing equipment before entering or leaving the work area to minimize spreading invasive plant species, ensuring seed mixes do not include invasive or noxious species, controlling access of machinery to the work area, employment of silt fencing, use of vegetative strips to stabilize soil, and stockpiling topsoil for re-use in establishing new vegetation.

Protected species that occur or have the potential to occur in areas approved for ECP would be protected through informal consultation with USFWS during the site-specific environmental evaluation. If impacts are identified, formal consultation with USFWS would be completed.

If negative impacts to listed species are found, it is not likely the land would be approved for ECP. However, FSA would continue to encourage FSA State offices to develop memoranda of understandings with USFWS to expedite reviews at the site specific level.

Under the Proposed Action, expanding the eligibility of ECP allows for the continuation of cost share payments to producers, and allows more producers to apply for assistance.

Rational for Decision

None of the impacts discussed in the FSEIS are considered significant, and there are no adverse cumulative impacts expected on environmental resources. It is possible to manage most of these concerns and therefore minimize any potentially adverse effects by employing best management practices, and through site specific environmental evaluations for certain practices prior to enrolling particular lands into ECP. Further avoidance, minimization, and mitigation of impacts would be addressed in the Federal and State permitting processes prior to enrolling specific lands. These measures would be incorporated into a conservation plan prior to accepting land proposed for enrollment in ECP.

Implementation and Monitoring

FSA will implement the Proposed Action as specified in the ECP FSEIS. The Proposed Action alternative allows different types of land to be eligible for ECP benefits, thereby potentially providing producers greater financial assistance. Restoring land to agricultural production after a natural disaster provides long-term benefits to water quality, improves soil stability, restores wildlife habitat, and helps to stabilize the local economy. Any deviation from the Proposed Action alternative and the area of potential effects evaluated in the FSEIS may require supplemental environmental analyses. FSA will ensure that impacts are minimized through a process of completing site-specific environmental evaluations for certain ECP practices for each application.

Signed in Washington, DC, on June 25, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–16755 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1221

[Doc. No. AMS–LS–10–0003]

Sorghum Promotion and Research Program: Procedures for the Conduct of Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Promotion, Research, and Information Act of 1996 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sorghum Promotion, Research, and Information Order (Order). The Act requires that the Secretary of Agriculture (Secretary) conduct a referendum among persons subject to assessments who, during a representative period established by the Secretary, have engaged in the production or importation of sorghum. This proposed rule establishes procedures the Department of Agriculture (USDA) would use in conducting the required referendum as well as future referenda. Eligible persons would be provided the opportunity to vote during a specified period announced by USDA. For the program to continue, it must be approved, with an affirmative vote, by at least a majority of those persons voting who were engaged in the production or importation of sorghum during the representative period.

DATES: Comments regarding this proposal must be received by September 14, 2010.

Comments on this proposal must be posted online at *http://www.regulations.gov* or sent to Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone: (202) 720–1115; Fax: (202) 720–1125. Comments will be made available for public inspection via the Internet at *http://www.regulations.gov.* All comments should reference the docket number, Docket No. AMS–LS–10–0003, the date, and the page number of this issue of the **Federal Register**. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch on 202/720–1115, fax 202/720–1125, or by e-mail at *Kenneth.Payne@ams.usda.gov* or Rick Pinkston, USDA, FSA, DAFO, on 202/690–8034, fax 202/720–5900, or by e-mail on *rick.pinkston@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not established in accordance with the law, and may request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Regulatory Flexibility and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), USDA is required to examine the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act, which authorizes USDA to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act states that Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, Government-supervised, commodity promotion programs.

Section 518 of the Act provides three options for determining industry approval or continuation of a new research and promotion program. They are: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, § 518 of the Act provides for referendums to ascertain approval of an Order to be conducted either prior to its going into effect or within 3 years after assessments first begin under an Order. As recommended by representatives of the sorghum industry, the final Order, which was published in the **Federal Register** on May 6, 2008 (73 FR 25398), provides that USDA conduct a referendum within 3 years after assessments begin and that the continuation of the Order be approved by at least a majority of those persons voting for approval who are engaged in the production or importation sorghum.

This proposed rule would establish the procedures USDA would use for the conduct of a nationwide referendum among eligible persons to determine if the Order should be continued. This proposal would add a new subpart that establishes procedures to conduct the initial and future referendum. The new subpart would cover definitions, certification and voting procedures, eligibility, disposition of forms and records, FSA's role, and reporting the results.

According to the 2007 Census of Agriculture, there are approximately 26,000 persons engaged in the production of sorghum who are subject to the program. Most sorghum producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA)(13 CFR 121.201).

In accordance with OMB regulation (5 CFR part 1320) that implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) (PRA), AMS received OMB approval for a new information collection for the sorghum program. Upon approval, this collection was merged into the existing collection numbered 0581–0093.

The information collection requirements are minimal. Public reporting burden on producers and importers for this collection of information is estimated to average 0.01 hours per response with an estimated total number of 166 hours and a total cost of $3,079.30. Obtaining a ballot by mail, in-person, facsimile, or via the Internet and completing it in its entirety would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

Background

The Act (U.S.C. 7411–7425), which became effective on April 4, 1996, authorizes USDA to establish generic programs of promotion, research, and information for agricultural commodities designed to strengthen an industry's position in the marketplace and to maintain and expand existing domestic and foreign markets and uses for agricultural commodities. Pursuant to the Act, a proposed Order on the Sorghum Checkoff Program was published in the **Federal Register** on November 23, 2007 (72 FR 65842). The final Order was published in the **Federal Register** on May 6, 2008 (73 FR 25398). Collection of assessments began on July 1, 2008.

This program is funded primarily by those persons engaged in the production of sorghum. Grain sorghum is assessed at a rate of 0.6 percent of net market value received by the producer.

Sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage are assessed at a rate of 0.35 percent of net market value received by the producer. Imported sorghum is also subject to assessment and therefore, sorghum importers are eligible to vote in the referendum. Total annual revenue for the program is approximately $6,000,000 of which, less than $100 comes from import assessments.

For purposes of this program, *Sorghum* means any harvested portion of *Sorghum bicolor* (L.) Moench or any related species of the genus *Sorghum* of the family Poaceae. This includes, but is not limited to, grain sorghum (including hybrid sorghum seeds, inbred sorghum line seed, and sorghum cultivar seed), sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage.

The Act requires that a referendum to ascertain approval of the Order must be conducted either prior to the Order going into effect or within 3 years after assessments first begin. The industry recommended to USDA that the referendum be conducted no later than 3 years after assessments first begin to determine whether the Order should be continued. Assessments began on July 1, 2008. Thus, USDA is required to conduct a nationwide referendum among persons subject to the assessment by July 1, 2011.

On January 25, 2010, the Chairman of the United Sorghum Checkoff Program Board signed a letter requesting that the referendum be completed by March 1, 2011. He observed that there is a large area of sorghum production in South Texas, Louisiana, Arkansas and other southern States that begin planting in March. He noted that by conducting the referendum before March 1, 2011, producers would not have to interrupt planting operations at a critical time to go and vote.

The Order would continue if a majority of those persons voting favor continuing the program. If the continuation of the Order is not approved by eligible persons voting in the referendum, USDA would begin the process of terminating the program.

Eligible persons would be required to complete a ballot in its entirety, vote "yes" or "no" to continue the program, and provide documentation showing that they engaged in the production or importation of sorghum during the representative period. The person would sign the ballot certifying that they were engaged in the production or importation of sorghum during a representative period specified by the Secretary to the best of one's knowledge.

USDA proposes that the representative period for the production or importation of sorghum would be July 1, 2008 through December 31, 2010. USDA also proposes that the ballots may be cast in person, by facsimile, or by mail-in vote at the appropriate county FSA or, for importers, AMS offices. Providing producers an opportunity to vote at the county FSA office and importers through the AMS office would give persons subject to the Order the greatest opportunity to vote in the referendum.

Producers would vote at the county Farm Service Agency (FSA) office where FSA maintains and processes the person's administrative farm records. For those eligible producers not participating in FSA programs, the opportunity to vote would be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county would vote in the county FSA office where the person does most of his or her business. Eligible producer voters can determine the location of county FSA offices by contacting (1) The nearest county FSA office, (2) the State FSA office, or (3) through an online search of FSA's Web site at *http://www.fsa.usda.gov/pas/default.asp.* From the options available on this Web page Select "Your local office," click on your State, and click on the map to select a county.

Importers would vote by contacting Craig Shackelford, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone: (202) 720–1115; Fax: (202) 720–1125; *craig.shackelford@ams.usda.gov.* Forms may be obtained via the Internet at *http://www.ams.usda.gov/LSMarketingPrograms.*

The proposed rule establishes procedures USDA would use in conducting the required referendum as well as future referendums provided under the Act. The proposed rule includes definitions, eligibility, certification and voting procedures, reporting results, and disposition of the forms and records.

FSA would coordinate State and county FSA roles in conducting the referendum by (1) Determining producer eligibility, (2) canvassing and counting ballots, and (3) reporting the results. AMS would coordinate importer voting. A 60 day comment period is provided for interested persons to comment.

List of Subjects in 7 CFR Part 1221

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Sorghum and sorghum products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that part 1221, Title 7 of Chapter XI of the Code of Federal Regulations, be amended as follows:

PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR part 1221 continues to read as follows:

Authority: 7 U.S.C. 7411–7425.

2. Subpart B is added to read as follows:

Subpart B—Procedures for the Conduct of Referenda

Definitions

Sec.
1221.200 Terms defined.
1221.201 Administrator, AMS.
1221.202 Administrator, FSA.
1221.203 Eligibility.
1221.204 Farm Service Agency.
1221.205 Farm Service Agency County Committee.
1221.206 Farm Service Agency County Executive Director.
1221.207 Farm Service Agency State Committee.
1221.208 Farm Service Agency State Executive Director.
1221.209 Public notice.
1221.210 Representative period.
1221.211 Voting period.

Procedures

1221.220 General.
1221.221 Supervision of the process for conducting referenda.
1221.222 Eligibility.
1221.223 Time and place of the referendum.
1221.224 Facilities.
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Subpart B—Procedures for the Conduct of Referenda

Definitions

§ 1221.200 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as

the definition of such terms in subpart A of this part.

§ 1221.201 Administrator, AMS.

Administrator, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1221.202 Administrator, FSA.

Administrator, FSA, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1221.203 Eligibility.

Eligibility is defined as any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production or importation of sorghum. Such persons are eligible to participate in the referendum.

§ 1221.204 Farm Service Agency.

Farm Service Agency also referred to as "FSA" means the Farm Service Agency of USDA.

§ 1221.205 Farm Service Agency County Committee.

Farm Service Agency County Committee, also referred to as "FSA County Committee or COC," means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1221.206 Farm Service Agency County Executive Director.

Farm Service Agency County Executive Director, also referred to as "CED," means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1221.207 Farm Service Agency State Committee.

Farm Service Agency State Committee, also referred to as "FSA State Committee," means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

§ 1221.208 Farm Service Agency State Executive Director.

Farm Service Agency State Executive Director, Farm Service Agency State Executive Director, also referred to as "SED," means the person within a State who is appointed by the Secretary to be responsible for the day-to-day operation of the FSA State Office, or the person acting in such capacity.

§ 1221.209 Public notice.

Public notice means not later than 30 days before the referendum is conducted, the Secretary shall notify the eligible voters in such manner as determined by the Secretary, of the voting period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under section 518 of the Act.

§ 1221.210 Representative period.

Representative period means the period designated by the Secretary pursuant to section 518 of the Act.

§ 1221.211 Voting period.

The term *voting period* means a 4-week period to be announced by the Secretary for voting the referendum.

Procedures

§ 1221.220 General.

A referendum to determine whether eligible persons favor the continuance of this part shall be carried out in accordance with this subpart.

(a) The referendum will be conducted at county FSA offices for producers and through AMS headquarters offices for importers.

(b) The Secretary shall determine if at least a majority of those persons voting favor the continuance of this part.

§ 1221.221 Supervision of the process for conducting referenda.

The Administrator, AMS, shall be responsible for supervising the process of permitting persons to vote in a referendum in accordance with this subpart.

§ 1221.222 Eligibility.

(a) Any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production or importation of sorghum is eligible to participate in the referendum.

(b) *Proxy registration.* Proxy registration is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a person's estate, or an authorized representative of any eligible producer or importer entity (other than an individual person), such as a corporation or partnership, may vote on behalf of that entity. Further, an individual cannot vote on behalf of another individual (*i.e.,* spouse, family members, sharecrop lease, joint tenants, tenants in common, owners of community property, a partnership, or a corporation).

(c) Any individual, who votes on behalf of any producer or importer entity, shall certify that he or she is authorized by such entity to take such action. Upon request of the county FSA or AMS office, the person voting may be required to submit adequate evidence of such authority.

(d) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation who engaged in the production or importation of sorghum during the representative period as a producer or importer entity shall be entitled to cast only one vote; provided, however, that any individual member of a group who is an eligible person separate from the group may vote separately.

§ 1221.223 Time and place of the referendum.

(a) The opportunity to vote in the referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to vote following the procedures established in this subpart during the normal business hours of each county FSA or AMS office.

(b) Persons can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office, or through an online search of FSA's Web site.

(c) Each eligible producer shall cast a ballot in the county FSA office where FSA maintains the person's administrative farm records. For eligible persons not participating in FSA programs, the opportunity to vote will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county will vote in the county FSA office where the person does most of his or her business.

(d) Each eligible importer would cast a ballot in the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone: (202) 720–1115; Fax: (202) 720–1125.

§ 1221.224 Facilities.

Each county FSA office will provide:

(a) A voting place that is well known and readily accessible to persons in the county and that is equipped and

arranged so that each person can complete and submit a ballot in secret without coercion, duress, or interference of any sort whatsoever, and

(b) A holding container of sufficient size so arranged that no ballot or supporting documentation can be read or removed without breaking seals on the container.

§ 1221.225 Certification and referendum ballot form.

Form LS–379 shall be used to vote in the referendum and certify eligibility. Eligible persons will be required to complete a ballot in its entirety, vote "yes" or "no" to continue the program and provide documentation such as a sales receipt or remittance form showing that the person voting was engaged in the production of sorghum during the representative period. The person or authorized representative shall sign the ballot certifying that they or the entity they represent were engaged in the production of sorghum during the representative period.

§ 1221.226 Certification and voting procedures.

(a) Each eligible person shall be provided the opportunity to cast a ballot during the voting period announced by the Secretary.

(1) Each eligible person shall be required to complete Form LS–379 in its entirety, sign it and, provide evidence that they were engaged in the production or importation of sorghum during the representative period. The person must legibly place his or her name and, if applicable, the entity represented, address, county and, telephone number. The person shall sign and certify on Form LS–379 that:

(i) The person was engaged in the production or importation of sorghum during the representative period;

(ii) The person voting on behalf of a corporation or other entity is authorized to do so;

(iii) The person has cast only one vote; and

(2) Only a completed and signed Form LS–379 accompanied by supporting documentation showing that the person was engaged in the production or importation of sorghum during the representative period shall be considered a valid vote.

(b) To vote, eligible producers may obtain Form LS–379 in-person, by mail, or by facsimile from county FSA offices or through the Internet during the voting period. A completed and signed Form LS–379 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate county FSA office where FSA maintains and processes the person's administrative farm records. For a person not participating in FSA programs, the opportunity to vote in a referendum will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production of sorghum in more than one county will vote in the county FSA office where the person does most of his or her business. A completed and signed Form LS–379 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office. Form LS–379 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS–379 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office on the 5th business day following the final day of the voting period. To vote, eligible importers may obtain Form LS–379 in-person, by mail or, by facsimile from AMS offices or through the Internet during the voting period. A completed and signed Form LS–379 and supporting documentation, such as a Customs and Border Protection form 7501, must be returned to the from the AMS headquarters office.

(c) A completed and signed Form LS–379 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office for producers and to AMS office for importers. Form LS–379 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office for producers or the AMS office for importers prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS–379 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office for producers and the AMS office for importers on the 5th business day following the final day of the voting period.

(d) Persons who obtain Form LS–379 in-person at the appropriate FSA county office may complete and return it the same day along with the supporting documentation. Importers who obtain Form LS–379 in-person at the appropriate AMS office may complete and return it the same day along with the supporting documentation.

§ 1221.227 Canvassing voting ballots.

(a) Canvassing of Form LS–379 shall take place at the appropriate county FSA offices or AMS office on the 6th business day following the final day of the voting period. Canvassing of producer ballots shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director, if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the ballots and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) Canvassing of importer ballots will be performed by AMS personnel or any other person as deemed necessary.

(c) Form LS–379 should be canvassed as follows:

(1) *Number of valid ballots.* A person has been declared eligible by FSA or AMS to vote by completing Form LS–379 in its entirety, signing it, and providing supporting documentation that shows the person who cast the ballot during the voting period was engaged in the production or importation of sorghum. Such ballot will be considered a valid ballot.

(2) *Number of ineligible ballots.* If FSA or AMS cannot determine that a person is eligible based on the submitted documentation or if the person fails to submit the required supporting documentation, the person shall be determined to be ineligible. FSA or AMS shall notify ineligible persons in writing as soon as practicable but no later than the 8th business day following the final day of the voting period.

(d) *Appeal.* A person declared to be ineligible by FSA or AMS can appeal such decision and provide additional documentation to the FSA county office or AMS within 5 business days after the postmark date of the letter of notification of ineligibility. FSA or AMS will then make a final decision on the

person's eligibility and notify the person of the decision.

(e) *Invalid ballots.* An invalid ballot includes, but is not limited to the following:

(1) Form LS–379 is not signed or all required information has not been provided;

(2) Form LS–379 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS–379 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS–379 and supporting documentation returned by mail was not received in the county FSA or AMS office by the 5th business day following the final day of the voting period;

(5) Form LS–379 or supporting documentation is mutilated or marked in such a way that any required information on the Form is illegible; or

(6) Form LS–379 and supporting documentation not returned to the appropriate county FSA or AMS office.

§ 1221.228 Counting ballots.

(a) Form LS–379 shall be counted by county FSA offices or the AMS office on the same day as the ballots are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Number of invalid ballots.

§ 1221.229 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event shall submit no later than the 18th business day following the final day of the specified period. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 calendar days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1221.230 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the voting period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

§ 1221.231 Results of the referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, reports from all State FSA offices. The Administrator, AMS shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official results on its Web site. State reports and related papers shall be available for public inspection upon request during normal business hours at the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room 2628–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

§ 1221.232 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the "Sorghum Checkoff Program Referendum," all of the Forms LS–379 along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

§ 1221.233 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

§ 1221.234 Confidentiality.

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

Dated: July 9, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–17272 Filed 7–15–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1429

RIN 0560–AI02

Asparagus Revenue Market Loss Assistance Payment Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes regulations to implement the new Asparagus Revenue Market Loss Assistance Payment (ALAP) Program authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The purpose of the program is to compensate domestic asparagus producers for marketing losses resulting from imports during the 2004 through 2007 crop years. Payments will be calculated based on 2003 crop production. Through the ALAP Program, CCC is authorized to provide up to $15 million in direct payments to asparagus producers. This rule proposes eligibility requirements, payment application procedures, and the method for calculating individual payments. This rule also proposes new information collection for the payment application.

DATES: We will consider comments that we receive by September 14, 2010.

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

- E-mail: *Gene.rosera@wdc.usda.gov.*
- *Fax:* (202) 690–1536.
- *Mail:* Director, Price Support Division, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), Mail Stop 0512, Rm. 4095–S, 1400

Independence Ave., SW., Washington, DC 20250–0512.

• *Hand Delivery or Courier:* Deliver comments to the above address.

• *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All written comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday. A copy of this proposed rule is available through the FSA home page at *http://www.fsa.usda.gov/*.

FOR FURTHER INFORMATION CONTACT: Gene Rosera, Program Manager, FSA, USDA, Mail Stop 0512, 1400 Independence Ave., SW., Washington, DC 20250–0512; telephone (202) 720–8481; fax (202) 690–1536; e-mail: *gene.rosera@wdc.usda.gov.* Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 10404 of the 2008 Farm Bill (Pub. L. 110–246) directs the Secretary of Agriculture to "make payments to producers of the 2007 crop of asparagus for market loss resulting from imports during the 2004 through 2007 crop years." The 2008 Farm Bill provides that the payment rate will be based on the reduction in asparagus farm revenue for the 2004 through 2007 crop years. The payment quantity will be the quantity of the 2003 crop of asparagus produced on a farm, which is used as the "baseline" production amount before the losses in 2004 through 2007 occurred. The ALAP Program specified in this rule would provide a one-time payment for the losses.

Asparagus is produced on an estimated 2,600 farms throughout the United States. A substantial increase in asparagus imports over the last several years resulted in reduced revenue for U.S. asparagus producers. The increased supply of imported asparagus resulted in reduced domestic production, reduced U.S. market share of domestic producers, and reduced market prices for both fresh and processed asparagus in the United States. The ALAP Program is intended to compensate producers for the losses associated with those reductions.

This rule proposes to add 7 CFR part 1429 to specify the eligibility requirements, payment rates, and other provisions for the ALAP Program. The ALAP Program is a CCC program that will be administered by FSA.

Proposed Eligibility Requirements

The eligibility requirements in this proposed rule are based on provisions in the 2008 Farm Bill. To be eligible for ALAP as proposed in this rule, producers must:

(1) Have produced asparagus in the United States during both crop years 2003 and 2007;

(2) Certify production of fresh or processed asparagus or both for the 2003 and 2007 crop years; and

(3) Apply for payment during the application period that will be announced by the FSA Deputy Administrator for Farm Programs.

Payments to asparagus producers would be calculated for each asparagus farm operation, based on their 2003 production quantity. Each applicant would be paid based on the applicant's share of specific asparagus production in the base period.

Payment eligibility for the ALAP Program will not be subject to adjusted gross income (AGI) and farm income limitations as currently specified in 7 CFR part 1400, because the payment is for the 2007 crop. However, to insure a fair distribution of funds where the need is greatest in the event of an oversubscription (a situation where the value of the applications would exceed available funding), an AGI limit of $2.5 million and a $100,000 cap on payments is proposed. This program is not expected, with respect to the authorized funding, to be sufficient to pay all eligible claims at the maximum payment rates. Without the cap, all or most of the funds would go, in terms of substantial amounts, to large producers only. The figure of $100,000 was chosen because it provides a substantial level of benefits to those who might otherwise have larger claims. However, in the unlikely event that this program is not oversubscribed, the AGI and pay limits will not apply.

Asparagus producers must have been in compliance with the regulations in 7 CFR part 12, "Highly Erodible Land and Wetland Conservation," during the years for which the person is requesting benefits. Those regulations provide for a denial of benefits for failing to comply with general requirements regarding the handling of highly erodible cropland and wetlands.

Growers producing asparagus under contract for crop owners are not considered asparagus producers for the purposes of the ALAP Program and will not be eligible for payments unless the grower has an ownership share of the crop and risk of loss in the crop itself, meaning that the producer will not be paid if the crop is not actually harvested. The crop owner, which is to say the person or entity with the risk of loss in the crop, will be eligible for payment if all other requirements are met.

Proposed Payment Calculation

As proposed in this rule, asparagus producers who produced asparagus in 2003 and 2007 would receive a payment based on their 2003 crop production (referred to as the "base period"). The rule requires that the producer must have been a 2007 producer to be eligible for payment on asparagus produced in the base period and have produced asparagus for the commercial market in commercial quantities in 2007. The quantity used in the payment calculation would be the actual 2003 production amount marketed by the asparagus producer as either fresh or processed asparagus and included in the application.

Section 10404 of the 2008 Farm Bill requires that the payment quantity for asparagus for which asparagus producers on a farm are eligible for payments will "be equal to the average quantity of the 2003 crop of asparagus produced by producers on the farm." "Average quantity" is not defined in the 2008 Farm Bill and use of national or State averages would not appear to be logical or consistent with the language of the 2008 Farm Bill. In this rule it is proposed instead that producers would simply receive their actual production on the farm and this would mean use of an "average" in the sense that operations with multiple producers would have individual producers receive their share of the production rather than duplicating base period quantities. This appears to make the most sense in the context of the 2008 Farm Bill. Using national or State average production rates would not reflect the relative amount of any individual producer's loss and would not accurately reflect the reference to the "farm" in the language in section 10404. As for the payment, the 2008 Farm Bill specifies that the rate, within the funding limits, will be based on "the reduction in revenue received by asparagus producers associated with imports during the 2004 through 2007 crop years." The 2008 Farm Bill does not specify how CCC should determine revenue losses, but by an economic analysis CCC has calculated the amount of relevant loss per pound, as an average, for the 2004 to 2007 crop years as compared to the 2003 crop year. However, it is expected that this calculation would not result in the actual payment rate because it would produce payments that would aggregate to more than the funding

limit. CCC plans to prorate the claims by dividing the eligible pounds claimed into the funding to achieve a per pound effective rate, with a certain reserve. As specified in the 2008 Farm Bill, the available funding is $7.5 million for payments for fresh asparagus and $7.5 million for payments for processed asparagus. CCC has estimated that the reduced revenue associated with imports of asparagus during the 2004 through 2007 crop years was $141.6 million for fresh-market asparagus and $73.3 million for processed-market asparagus. These revenue losses include both the loss by domestic producers of U.S. market share for the 2004 through 2007 crops, and the reductions in domestic prices directly attributable to imports.

CCC has determined that the total domestic production of asparagus for the 2003 crop was 133.4 million pounds marketed as fresh, and 68.0 million pounds marketed as processed. Based on analysis of both reduced production and reduced prices due to imports for the 2004 through 2007 crop years, the estimated revenue loss was $1.06 per pound of fresh asparagus and $1.08 per pound of processed asparagus; therefore, these would be considered the maximum payment rates, if funds were adequate to cover all applications. The maximum payment rates are different for fresh and processed asparagus because the differences in production and demand elasticities by marketing category result in different revenue effects from imports. Fresh asparagus accounted for approximately 66 percent of total 2003 asparagus production and 75 percent of the total estimated monetary loss over the 2004–2007 crops.

As explained below, it is unlikely that there will be funds available to compensate producers at the maximum payment rates, unless very few producers apply for the ALAP Program. Therefore, the amounts identified as maximum payment rates are over estimates. The 2008 Farm Bill allocates exactly one half of the $15 million available for the ALAP Program to each marketing category (fresh and processed). The rate determination process we propose in this rule would be implemented as follows:

Step 1: At the close of the announced application period, the total payment quantity from all eligible producers would be determined. Potential maximum payments to eligible producers would be calculated by separately multiplying the total eligible payment quantity in pounds by the maximum payment rates for fresh asparagus and processed asparagus.

Step 2: If the total amount of available funding allocated for each marketing category of asparagus is insufficient to compensate eligible producers for their eligible payment quantity at the maximum payment rates, then CCC would recalculate the payment rates determined by dividing the funds available, less a $300,000 reserve for disputed claims, by total nationwide payment quantities for fresh and processed asparagus.

Step 3: CCC would pay producers using the applicable payment rate multiplied by their individual share in the actual 2003 production quantity, by marketing category, subject to the $100,000 cap if there is an oversubscription of the program.

CCC estimates that if payment applications were submitted for 90 percent of the total quantity of the 2003 crop, the total value of requested payments would substantially exceed the level of funds available for payments. Multiplying 90 percent of the estimated 2003 crop production quantities by the estimated revenue loss per pound would result in the following estimated total payment amounts:

- Potential Requested Fresh Market Payments:
  - 133,400,000 lbs × 90 percent × $1.06/lb. = $127,263,600,
  - $119,763,600 over the allocated funding level, and
- Potential Requested Processed Market Payments:
  - 68,000,000 lbs × 90 percent × $1.08/lb. = $66,096,000,
  - $58,576,000 over the allocated funding level.

Based on the 90 percent examples, the estimated payment rate for fresh-market payments would be 6.12 cents per pound and the processed market payment rate would be 12.00 cents per pound. This would result in the following payments, leaving $300,000 in reserve funds:

- Fresh Market Payments: 120,060,000 lbs × 6.12 cents/lb. = $7,347,672
- Processed Market Payments: 61,200,000 lbs × 12.00 cents/lb. = $7,344,000.

Proposed Application Process

CCC proposes to establish and announce a 30-day period for submitting payment applications for the ALAP Program. The application deadline will be announced in the final rule that will be published in the **Federal Register**. During the application period, asparagus producers may apply in person at FSA county offices during regular business hours. Applications may also be submitted to FSA by mail or fax. The ALAP Program applications may be obtained in person, by mail, telephone, and fax from any FSA county office or via the Internet at *http://www.sc.egov.usda.gov.* The application is for an asparagus farm operation, including all producers who have a share in that operation, but only the producers in an operation who sign the application will be eligible to receive payment. Producers may receive payment from shares in multiple operations if they sign an application for each operation, subject to the $100,000 cap.

Any applications not received by FSA by the last day of the application period would not receive consideration and producers on a late application would be ineligible for payment. A deadline for applications is necessary because CCC needs to know the total value of requested payments in order to calculate the payment rates to stay within available funding. The ALAP Program provides a one-time payment for asparagus market losses; the 2008 Farm Bill does not authorize annual appropriations for the ALAP Program. Therefore, there will be one application period for the ALAP Program.

CCC proposes to hold in reserve $300,000 for errors and appeals; however, these reserve funds are only intended for corrections and payments for disapproved applications that are successfully appealed. Although CCC has discretion to grant relief and accept a late-filed application as timely filed, the late-filed application so approved would only be paid if there are available non-reserve funds. CCC does not expect that there will be any non-reserve funds available because the total expected applications are anticipated to use all available funds.

The 2008 Farm Bill ties the payments to 2003 production quantities. The application would require a producer to submit a certification of 2003 asparagus production and a certification that the same producer was also a producer of asparagus on a farm in 2007. Asparagus producers would need to provide acceptable production records for 2003 asparagus production, if requested. Applicants would not be required to submit 2007 production records because 2007 production would not be used in the calculation of payment quantity or rate. However, at the discretion of CCC, certifications of producer eligibility, including, but not limited to, certification of an interest in 2007 asparagus production on a farm, are subject to spot check and verification by CCC. The producer's place of production does not have to be the same in 2007 as it was in 2003. Production

beyond 2007 is not specifically required by the 2008 Farm Bill though the general reference to "producers" in the statute might arguably be construed to mean a continuing status as a producer. The rule as proposed does not require a continuing status as a producer beyond 2007, but it is as an area for comment.

Information provided on applications and supporting documentation will be subject to verification by CCC; however, CCC is under no obligation to perform spot checks within any specific time frame and applicants are responsible for producing documents substantiating their application when requested by CCC.

In the event that CCC finds that a payment was issued based on inaccurate information on a certification submitted by an applicant, CCC may require a refund of all payments.

Asparagus producers determined to have made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund any payments issued through the ALAP Program with interest, and may be subject to other civil, criminal, or administrative remedies.

Asparagus producers who apply for payment will receive payment only for their share of asparagus production in asparagus operations that operated in the 2003 base period. If every asparagus producer with a share in the asparagus farm operation does not sign the application; payments will not be calculated for the entire production of the asparagus farm operation, but will be calculated only for the share of the asparagus producers who signed the application. Similarly, if every producer with a share in the operation does not meet the eligibility requirements including the AGI limit, payments will not be calculated for the entire production of the operation, but will be calculated only for the share of the producers who meet the AGI and all other eligibility requirements.

Notice and Comment

The Administrative Procedures Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, a proposed rule must be published in the **Federal Register**, and interested persons must be given an opportunity to participate in the rulemaking through submission of data, views, or arguments. The law exempts from this requirement rules, such as this one, relating to public property, loans, grants, benefits, and contracts. However, the Secretary of Agriculture published in the **Federal Register** on July 24, 1971 (36 FR 13804), a Statement of Policy that USDA would publish a notice of proposed rulemaking for such rules. USDA is committed to providing the public reasonable opportunity to participate in rulemaking.

Executive Order 12866

This proposed rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget. A summary of economic impacts is provided below, and the cost-benefit analysis is available from the contact information listed above.

Summary of Economic Impacts

The 2008 Farm Bill authorizes $15 million in payments to asparagus producers for losses that asparagus producers sustained due to imports. The estimated U.S. asparagus revenue losses due to crop year 2004 through 2007 imports in the fresh market totaled $141.6 million, and in the processed market, $73.3 million, for a total of $214.9 million in losses. Therefore, we expect to receive applications that exceed the available funding. The payment rates would be calculated so as not to exceed the available funding. The expected benefit to producers is $15 million, which is all of the available funding. Since producers are being paid for past losses on past production, this program is not expected to increase production of asparagus or to change the price that consumers pay for asparagus.

Alternative methods for calculating payment quantities and rates would result in a different distribution of payment amounts among producers, but would not reduce the costs or benefits of this program to below $15 million.

Regulatory Flexibility Act

According to the 2007 Census of Agriculture, there are 2,605 asparagus farms, with 1,408 of those farms harvesting 1 acre or less. Those farms harvesting 100 acres or more account for 5 percent of farms harvesting asparagus and 74 percent of all asparagus production. Most of the payments as specified in this rule would go to the larger farms that accounted for most of the production, rather than the smaller farms. CCC is proposing to calculate and disburse payments based on the actual 2003 crop production quantities for fresh and processed marketing. Both small and large farms would receive payment in proportion to their production, subject to the $100,000 cap that will impact only the largest farms. Direct and indirect costs of applying for these one-time payments would likely to be very small as a percentage of the resulting payment. The minimal regulatory requirements would impact large and small businesses equally, and the program's benefits should slightly improve cash flow and liquidity for farmers participating in the program. Therefore, in accordance with the Regulatory Flexibility Act (5 U.S.C. 601), CCC is certifying that there would not be a significant economic impact on a substantial number of small entities. Due to the limited amount of funding available, payments are unlikely to have a substantial economic impact on entities of any size.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The implementation and administration of ALAP Program required by the 2008 Farm Bill that is identified in this rule is non-discretionary in nature, solely providing financial assistance. Therefore, FSA has determined that NEPA does not require that an environmental assessment or environmental impact statement be prepared and neither will be prepared.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this proposed rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

Executive Order 13132

The policies contained in this rule would not have any substantial direct effect on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Nor would this

proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

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

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Domestic Federal Assistance to which this rule will apply is 10.098—Asparagus Revenue Market Loss Assistance Program.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), CCC is requesting comments from all interested individuals and organizations on new information collection activities associated with the ALAP Program. The information collection is necessary to implement the new program. CCC is making payments to eligible domestic asparagus producers for marketing losses due to imports during the 2004 through 2007 crop years.

Title: Asparagus Revenue Market Loss Assistance Payment Program.

OMB Number: 0560–NEW.

Type of Request: New information collection.

Abstract: This information collection is needed for CCC to identify eligible asparagus producers and to make payments to those producers through the ALAP Program. CCC requires producers to submit an application on a form specified by CCC to the FSA County Office for the farms where they produced 2003 and 2007 crop asparagus.

For an application to be accepted and approved, the producer will be required to provide the following information: producer name, address, and taxpayer identification number; the name and location of the farm where 2003 crop asparagus was produced, the amount of asparagus produced in 2003, and a certification of interest in a farm where 2007 crop asparagus was produced; the applicant signature; the applicant's percentage share of 2003 crop asparagus production on the farm; the quantities expressed in pounds or hundredweight of 2003 crop asparagus marketed as fresh and marketed as processed, and the total of those two amounts.

Also, about 700 applicants are expected to complete a direct deposit application form, and all producers, if not submitting electronically, will travel an average of one hour to submit their application to the FSA county office. The average travel time is included in the estimated burden.

The following estimated burden is based on the 2007 Census of Agriculture that reports 2007 crop asparagus was produced on 2,605 farms in 48 States reporting harvested acreage of 43,010 acres. The major producing states were California (20,211 harvested acres); Michigan (12,127 harvested acres); and Washington (7,007 harvested acres). That Census reports that 11 States had 10 acres or less harvested that year. Based on information provided by the asparagus industry, there are about 1.1 producers per asparagus farm, or approximately 2,800 producers each having a crop share. These data serve as basis for the following estimates.

Respondents: Producers of 2007 crop asparagus who also produced 2003 crop asparagus.

Estimated Annual Number of Applicants: 2,800.

Estimated Annual Number of Forms per Applicant: 1.25.

Estimated Average Time to Respond: 83 minutes.

Estimated Total Annual Burden Hours: 3,850 hours.

We are requesting comments on all aspects of the information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper administration of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who will respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms or information collection.

All comments received in response to this rule, including names and addresses when provided, will be a matter of public record and will be available for review at the above address. Comments, including any comments that are received on the information collection, will be summarized in the submission for the Office of Management and Budget approval and included as supplemental information when the final rule is published in the **Federal Register**.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1429

Asparagus, Reporting and record keeping requirements.

For the reasons discussed in the preamble, the Commodity Credit Corporation (USDA) proposes to add 7 CFR part 1429 to read as follows:

Part 1429—ASPARAGUS REVENUE MARKET LOSS ASSISTANCE PAYMENT PROGRAM

Sec.
1429.101 Applicability.
1429.102 Administration.
1429.103 Definitions.
1429.104 Application requirements.
1429.105 Producer eligibility requirements.
1429.106 Proof of production.
1429.107 Maximum and final payment rates.
1429.108 Calculation of individual payments.
1429.109 Availability of funds.
1429.111 Misrepresentation and scheme or device.
1429.112 Death, incompetence, or disappearance.
1429.113 Maintaining records.
1429.114 Refunds; joint and several liability.
1429.115 Miscellaneous provisions and appeals.

Authority: 15 U.S.C. 714b and 714c, and Sec. 10404, Pub. L. 110–246, 122 Stat. 2111.

§ 1429.101 Applicability.

(a) The regulations in this part are applicable to program applicants who produced both 2003– and 2007–crop asparagus. Asparagus producers may apply to the Commodity Credit Corporation (CCC) for a payment based on the actual quantity of their 2003 asparagus production and their share of that production.

(b) Total payments made through the Asparagus Revenue Marketing Loss Assistance Payment Program will not exceed $15 million, allocated as $7.5 million for fresh asparagus and $7.5 million for processed asparagus, less any reserve allocated for disputed claims.

§ 1429.102 Administration.

(a) The Asparagus Revenue Market Loss Assistance Payment Program will be administered under the general supervision of the Executive Vice President, CCC (Administrator, Farm Service Administration (FSA)), or a designee, and will be carried out in the field by FSA State and county committees and FSA employees.

(b) FSA State and county committees, and representatives and employees of those committees, do not have the authority to modify or waive any of the provisions of this part, except as provided in paragraph (e) of this section.

(c) The FSA State committee will take any action required by this part that has not been taken by the FSA county committee. The FSA State committee will also:

(1) Correct or require correction of an action taken by an FSA county committee that is not in compliance with this part; and

(2) Require an FSA county committee to not take an action or implement a decision that is not in compliance with the regulations of this part.

(d) No delegation in this part to an FSA State or county committee will preclude the Executive Vice President, CCC, or a designee, from determining any question for the Asparagus Revenue Marketing Loss Assistance Payment Program, or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize FSA State and county committees to waive or modify program requirements that are not statutory in cases where failure to meet such requirements does not adversely affect the operation of the Asparagus Revenue Market Loss Assistance Payment Program.

§ 1429.103 Definitions.

The following definitions apply to this part. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Application means the Asparagus Revenue Market Loss Assistance Payment Program application form approved for use in this program by CCC and any required accompanying information or documentation.

Application period means the 30-day period established by the Deputy Administrator for producers to apply for the Asparagus Revenue Marketing Loss Assistance Payment Program.

Asparagus producer means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity, as defined in § 1400.3 of this chapter, who is an owner, operator, landlord, tenant, or sharecropper, who directly or indirectly, as determined by the Secretary, shares in the risk of producing asparagus and who is entitled to ownership share in the asparagus crop available for marketing from the farm operation. Growers producing asparagus under contract for crop owners are not considered asparagus producers unless the grower can be determined to have an ownership share of the crop.

Base period means the 2003 crop year of asparagus.

County office means the FSA office responsible for administering CCC programs located in a specific area in a State.

Crop year means the marketing season or year as defined by the National Agricultural Statistics Service (NASS).

Department or USDA means the U.S. Department of Agriculture.

Determined production means, with respect to the base period, the total amount of fresh and processed asparagus specified on the application for payment verified by CCC as having been produced and marketed by the producer in the base period.

Farm Service Agency or FSA means the Farm Service Agency of the U.S. Department of Agriculture.

Fresh asparagus means domestically-produced asparagus that, regardless of intended use, was marketed as a fresh product without any processing other than cleaning, grading, sorting, trimming, drying, cooling, and packing.

Hundredweight or cwt. means 100 pounds.

Processed asparagus means domestically-produced asparagus that, regardless of intended use, was marketed as frozen, canned, pickled, or otherwise treated or handled in such fashion that the buyer would not consider the asparagus to be consumed as fresh, as determined by CCC.

Reliable production records means evidence provided by the producer to the FSA county office that FSA determines is adequate to substantiate the amount of production reported when verifiable records are not available, including copies of receipts, ledgers of income, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries. When the term "acceptable production records" is used in this rule, it may be either reliable or verifiable production records, as defined in this section.

Reported production means the total amount of fresh and processed asparagus produced and marketed by a producer, as specified by a producer on the application for payment.

Verifiable production records mean evidence that is used to substantiate the amount of production reported and that can be verified by FSA through an independent source.

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

§ 1429.104 Application requirements.

(a) To be eligible for payment, asparagus producers must submit a completed application for payment and meet other eligibility requirements as specified in this part. Asparagus producers may obtain an application in person, by mail, by telephone, or by facsimile from any FSA county office. In addition, applicants may download a copy of the application from *http://www.sc.egov.usda.gov*.

(b) An application for payment must be submitted on a completed application form. Applications and any other supporting documentation must be submitted to the FSA county office serving the county in which the producer produced asparagus in 2003 unless the producer now resides in a different county than the county in which asparagus was produced in the base period.

(c) Asparagus producers who apply for payment must certify the information on the application before the application will be considered complete. Applications may be accompanied by acceptable production records for all fresh and processed asparagus produced and marketed from the farm in the 2003 crop year. Producers must certify they had a share interest in both 2003 and 2007 crop

asparagus. To be eligible for payment on asparagus produced in the base period, the producer must have produced asparagus in 2007 for the commercial market in commercial quantities as determined for this purpose by the Deputy Administrator. At any time CCC deems appropriate, either before or after payment issuance, CCC may, at its discretion, require a producer to provide documentation to support:

(1) Reported production of 2003 crop fresh or processed asparagus production or both entered on the application accompanied by acceptable production record,

(2) Share percentage of 2003 crop production by marketing category for each producer in the asparagus farm operation, or

(3) Any other eligibility requirement specified in this part including commercial quantities of 2007 production to meet the 2007 production requirement.

(d) Each asparagus producer who signs the application must certify the accuracy and truthfulness of the information in the application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program payments will not be approved. Providing a false certification may be punishable by imprisonment, fines, and other penalties or sanctions.

(e) Data furnished by the applicants will be used to determine eligibility for program payments. Although participation in the Asparagus Revenue Market Loss Assistance Payment Program is voluntary, program payments will not be provided unless the participant furnishes a complete application by the end of the application period with all requested data.

(f) Individuals or entities who submit applications after the application period are not entitled to any payment consideration or determination of eligibility. Regardless of the reason why an application is not submitted to or received by the FSA county office, any late application will be considered as not having been timely filed and the applicants on that application will not be eligible for the Asparagus Revenue Marketing Loss Assistance Payment Program.

§ 1429.105 Producer eligibility requirements.

(a) To be eligible to receive the Asparagus Revenue Marketing Loss Assistance Payment Program payments, asparagus producers must submit an application during the application period and must:

(1) Have produced and marketed asparagus in commercial quantities in commercial markets in the United States during both of the 2003 and 2007 crop years;

(2) Be an asparagus producer, as defined in § 1429.103, for the 2003 and 2007 crop years;

(3) Certify their shares and the pounds of fresh and processed asparagus produced and marketed from the farm operation during the 2003 crop year as reflected on the application;

(4) If the total value of payments claimed exceeds the available funding, have an average adjusted gross income (AGI) of less than $2.5 million for the three taxable years of 2004–2006; and

(5) Be in compliance with the requirements in 7 CFR part 12 regarding highly erodible cropland and wetlands and meet any general farm program eligibility requirements that apply under 7 CFR part 1400 or other regulations as applicable.

(b) Asparagus producers must sign an application to be considered for payment eligibility. Asparagus producers who do not sign an application will not receive payment or a determination of eligibility, even if other producers in the asparagus farm operation sign an application and receive payment.

(c) Each applicant determined by spot check or other information to not have an interest as an asparagus producer in 2003 and 2007 who meets the other qualifications of this part will be ineligible for payment and such applicant's claimed share shown on the application will not be paid.

§ 1429.106 Proof of production.

(a) Producers selected for spot check by CCC must, in accordance with instructions issued by the Deputy Administrator or his designee, provide adequate proof of the fresh and processed asparagus produced and marketed during the 2003 and 2007 crop years.

(b) If adequate proof of marketed production and supporting documentation in support of any application for payment is not presented to the satisfaction of CCC or the FSA county office requesting information, the application and the producers on that application will be determined ineligible for payment.

§ 1429.107 Maximum and final payment rates.

(a) Subject to the funding limits that may apply to the program, the estimated maximum per pound payment rates for fresh market asparagus and for processed market asparagus are:

(1) $1.06 per pound ($106.00 per hundredweight) for 2003 crop quantities of asparagus marketed to fresh markets; and

(2) $1.08 per pound ($108.00 per hundredweight) for 2003 crop quantities of asparagus marketed for processing.

(b) This program will be administered to assure that total payments do not exceed the available funding. If the total value of payments claimed calculated using the maximum payment rates specified in paragraph (a) of this section exceeds the funding available for each marketing category, less any reserve that may be created as specified in paragraph (e) of this section, the payment quantities will be paid at a lower rate determined by dividing the funds available in each marketing category of asparagus, by the payment quantity from applications received by the end of the application period in each marketing category.

(c) In no event will the payment rate exceed the maximum payment rate for each marketing category of asparagus determined in paragraph (a) of this section.

§ 1429.108 Calculation of individual payments.

(a) Producers will be eligible for payment for both fresh and processed asparagus. CCC will calculate the payment quantity of 2003 fresh and processed asparagus for an asparagus farm operation based on the lower of:

(1) Reported production reflected on the application, or

(2) If applicable, determined production.

(b) The payment quantity will be multiplied by the following:

(1) Each asparagus producer's share, and

(2) The payment rate for the fresh or processed asparagus determined as specified in § 1429.107.

(c) If the total value of payments claimed exceeds the available funding, payments to producers are subject to a $100,000 cap per asparagus producer as defined in this part, not per "person" or "legal entity" as those terms might be defined in part 1400 of this title.

§ 1429.109 Availability of funds.

(a) Payments specified in this part are subject to the availability of funds. The total available program funds will be $15,000,000 as provided by section 10404 of Pub. L. 110–246.

(b) Of the available funds, $7,500,000 are allocated for fresh market asparagus production and $7,500,000 are allocated to processed market asparagus.

(c) CCC will prorate the available funds by a national factor to ensure that payments do not exceed $15,000,000. CCC will prorate the payments in such manner as it, in its sole discretion, finds fair and reasonable.

(d) A reserve will be created to handle appeals and errors. Claims will not be payable once the available funding is expended. Any amount of funds reserved for such purposes that are not disbursed for the purpose of correcting errors or omissions, or for the payment of appeals, will not otherwise be distributed to any payment applicants and will be refunded to the U.S. Department of Treasury.

§ 1429.111 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions, or remedies as may apply, an asparagus producer will be ineligible to receive assistance through the Asparagus Revenue Market Loss Assistance Payment Program if the asparagus producer is determined by CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, must be refunded with interest together with such other sums as may become due and all charges including interest will run from the date of the disbursement of the CCC funds. Any asparagus farm operation, asparagus producer, or person engaged in acts prohibited by this section and any asparagus farm operation, asparagus producer, or person receiving payment as specified in this part will be jointly and severally liable with other persons or operations involved in such claim for payment for any refund due as specified in this section and for related charges. The remedies provided in this part will be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1429.112 Death, incompetence, or disappearance.

(a) In the case of death, incompetency, disappearance, or dissolution of a person or an entity that is eligible to receive payment as specified in this part, an alternate person or persons as specified in part 707 of this title may receive such payment, as determined appropriate by CCC.

(b) Payment may be made for asparagus market losses suffered by an otherwise eligible asparagus producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into an application for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If an asparagus producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

§ 1429.113 Maintaining records.

Producers applying for payment through the Asparagus Revenue Market Loss Assistance Payment Program must maintain records and accounts to document all eligibility requirements specified in this part. Such records and accounts must be retained for 3 years after the date of payment.

§ 1429.114 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment in the application or this part, must be refunded to CCC.

(b) A refund required as specified in this section will be due with interest from the date of CCC disbursement and determined in accordance with paragraph (d) of this section and late payment charges as provided in part 1403 of this chapter.

(c) Persons signing an asparagus farm operation's application as having an interest in the asparagus farm operation will be jointly and severally liable for any refund and related charges found to be due as specified in this section.

(d) Interest will be applicable to any refunds required as specified in parts 792 and 1403 of this title. Such interest will be charged at the rate that the U.S. Department of the Treasury charges CCC for funds, and will accrue from the date CCC made the erroneous payment to the date of repayment.

(e) CCC may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of CCC alone.

§ 1429.115 Miscellaneous provisions and appeals.

(a) *Offset.* CCC may offset or withhold any amount due CCC as specified in this part in accordance with the provisions of part 1403 of this chapter.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of part 1403 of this chapter.

(c) *Other interests.* Payments or any portion thereof due under this part will be made without regard to questions of title under State law and without regard to any claim or lien against the asparagus crop, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any asparagus producer entitled to any payment as specified in this part may assign any payment in accordance with the provisions of part 1404 of this chapter.

(e) *Appeals.* Appeals will be handled as specified in parts 11 and 780 of this title.

Signed in Washington, DC on July 12, 2010.

Jonathan W. Coppess,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–17407 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2009–0538]

RIN 3150–AI75

List of Approved Spent Fuel Storage Casks: NUHOMS® HD Revision 1; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a proposed rule that would have revised the NUHOMS® HD cask system listing within the list of approved spent fuel storage casks to include Amendment No. 1 to Certificate of Compliance (CoC) Number 1030. The NRC is taking this action because the applicant identified that a certain Technical Specification (TS) for Boral characterization was not written precisely. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the Safety Analysis Report (SAR), are not precisely quantified in that it requires that "the average size of the boron carbide

particles in the finished product is approximately 50 microns after rolling." Use of language such as "average" and "approximately" is imprecise, and no ranges or statistical variations are specified. The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

DATES: The proposed rule published May 7, 2010 (75 FR 25120), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov*.

SUPPLEMENTARY INFORMATION: On May 7, 2010 (75 FR 25120), the NRC published in the **Federal Register** a proposed rule that would have amended its regulations in 10 CFR 72.214 to revise the NUHOMS® HD System listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 1 to the CoC. Amendment No. 1 would modify the present cask system by adding Combustion Engineering 16 × 16 class fuel assemblies as authorized contents, reducing the minimum off-normal ambient temperature from −20°F to −21°F, expanding the authorized contents of the NUHOMS® HD System to include pressurized water reactor fuel assemblies with control components, reducing the minimum initial enrichment of fuel assemblies from 1.5 weight percent uranium-235 to 0.2 weight percent uranium-235, clarifying the requirements of reconstituted fuel assemblies, adding the requirements to qualify metal matrix composite neutron absorbers with integral aluminum cladding, deleting the use of nitrogen for draining the water from the dry shielded canister (DSC) and allowing only helium as a cover gas during DSC cavity water removal operations, and making corresponding changes to the technical specifications. The NRC also published a direct final rule on May 6, 2010 (75 FR 24786), that would have become effective on July 20, 2010. A correction notice was published on May 17, 2010 (75 FR 24786), to correctly specify an effective date of July 21, 2010. The direct final rulemaking and the companion notice of proposed rulemaking were published in the **Federal Register** on different dates instead of being published concurrently on the same date.

The rulemaking is being withdrawn because the applicant identified that a certain TS for Boral characterization was not written precisely and in a manner that could be readily and demonstrably implemented. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the SAR, are not precisely quantified in that it requires that "the average size of the boron carbide particles in the finished product is approximately 50 microns after rolling." Use of language such as "average" and "approximately" is imprecise, and no ranges or statistical variations are specified. The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

Dated at Rockville, Maryland, this 8th day of July, 2010.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2010–17424 Filed 7–15–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Part 217

RIN 1901–AB28

Energy Priorities and Allocations System Regulations

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish standards and procedures by which the U.S. Department of Energy (DOE) may require that certain contracts or orders that promote the national defense be given priority over other contracts or orders. This rule also sets new standards and procedures by which DOE may allocate materials, services and facilities to promote the national defense. DOE is publishing this rule to comply with a requirement of the Defense Production Act Reauthorization of 2009 (Pub. L. 111–67) to publish regulations providing standards and procedures for prioritization of contracts and orders and for allocation of materials, services and facilities to promote the national defense.

DATES: Comments must be received by August 16, 2010.

ADDRESSES: You may submit comments, identified by RIN 1901–AB28, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- By e-mail directly to *GC-76EPAS@hq.doe.gov*. Include RIN 1901–AB28 in the subject line.
- By mail or delivery to Dr. Kenneth Friedman, Office of Infrastructure Security and Energy Restoration, U.S. Department of Energy, Room 1E–256, 1000 Independence, Avenue, SW., Washington, DC 20585.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Dr. Kenneth Friedman (*see* **ADDRESSES**) and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Friedman, Office of Infrastructure Security and Energy Restoration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; (202) 536–0379 (*GC-76EPAS@hq.doe.gov*). Ms. S. Becca Smith, Office of the General Counsel (GC–76), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586–9788 (*GC-76EPAS@hq.doe.gov*).

SUPPLEMENTARY INFORMATION:

Background

This rule expands upon Title 10 of the Code of Federal Regulations (10 CFR) part 216, DOE Energy Priorities and Allocations System (EPAS) regulations.

10 CFR part 216 implements DOE's administration of priorities and allocations actions in order to maximize domestic energy supplies pursuant to its authority under Section 101(c) of the Defense Production Act (50 U.S.C. app. § 2071 *et seq.*) (DPA) as delegated by Executive Order 12919 (June 3, 1994). These proposed regulations, to be codified at 10 CFR part 217, would implement DOE's administration of priorities and allocations in order to promote the national defense pursuant to its DPA authorities other than section 101(c). The EPAS has two principal components: priorities and allocations. Under the priorities component, certain contracts between the government and private parties or between private parties for the production or delivery of industrial resources are required to be given priority over other contracts to facilitate expedited delivery in promotion of the U.S. national defense. Under the allocations component, materials, services, and facilities may be allocated to promote the national defense. For both components, the term "national defense" is defined broadly and can include critical infrastructure protection and restoration, emergency preparedness, and recovery from natural disasters.

On September 30, 2009, the Defense Production Act Reauthorization of 2009 (Pub. L. 111–67, 123 Stat. 2006, September 30, 2009) (DPAR) was enacted. That act requires that within 270 days of its enactment (that is, by June 20, 2010), all agencies to which the President has delegated priorities and allocations authority under Title I of the DPA must publish final rules establishing standards and procedures by which that authority will be used to promote the national defense in both emergency and nonemergency situations. That act also required all such agencies to consult "as appropriate and to the extent practicable to develop a consistent and unified Federal priorities and allocations system." (123 Stat. 2006, at 2009). This rule is one of several rules to be published to implement the provisions of the DPAR. The final rules of the agencies with DPAR authorities, which are the Departments of Commerce, Energy, Transportation, Health and Human Services, Defense, and Agriculture, will comprise the Federal Priorities and Allocations System.

DOE is publishing this proposed rule as the initial rulemaking stage in compliance with the provision of the DPAR noted above. DOE believes that its existing rules at 10 CFR part 216 satisfy the DPAR's requirement that agencies have standards and procedures in place to implement the DPA's 101(c) authorities. However, in the interest of promoting a unified priorities and allocations system, and to implement DOE's DPA authorities other than those set forth in section 101(c), DOE is setting forth the proposed EPAS rule. DOE's proposed EPAS provisions are consistent with the Federal Priorities and Allocations System regulations being issued by other agencies. The specific proposals in this rule are more fully described below.

Analysis of the Proposed Priorities and Allocations System

Subpart A

Proposed Subpart A would set forth the purpose of the regulation.

Proposed § 217.1 would state the purpose of the EPAS in general terms, as providing guidance and procedures for use of the Defense Production Act Section priorities and allocations authority (other than the authorities set forth in section 101(c)) with respect to all forms of energy necessary or appropriate to promote the national defense.

Proposed § 217.2 would provide an overview of the EPAS program. This section would describe briefly all aspects of the EPAS, including the resource jurisdiction of other agencies delegated priorities and allocations authority under the DPA.

Subpart B

The "Definitions" section would appear in proposed § 217.20 in Subpart B and provide definitions for the relevant regulatory terms.

Subpart C

Proposed Subpart C would be titled "Placement of Rated Orders," reflecting the fact that the subpart will address only DOE's priorities authorities; allocations authorities will be addressed in Subpart E.

Proposed § 217.30, "Delegation of Authority," would describe fully the President's delegations to the Department of Energy. It would also describe, in general terms, the items subject to DOE's jurisdiction and note that the Department of Commerce has delegated certain authorities to DOE. DOE is proposing this provision to facilitate public understanding of the role that each delegate agency plays in the overall priorities and allocations system.

Proposed § 217.31, "Priority ratings," describes the different levels of priority and program symbols used when rating an order.

Proposed § 217.32, "Elements of a rated order," describes in detail what each rated order must include, consisting of the appropriate priority rating, delivery date information, signatures and required language. DOE seeks comment specifically on the text of this provision.

Language in proposed § 217.33, "Acceptance and rejection of rated orders," details when orders placed by DOE may or must be accepted or rejected, and what the procedures are for both, including customer notification requirements and certain exceptions for emergency preparedness conditions. Specifically, persons must accept or reject rated orders for emergency response-related approved programs within five days (or two days, depending on the circumstance). DOE is proposing the shorter time limit in which the recipient must respond to a rated order issued in connection with an emergency response related program because such programs would involve disaster assistance, emergency response or similar activities. DOE believes that the exigent circumstances inherent in such activities justify requiring a shorter response time.

Proposed § 217.34, "Preferential scheduling," details procedures in cases where a person receives two or more conflicting rated orders. If a person is unable to resolve such a conflict, this section refers them to special priorities assistance as provided in §§ 217.40 through 217.44. Language in proposed § 217.35, "Extension of priority ratings," requires a person to use rated orders with suppliers to obtain items or services needed to fill a rated order. This allows the priority rating to "extend" from contractor to subcontractor to supplier throughout the entire procurement chain.

Proposed § 217.36, "Changes or cancellations of priority ratings and rated orders," provides procedures for changing or cancelling a rated order, both by DOE or other persons who placed the order.

Proposed § 217.37, "Use of rated orders," lists what items must be rated. It also introduces the use of certain program identification symbols used when rated orders may be combined, and details the procedures for combining two or more rated orders, as well as rated and unrated orders.

Proposed § 217.38, "Limitations on placing rated orders," prohibits the use of rated orders in a list of specific circumstances. This section also specifically excludes the use of rated orders for resources within the resource jurisdiction of agencies other than DOE with DPA priorities and allocations authority.

Subpart D

Proposed Subpart D "Special Priorities Assistance" describes instances in which DOE would provide assistance in resolving matters related to priority rated contracts and orders.

Proposed § 217.40 "General provisions" illustrates when and how DOE can provide special priorities assistance, and provides specific DOE points of contact and the form to be used for requesting such assistance. Special priorities assistance may generally be requested for any reason.

Proposed § 217.41, "Requests for priority rating authority," directs persons to the Department of Commerce to request rating authority for production or construction equipment. This section also identifies circumstances in which DOE may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract, and lists factors DOE will consider in deciding whether to grant this authority.

Proposed § 217.42, "Examples of assistance," provides a number of examples of when special priorities assistance may be provided, although it

may generally be provided for any reason.

Proposed § 217.43 lists the criteria for granting assistance, and proposed § 217.44 lists instances in which assistance may not be provided (i.e., to secure a price advantage).

Subpart E

Proposed Subpart E, "Allocation Actions," would provide the public with detailed information on the procedures governing allocations actions. Allocations actions would most likely be used in extreme circumstances, such as in response to a national emergency.

Proposed §§ 217.50 through 217.52 describe allocations and when and how allocation orders would be used. Specifically, allocation orders would be used only if priorities authority would not provide a sufficient supply of material, services or facilities for national defense requirements, or when use of priorities authority would cause a severe and prolonged disruption in the supply of resources available to support normal U.S. economic activities. Allocation orders would not be used to ration materials or services at the retail level. Allocation orders would be distributed equitably among the suppliers of the resource(s) being allocated and would not require any person to relinquish a disproportionate share of the civilian market. DOE is proposing the standards set forth in proposed §§ 217.50 through 217.52 to provide reasonable assurance that allocation orders will be used only in situations where the circumstances justify such orders.

Proposed § 217.53 describes the three types of allocation orders that DOE might issue, which are a set-aside, an allocation directive, and an allotment. A set-aside is an official action that would require a person to reserve resource capacity in anticipation of receipt of rated orders. An allocation directive is an official action that would require a person to take or refrain from taking certain actions in accordance with its provisions (an allocation directive can require a person to stop or reduce production of an item, prohibit the use of selected items, divert supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period). An allotment is an official action that would specify the maximum quantity of an item authorized for use in a specific program or application. DOE is proposing these three types of allocation orders because it believes that, collectively they describe the types of actions that might be taken in any situation in which allocation is justified.

Proposed § 217.54, "Elements of an allocation order," sets forth the minimum elements of an allocation order. Those elements are:

(a) A detailed description of the required allocation action(s);

(b) Specific start and end calendar dates for each required allocation action;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the Secretary of Energy. The signature or use of the name certifies that the order is authorized under this regulation and that the requirements of this regulation are being followed;

(d) A statement that reads in substance: "This is an allocation order certified for national defense use. [Insert the legal name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Energy Priorities and Allocations System regulation (10 CFR 217), which is part of the Federal Priorities and Allocations System"; and

(e) A current copy of the Energy Priorities and Allocations System (10 CFR part 217).

DOE is proposing these elements because it believes that they provide a proper balance between the need for standards to permit the public to recognize and understand an allocation order if one is issued, and the expectation that any actual allocation orders will have to be tailored to meet unforeseeable circumstances. The language of proposed § 217.54 would not preclude DOE from including additional information in an allocation order if circumstances warrant doing so.

Proposed § 217.55, "Mandatory acceptance of allocation orders," would require that an allocation order must be accepted if a person is capable of fulfilling the order. If a person is unable to comply fully with the required actions specific in an allocation order, the person must notify DOE immediately, explain the extent to which compliance is possible, and give reasons why full compliance is not possible. This section also states that a person may not discriminate against an allocation order in any manner, such as by charging higher prices or imposing terms and conditions different than what the person imposed on contracts or orders for the same resource(s) that were received prior to receiving the allocation order. DOE is proposing § 217.55 to make it clear to the public that the limited circumstances and emergency situations that trigger issuance of an allocation order require immediate response from the public in order to address the situation in an expedient fashion.

Proposed § 217.56, "Changes or cancellations of an allocation order" provides that an allocation order may be changed or cancelled by the Department of Energy.

Subpart F

Proposed Subpart F, "Official Actions," provides the specific official actions the DOE may take to implement the provisions of this regulation. These official actions include Rating Authorizations, Directives, and Memoranda of Understanding.

Proposed § 217.61, "Rating Authorizations," defines a rating authorization as an official action granting specific priority rating authority, and refers persons to § 217.21 to request such priority rating authority.

Proposed § 217.62, "Directives," defines a directive as an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. This section details directive compliance for the public.

Proposed § 217.63, "Letters and Memoranda of Understanding," defines a letter or memorandum of understanding as an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties, and explains its use.

Subpart G

Proposed Subpart G, "Compliance," provides DOE authority to enforce the administration of the DPA and other applicable statutes, this regulation, or an official action. This subpart provides that willful violations of the provisions of title I or section 705 of the DPA, this regulation, or a DOE official action, are criminal acts, punishable as provided in the DPA, and as set forth below in § 217.74.

Proposed § 217.71, "Audits and investigations," details the procedures for official examinations of books, records, documents, and other writings and information to ensure that the provisions of the DPA and other applicable statutes, this regulation, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this regulation.

Proposed § 217.72, "Compulsory process," provides that if a person refuses to permit a duly authorized DOE representative to have access to necessary information, DOE may seek the institution of appropriate legal action, including ex parte application

for an inspection warrant, in any forum of appropriate jurisdiction.

Proposed §§ 217.73 and 217.74 both provide procedures for notification of failure to comply with the DPA, these regulations, or DOE official actions, and the violations, penalties and remedies that may result.

Proposed § 217.75, "Compliance Conflicts," requires that persons immediately contact DOE should compliance with the DPA, these regulations, or an official action prevent a person from filling a rated order or from complying with another provision of the DPA and other applicable statutes, this regulation, or an official action.

Subpart H

Proposed § 217.80, "Adjustments, Exceptions, and Appeals," would reflect the procedures necessary to request an adjustment or exception to the provisions of these regulations on the grounds of exceptional hardship or compliance would be contrary to the intent of the DPA. These requests must be written and submitted to the DOE contact provided in this section.

Proposed § 217.81, "Appeals," provides the procedures, timing and contact information for appealing a decision made on a request for relief in the previous section.

Subpart I

Proposed Subpart I, "Miscellaneous Provisions," addresses a number of remaining issues, including protection against claims, records and reports, applicability issues, and communications.

Proposed § 217.90, "Protection against claims," provides that a person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any part of this regulation, or an official action.

Proposed § 217.91, "Records and reports," would require that persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this regulation or an official action. Various requirements and procedures regarding such records are provided in this section. The confidentiality provisions of the DPA governing the submission of information pursuant to the DPA and these regulations are also set forth.

Proposed § 217.92, "Applicability of this regulation and official actions," would provide the jurisdictional applicability of this regulation and official actions.

Proposed § 217.93, "Communications," would provide a DOE point of contact for all communications regarding this regulation.

A. Review Under Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866.

B. Review Under the Regulatory Flexibility Act

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

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

Number of Small Entities

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System Codes (August 2008 Edition), has a maximum annual revenue of $33.5 million and a maximum of 1,500 employees (for some business categories, these number are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule sets criteria under which DOE (or agencies to which DOE delegates authority) will authorize prioritization of certain orders or contracts as well as criteria under which DOE would issue orders allocating resources or production facilities. Because the rule affects commercial transactions, DOE believes that small organizations and small governmental jurisdictions are unlikely to be affected by this rule. To date, DOE has not exercised its existing allocations authority. As such, DOE has no basis on which to estimate the number of small businesses that may be affected by this rule.

Impact

The proposed rule has two principle components: prioritization and allocation. Under prioritization, DOE or its Delegate Agency designates certain orders as one of two possible priority levels. Once so designated, such orders are referred to as "rated orders." The recipient of a rated order must give it priority over an unrated order or an order with a lower priority rating. A recipient of a rated order may place orders at the same priority level with suppliers and subcontractors for supplies and services necessary to fulfill the recipient's rated order and the suppliers and subcontractors must treat the request from the rated order recipient as a rated order with the same priority level as the original rated order. The rule does not require recipients to fulfill rated orders if the price or terms of sale are not consistent with the price or terms of sale of similar non-rated orders. The rule provides a defense from any liability for damages or penalties for actions taken in, or inactions required for, compliance with the rule.

Although rated orders could require a firm to fill one order prior to filling another, they would not necessarily require a reduction in the total volume of orders. The regulations would also not require the recipient of a rated order to reduce prices or provide rated orders with more favorable terms than a similar non-rated order. Under these circumstances, the economic effects on the rated order recipient of substituting one order for another are likely to be mutually offsetting, resulting in no net economic impact.

Allocations could be used to control the general distribution of materials or services in the civilian market. Specific allocation actions that DOE might take are as follows:

Set-aside: an official action that requires a person to reserve resource capacity in anticipation of receipt of rated orders.

Allocations directive: an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. An allocation directive can require a person to stop or reduce production

of an item, prohibit the use of selected items, or divert supply of one type of product to another, or to supply a specific quantity, size, shape, and type of an item within a specific time period.

Allotment: an official action that specifies the maximum quantity of an item authorized for use in a specific program or application.

DOE has not yet taken any actions under its existing allocations authority, and any future allocations actions would be used only in extraordinary circumstances. As required by section 101(b) of the Defense Production Act of 1950, as amended, (50 U.S.C. app. § 2071), hereinafter "DPA," and by Section 201(d) of Executive Order 12919 of June 3, 1994, as amended, DOE may implement allocations only if the Secretary of Energy makes, and the President approves, a finding "(1) that the material [or service] is a scarce and critical material [or service] essential to the national defense, and (2) that the requirements of the national defense for such material [or service] cannot otherwise be met without creating a significant dislocation of the normal distribution of such material [or service] in the civilian market to such a degree as to create appreciable hardship." The term "national defense" is defined to mean "programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any related activity. Such term includes emergency preparedness activities conducted pursuant to title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*) and critical infrastructure protection and restoration.

Any allocation actions taken by DOE would also have to comply with Section 701(e) of the DPA (50 U.S.C. app. § 2151(e)), which provides that "small business concerns shall be accorded, to the extent practicable, a fair share of the such material [including services] in proportion to the share received by such business concerns under normal conditions, giving such special consideration as may be possible to emerging business concerns." Such a provision may even provide an economic benefit to small businesses.

Conclusion

Although DOE cannot determine precisely the number of small entities that would be affected by this rule, DOE believes that the overall impact on such entities would not be significant. In most instances, rated contracts would be fulfilled in addition to other (unrated) contracts and could actually increase the total amount of business of the firm that receives a rated contract.

Because allocations can be imposed only after an agency determination confirmed by the President, and because DOE has not yet used its allocations authority that has existed since passage of the Defense Production Act in 1950, one can expect allocations will be ordered only in particular circumstances. However, DOE believes that the requirement for a Presidential determination and the provisions of section 701 of the DPA indicate that any impact on small business will not be significant.

Therefore, for the reasons set forth above, the Assistant General Counsel for Legislation, Regulation, and Energy Efficiency certifies that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for submission of Form DOE–XXX is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this 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 burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Dr. Kenneth Friedman (*see* **ADDRESSES**), and e-mail to *Christine_J._Kymn@omb.eop.gov.*

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

D. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA) a Statement of Energy Effects for any proposed significant energy action. DOE determined that today's proposed rule, which sets forth procedures for compliance with the Defense Production Act (separate from the procedures set forth at 10 CFR part 216), is not a "significant energy action" within the meaning of Executive Order 13211. The Administrator of the Office of Information and Regulatory Affairs at OMB also did not designate this action as a significant energy action. Therefore, DOE has tentatively concluded that today's proposed rule is not a significant energy action within the meaning of Executive Order 13211 and has not prepared a Statement of Energy Effects.

E. Review Under Executive Order 13132

DOE reviewed this rule pursuant to Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. DOE also reviewed this rule pursuant to DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000). DOE determined that the rule would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government.

F. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 217

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

Issued in Washington, DC on June 3, 2010.

Patricia Hoffman,

Principal Deputy Assistant Secretary, Electricity Delivery and Energy Reliability.

For the reasons stated in the preamble, DOE proposes to add a new part 217 to chapter II of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 217—ENERGY PRIORITIES AND ALLOCATIONS SYSTEM

Subpart A—General

Sec.
217.1 Purpose of this part.
217.2 Priorities and allocations authority.
217.3 Program eligibility.

Subpart B—Definitions

217.20 Definitions.

Subpart C—Placement of Rated Orders

217.30 Delegations of authority.
217.31 Priority ratings.
217.32 Elements of a rated order.
217.33 Acceptance and rejection of rated orders.
217.34 Preferential scheduling.
217.35 Extension of priority ratings.
217.36 Changes or cancellations of priority ratings and rated orders.
217.37 Use of rated orders.
217.38 Limitations on placing rated orders.

Subpart D—Special Priorities Assistance

217.40 General provisions.
217.41 Requests for priority rating authority.
217.42 Examples of assistance.
217.43 Criteria for assistance.
217.44 Instances where assistance may not be provided.

Subpart E—Allocation Actions

217.50 Policy.
217.51 General procedures.
217.52 Controlling the general distribution of a material in the civilian market.
217.53 Types of allocation orders.
217.54 Elements of an allocation order.
217.55 Mandatory acceptance of an allocation order.
217.56 Changes or cancellations of an allocation order.

Subpart F—Official Actions

217.60 General provisions.
217.61 Rating Authorizations.
217.62 Directives.
217.63 Letters and Memoranda of Understanding.

Subpart G—Compliance

217.70 General provisions.
217.71 Audits and investigations.
217.72 Compulsory process.
217.73 Notification of failure to comply.
217.74 Violations, penalties, and remedies.
217.75 Compliance conflicts.

Subpart H—Adjustments, Exceptions, and Appeals

217.80 Adjustments or exceptions.
217.81 Appeals.

Subpart I—Miscellaneous Provisions

217.90 Protection against claims.
217.91 Records and reports.
217.92 Applicability of this part and official actions.
217.93 Communications.
Appendix I to Part 217–Sample Form DOE–XXX

Authority: Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061–2171; E. O. 12919, as amended, (59 FR 29525, June 7, 1994)

Subpart A—General

§ 217.1 Purpose of this part.

This part provides guidance and procedures for use of the Defense Production Act section 101(a) priorities and allocations authority with respect to all forms of energy necessary or appropriate to promote the national defense. (The guidance and procedures in this part are consistent with the guidance and procedures provided in other regulations that, as a whole, form the Federal Priorities and Allocations System. Guidance and procedures for use of the Defense Production Act priorities and allocations authority with respect to other types of resources are provided for: food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer in [*CFR citation to be inserted in final rule*]; health resources in [*CFR citation to be inserted in final rule*]; all forms of civil transportation in [*CFR citation to be inserted in final rule*]; water resources in [*CFR citation to be inserted in final rule*]; and all other materials, services, and facilities, including construction materials in the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).) DOE regulations at 10 CFR Part 216 describe and establish the procedures to be used by DOE in considering and making certain findings required by section 101(c)(2)(A) of the Defense Production Act of 1950, as amended.

§ 217.2 Priorities and allocations authority.

(a) Section 201 of E. O. 12919 [59 FR 29525] delegates the President's authority under section 101 of the Defense Production Act to require acceptance and priority performance of contracts and orders (other than contracts of employment) to promote the national defense over performance of any other contracts or orders, and to allocate materials, services, and facilities as deemed necessary or appropriate to promote the national defense to:

(1) The Secretary of Agriculture with respect to food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer;

(2) The Secretary of Energy with respect to all forms of energy;

(3) The Secretary of Health and Human Services with respect to health resources;

(4) The Secretary of Transportation with respect to all forms of civil transportation;

(5) The Secretary of Defense with respect to water resources; and

(6) The Secretary of Commerce for all other materials, services, and facilities, including construction materials.

(b) Section 202 of E.O. 12919 states that the priorities and allocations authority delegated in section 201 of this order may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense:

(1) By the Secretary of Defense with respect to military production and construction, military assistance to foreign nations, stockpiling, outer space, and directly related activities;

(2) By the Secretary of Energy with respect to energy production and construction, distribution and use, and directly related activities; and

(3) By the Secretary of Homeland Security with respect to essential civilian needs supporting national defense, including civil defense and continuity of government and directly related activities.

§ 217.3 Program eligibility.

Certain programs to promote the national defense are eligible for priorities and allocations support. These include programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, deploying and sustaining military forces, homeland security, stockpiling, space, and any directly related activity. Other eligible programs include emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act [42 U.S.C. 5195 *et seq.*] and critical infrastructure protection and restoration.

Subpart B—Definitions

§ 217.20 Definitions.

The following definitions pertain to all sections of this part:

Allocation order means an official action to control the distribution of materials, services, or facilities for a purpose deemed necessary or appropriate to promote the national defense.

Allotment means an official action that specifies the maximum quantity or

use of a material, service, or facility authorized for a specific use to promote the national defense.

Approved program means a program determined by the Secretary of Defense, the Secretary of Energy, or the Secretary of Homeland Security to be necessary or appropriate to promote the national defense, in accordance with section 202 of E.O. 12919.

Civil transportation includes movement of persons and property by all modes of transportation in interstate, intrastate, or foreign commerce within the United States, its territories and possessions, and the District of Columbia, and, without limitation, related public storage and warehousing, ports, services, equipment and facilities, such as transportation carrier shop and repair facilities. However, "civil transportation" shall not include transportation owned or controlled by the Department of Defense, use of petroleum and gas pipelines, and coal slurry pipelines used only to supply energy production facilities directly. As applied herein, "civil transportation" shall include direction, control, and coordination of civil transportation capacity regardless of ownership.

Construction means the erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Critical infrastructure means any systems and assets, whether physical or cyber-based, so vital to the United States that the degradation or destruction of such systems and assets would have a debilitating impact on national security, including, but not limited to, national economic security and national public health or safety.

Defense Production Act means the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*).

Delegate Agency means a Federal government agency authorized by delegation from the Department of Energy to place priority ratings on contracts or orders needed to support approved programs.

Directive means an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions.

Emergency preparedness means all those activities and measures designed or undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard. Such term includes the following:

(1) Measures to be undertaken in preparation for anticipated hazards (including the establishment of appropriate organizations, operational plans, and supporting agreements, the recruitment and training of personnel, the conduct of research, the procurement and stockpiling of necessary materials and supplies, the provision of suitable warning systems, the construction or preparation of shelters, shelter areas, and control centers, and, when appropriate, the nonmilitary evacuation of the civilian population).

(2) Measures to be undertaken during a hazard (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities, the evacuation of personnel to shelter areas, the control of traffic and panic, and the control and use of lighting and civil communications).

(3) Measures to be undertaken following a hazard (including activities for fire fighting, rescue, emergency medical, health and sanitation services, monitoring for specific dangers of special weapons, unexploded bomb reconnaissance, essential debris clearance, emergency welfare measures, and immediately essential emergency repair or restoration of damaged vital facilities).

Energy means all forms of energy including petroleum, gas (both natural and manufactured), electricity, solid fuels (including all forms of coal, coke, coal chemicals, coal liquification, and coal gasification), and atomic energy, and the production, conservation, use, control, and distribution (including pipelines) of all of these forms of energy.

Facilities includes all types of buildings, structures, or other improvements to real property (but excluding farms, churches or other places of worship, and private dwelling houses), and services relating to the use of any such building, structure, or other improvement.

Farm equipment means equipment, machinery, and repair parts manufactured for use on farms in connection with the production or preparation for market use of food resources.

Fertilizer means any product or combination of products that contain one or more of the elements—nitrogen, phosphorus, and potassium—for use as a plant nutrient.

Food resources means all commodities and products, simple, mixed, or compound, or complements to such commodities or products, that are capable of being ingested by either human beings or animals, irrespective of other uses to which such commodities or products may be put, at all stages of processing from the raw commodity to the products thereof in vendible form for human or animal consumption. "Food resources" also means all starches, sugars, vegetable and animal or marine fats and oils, cotton, tobacco, wool, mohair, hemp, flax fiber, and naval stores, but does not mean any such material after it loses its identity as an agricultural commodity or agricultural product.

Food resource facilities means plants, machinery, vehicles (including on-farm), and other facilities required for the production, processing, distribution, and storage (including cold storage) of food resources, livestock and poultry feed and seed, and for the domestic distribution of farm equipment and fertilizer (excluding transportation thereof).

Hazard means an emergency or disaster resulting from:

(1) A natural disaster; or

(2) An accidental or human-caused event.

Health resources means materials, facilities, health supplies, and equipment (including pharmaceutical, blood collecting and dispensing supplies, biological, surgical textiles, and emergency surgical instruments and supplies) required to prevent the impairment of, improve, or restore the physical and mental health conditions of the population.

Homeland security includes efforts—

(1) To prevent terrorist attacks within the United States;

(2) To reduce the vulnerability of the United States to terrorism;

(3) To minimize damage from a terrorist attack in the United States; and

(4) To recover from a terrorist attack in the United States.

Industrial resources means all materials, services, and facilities, including construction materials, but not including: food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer; all forms of energy; health resources; all forms of civil transportation; and water resources.

Item means any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Maintenance and repair and operating supplies or *MRO*—

(1) "Maintenance" is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(2) "Repair" is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(3) "Operating supplies" are any resources carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(4) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

Materials includes—

(1) Any raw materials (including minerals, metals, and advanced processed materials), commodities, articles, components (including critical components), products, and items of supply; and

(2) Any technical information or services ancillary to the use of any such materials, commodities, articles, components, products, or items.

(3) Natural resources such as oil and gas.

National defense means programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity. Such term includes emergency preparedness activities conducted pursuant to title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*) and critical infrastructure protection and restoration.

Official action means an action taken by the Department of Energy or another resource agency under the authority of the Defense Production Act, E.O. 12919, and this part or another regulation under the Federal Priorities and Allocations System. Such actions include the issuance of Rating Authorizations, Directives, Set Asides, Allotments, Letters of Understanding, Memoranda of Understanding, Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

Person includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof, or any State or local government or agency thereof.

Rated order means a prime contract, a subcontract, or a purchase order in support of an approved program issued in accordance with the provisions of this part.

Resource agency means any agency delegated priorities and allocations authority as specified in § 217.2.

Secretary means the Secretary of Energy.

Services includes any effort that is needed for or incidental to –

(1) The development, production, processing, distribution, delivery, or use of an industrial resource or a critical technology item;

(2) The construction of facilities;

(3) The movement of individuals and property by all modes of civil transportation; or

(4) Other national defense programs and activities.

Set-aside means an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders.

Stafford Act means title VI (Emergency Preparedness) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195–5197g).

Water resources means all usable water, from all sources, within the jurisdiction of the United States, which can be managed, controlled, and allocated to meet emergency requirements.

Subpart C—Placement of Rated Orders

§ 217.30 Delegations of authority.

(a) The priorities and allocations authorities of the President under Title I of the Defense Production Act with respect to all forms of energy have been delegated to the Secretary of Energy under E.O. 12919 of June 3, 1994 (59 FR 29525).

(b) The Department of Commerce has delegated authority to the Department of Energy to provide for extension of priority ratings for "industrial resources," as provided in § 261.35 of this part, to support rated orders for all forms of energy.

§ 217.31 Priority ratings.

(a) *Levels of priority.*

(1) There are two levels of priority established by Federal Priorities and Allocations System regulations, identified by the rating symbols "DO" and "DX".

(2) All DO-rated orders have equal priority with each other and take precedence over unrated orders. All DX-rated orders have equal priority with each other and take precedence over DO-rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 217.34(c).)

(3) In addition, a Directive regarding priority treatment for a given item issued by the Department of Energy for that item takes precedence over any DX-rated order, DO-rated order, or unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 217.62.)

(b) *Program identification symbols.* Program identification symbols indicate which approved program is being supported by a rated order. The list of currently approved programs and their identification symbols are listed in Schedule 1, set forth as an Appendix to 15 CFR Part 700. For example, DO–E–F3 identifies a domestic energy construction program. Additional programs may be approved under the procedures of E.O.12919 at any time. Program identification symbols do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO or DX—and the program identification symbol, such as DO–E or DX–E. Thus, a contract for a domestic energy construction program will contain a DO–E–F3 or DX–E–F3 priority rating.

§ 217.32 Elements of a rated order.

Each rated order must include:

(a) The appropriate priority rating (e.g. DO–E or DX–E)

(b) A required delivery date or dates. The words "immediately" or "as soon as possible" do not constitute a delivery date. A "requirements contract", "basic ordering agreement", "prime vendor contract", or similar procurement document bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items or service from time-to-time or within a stated period against specific purchase orders, such as "calls", "requisitions", and "delivery orders". These purchase orders must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original procurement document;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the

person placing the order. The signature or use of the name certifies that the rated order is authorized under this part and that the requirements of this part are being followed; and

(d) (1) A statement that reads in substance:

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Energy Priorities and Allocations System regulation at 10 CFR part 217.

(2) If the rated order is placed in support of emergency preparedness requirements and expedited action is necessary and appropriate to meet these requirements, the following sentences should be added following the statement set forth in paragraph (d)(1) of this section:

This rated order is placed for the purpose of emergency preparedness. It must be accepted or rejected within 2 days after receipt of the order if (1) The order is issued in response to a hazard that has occurred; or (2) If the order is issued to prepare for an imminent hazard, as specified in EPAS Section 217.33(e), 10 CFR 217.33(e).

§ 217.33 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by the Department of Energy for a rated order involving all forms of energy:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO-rated order for delivery on a date which would interfere with delivery of any previously accepted DO- or DX-rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX-rated order for delivery on a date which would interfere with delivery of any previously accepted DX-rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(4) If a person is unable to fill all of the rated orders of equal priority status received on the same day, the person must accept, based upon the earliest delivery dates, only those orders which can be filled, and reject the other orders. For example, a person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. However, the person must offer to accept the rejected orders based on the earliest delivery dates otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by the Department of Energy for a rated order involving all forms of energy, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not capable of being performed;

(3) If the order is for an item or service produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items or provided similar services, the supplier is obligated to accept rated orders up to that quantity or portion of production or service, whichever is greater, sold or provided within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Energy, issued under the authority of the Defense Production Act or another relevant statute.

(d) *Customer notification requirements.* (1) Except as provided in this paragraph, a person must accept or reject a rated order in writing or electronically within fifteen (15) working days after receipt of a DO-rated order and within ten (10) working days after receipt of a DX-rated order. If the order is rejected, the person must give reasons in writing or electronically for the rejection.

(2) If a person has accepted a rated order and subsequently finds that shipment or performance will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment or performance date. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days.

(e) *Exception for emergency preparedness conditions.* If the rated order is placed for the purpose of emergency preparedness, a person must accept or reject a rated order and transmit the acceptance or rejection in writing or in an electronic format within 2 days after receipt of the order if:

(1) The order is issued in response to a hazard that has occurred; or

(2) The order is issued to prepare for an imminent hazard.

§ 217.34 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items or services, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery dates for rated orders cannot otherwise be met.

(b) DO-rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery or services being performed against unrated orders. Similarly, DX-rated orders must be given preference over DO-rated orders and unrated orders. (Examples: If a person receives a DO-rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX-rated order is received calling for delivery on July 15 and a person has a DO-rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX-rated order.)

(c) *Conflicting rated orders.*

(1) If a person finds that delivery or performance against any accepted rated orders conflicts with the delivery or performance against other accepted rated orders of equal priority status, the person shall give precedence to the conflicting orders in the sequence in which they are to be delivered or performed (not to the receipt dates). If the conflicting orders are scheduled to be delivered or performed on the same day, the person shall give precedence to those orders that have the earliest receipt dates.

(2) If a person is unable to resolve rated order delivery or performance conflicts under this section, the person should promptly seek special priorities

assistance as provided in §§ 217.40 through 217.44. If the person's customer objects to the rescheduling of delivery or performance of a rated order, the customer should promptly seek special priorities assistance as provided in §§ 217.40 through 217.44. For any rated order against which delivery or performance will be delayed, the person must notify the customer as provided in § 217.33.

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 217.37(b).

§ 217.35 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items or services needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this part or as directed by the Department of Energy. For example, if a person is in receipt of a DO–E–F1 rated order for an electric power sub-station, and needs to purchase a transformer for its manufacture, that person must use a DO–E–F1 rated order to obtain the needed transformer.

(b) The priority rating must be included on each successive order placed to obtain items or services needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 217.36 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or canceled by:

(1) An official action of the Department of Energy; or

(2) Written notification from the person who placed the rated order.

(b) If an unrated order is amended so as to make it a rated order, or a DO rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 217.33.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design; or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items or services to fill a rated order, any rated orders placed with suppliers for the items or services, or the priority rating on those orders, must be canceled.

(f) When a priority rating is added to an unrated order, or is changed or canceled, all suppliers must be promptly notified in writing.

§ 217.37 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed or converted into scrap or by-products in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating and the program identification symbol indicated on the customer's rated order must be used on the order. A DX rating may not be used even if the inventory was used to fill a DX-rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol "H1" must be used (i.e., DO–H1).

(c) A person may combine DX- and DO-rated orders from one customer or several customers if the items or services covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol "H1" (*i.e.,* DO–H1 or DX–H1).

(d) *Combining rated and unrated orders.*

(1) A person may combine rated and unrated order quantities on one purchase order provided that:

(i) The rated quantities are separately and clearly identified; and

(ii) The four elements of a rated order, as required by § 217.32, are included on the order with the statement required in § 217.32(d) modified to read in substance:

> This purchase order contains rated order quantities certified for national defense use, and you are required to follow all applicable provisions of the Energy Priorities and Allocations System regulations at 10 CFR part 217 only as it pertains to the rated quantities.

(2) A supplier must accept or reject the rated portion of the purchase order as provided in § 217.33 and give preferential treatment only to the rated quantities as required by this part. This part may not be used to require preferential treatment for the unrated portion of the order.

(3) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this part or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under § 217.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than $50,000, or one-half of the Simplified Acquisition Threshold (as established in the Federal Acquisition Regulation (FAR) (see FAR section 2.101) or in other authorized acquisition regulatory or management systems) whichever amount is greater, provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§ 217.38 Limitations on placing rated orders.

(a) *General limitations.*

(1) A person may not place a DO- or DX-rated order unless entitled to do so under this part.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item or services than needed, except to obtain a minimum procurable quantity. Separate rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items or services in advance of the receipt of a rated order, except as

specifically authorized by the Department of Energy (see § 217.41(c) for information on obtaining authorization for a priority rating in advance of a rated order);

(iv) Items that are not needed to fill a rated order, except as specifically authorized by the Department of Energy, or as otherwise permitted by this part; or

(v) Any of the following items unless specific priority rating authority has been obtained from the Department of Energy, a Delegate Agency, or the Department of Commerce, as appropriate:

(A) Items for plant improvement, expansion, or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see § 217.21.]

(vi) Any items related to the development of chemical or biological warfare capabilities or the production of chemical or biological weapons, unless such development or production has been authorized by the President or the Secretary of Defense.

(b) *Jurisdictional limitations.* Unless authorized by the resource agency with jurisdiction, the provisions of this part are not applicable to the following resources:

(1) Food resources, food resource facilities, and the domestic distribution of farm equipment and commercial fertilizer (Resource agency with jurisdiction—Department of Agriculture);

(2) Health resources (Resource agency with jurisdiction—Department of Health and Human Services);

(3) All forms of civil transportation (Resource agency with jurisdiction—Department of Transportation);

(4) Water resources (Resource agency with jurisdiction—Department of Defense/U.S. Army Corps of Engineers); and

(5) Communications services (Resource agency with jurisdiction—National Communications System under E. O. 12472 of April 3, 1984).

Subpart D—Special Priorities Assistance

§ 217.40 General provisions.

(a) The six regulations that comprise the Federal Priorities and Allocations System are designed to be largely self-executing. However, from time-to-time production or delivery problems will arise. In this event, a person should immediately contact the Office of Infrastructure Security and Energy Restoration, for guidance or assistance (Contact the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93). If the problem(s) cannot otherwise be resolved, special priorities assistance should be sought from the Department of Energy through the Office of Infrastructure Security and Energy Restoration (Contact the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93). If the Department of Energy is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Department of Energy may forward the request to another agency with resource jurisdiction, as appropriate, for action. Special priorities assistance is provided to alleviate problems that do arise.

(b) Special priorities assistance is available for any reason consistent with this part. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items that are not normally eligible for priority treatment.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form DOE–XXX [OMB control number to be inserted in the final rule] to the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93. Form DOE–999 may be obtained from the Department of Energy or a Delegate Agency. A sample Form DOE–999 is attached at Appendix I to this part.

§ 217.41 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items or services not normally rated under this part, the person may request the authority to use a priority rating in ordering the needed items or services.

(b) *Rating authority for production or construction equipment.*

(1) A request for priority rating authority for production or construction equipment must be submitted to the U.S. Department of Commerce on Form BIS–999.

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, the Department of Energy, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the Department of Energy or the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

> It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from the Department of Energy and our use of that priority rating with our suppliers in no way commits the Department of Energy or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, the Department of Energy will consider, among other things, the following criteria:

(i) The probability that the prime contract will be awarded;

(ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The time period for which the rating is being requested.

(4) The Department of Energy may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

§ 217.42 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this part, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item or service needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 217.43 Criteria for assistance.

Requests for special priorities assistance should be timely, *i.e.,* the request has been submitted promptly and enough time exists for the Department of Energy, the Delegate Agency, or the Department of Commerce for industrial resources to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 217.44 Instances where assistance may not be provided.

Special priorities assistance is provided at the discretion of the Department of Energy, the Delegate Agencies, or the Department of Commerce when it is determined that such assistance is warranted to meet the objectives of this part. Examples where assistance may not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

Subpart E—Allocation Actions

§ 217.50 Policy.

(a) It is the policy of the Federal Government that the allocations authority under title I of the Defense Production Act may:

(1) Only be used when there is insufficient supply of a material, service, or facility to satisfy national defense supply requirements through the use of the priorities authority or when the use of the priorities authority would cause a severe and prolonged disruption in the supply of materials, services, or facilities available to support normal U.S. economic activities; and

(2) Not be used to ration materials or services at the retail level.

(b) Allocation orders, when used, will be distributed equitably among the suppliers of the materials, services, or facilities being allocated and not require any person to relinquish a disproportionate share of the civilian market.

§ 217.51 General procedures.

When the Department of Energy plans to execute its allocations authority to address a supply problem within its resource jurisdiction, the Department shall develop a plan that includes the following information:

(a) A copy of the written determination made, in accordance with section 202 of E. O. 12919, that the program or programs that would be supported by the allocation action are necessary or appropriate to promote the national defense;

(b) A detailed description of the situation to include any unusual events or circumstances that have created the requirement for an allocation action;

(c) A statement of the specific objective(s) of the allocation action;

(d) A list of the materials, services, or facilities to be allocated;

(e) A list of the sources of the materials, services, or facilities that will be subject to the allocation action;

(f) A detailed description of the provisions that will be included in the allocation orders, including the type(s) of allocation orders, the percentages or quantity of capacity or output to be allocated for each purpose, and the duration of the allocation action (*i.e.,* anticipated start and end dates);

(g) An evaluation of the impact of the proposed allocation action on the civilian market; and

(h) Proposed actions, if any, to mitigate disruptions to civilian market operations.

§ 217.52 Controlling the general distribution of a material in the civilian market.

No allocation action by the Department of Energy may be used to control the general distribution of a material in the civilian market, unless the Secretary of the Department of Energy has:

(a) Made a written finding that:

(1) Such material is a scarce and critical material essential to the national defense, and

(2) The requirements of the national defense for such material cannot otherwise be met without creating a significant dislocation of the normal distribution of such material in the civilian market to such a degree as to create appreciable hardship;

(b) Submitted the finding for the President's approval through the Assistant to the President for National Security Affairs; and

(c) The President has approved the finding.

§ 217.53 Types of allocation orders.

There are three types of allocation orders available for communicating allocation actions. These are:

(a) *Set-aside:* an official action that requires a person to reserve materials, services, or facilities capacity in anticipation of the receipt of rated orders;

(b) *Directive:* an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions. For example, a directive can require a person to: Stop or reduce production of an item; prohibit the use of selected materials, services, or facilities; or divert the use of materials, services, or facilities from one purpose to another; and

(c) *Allotment:* an official action that specifies the maximum quantity of a material, service, or facility authorized for a specific use.

§ 217.54 Elements of an allocation order.

Each allocation order must include:

(a) A detailed description of the required allocation action(s);

(b) Specific start and end calendar dates for each required allocation action;

(c) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of the Secretary of Energy. The signature or use of the name certifies that the order is authorized under this part and that the requirements of this part are being followed;

(d) A statement that reads in substance: "This is an allocation order certified for national defense use. [Insert the legal name of the person receiving the order] is required to comply with this order, in accordance with the provisions of the Energy Priorities and Allocations System regulation (10 CFR Part 217), which is part of the Federal Priorities and Allocations System"; and

(e) A current copy of the Energy Priorities and Allocations System regulation (10 CFR part 217).

§ 217.55 Mandatory acceptance of an allocation order.

(a) Except as otherwise specified in this section, a person shall accept and comply with every allocation order received.

(b) A person shall not discriminate against an allocation order in any manner such as by charging higher prices for materials, services, or facilities covered by the order or by imposing terms and conditions for contracts and orders involving allocated materials, services, or facilities that differ from the person's terms and conditions for contracts and orders for the materials, services, or facilities prior to receiving the allocation order.

(c) If a person is unable to comply fully with the required action(s) specified in an allocation order, the person must notify the Department of Energy immediately, explain the extent to which compliance is possible, and give the reasons why full compliance is not possible. If notification is given verbally, written or electronic confirmation must be provided within five (5) working days. Such notification does not release the person from complying with the order to the fullest extent possible, until the person is notified by the Department of Energy that the order has been changed or cancelled.

§ 217.56 Changes or cancellations of an allocation order.

An allocation order may be changed or canceled by an official action of the Department of Energy.

Subpart F—Official Actions

§ 217.60 General provisions.

(a) The Department of Energy may take specific official actions to implement the provisions of this part.

(b) These official actions include Rating Authorizations, Directives, and Memoranda of Understanding.

§ 217.61 Rating Authorizations.

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item or service not normally ratable under this part; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see § 217.41.

§ 217.62 Directives.

(a) A Directive is an official action that requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) A Priorities Directive takes precedence over all DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

(d) An Allocations Directive takes precedence over all Priorities Directives, DX-rated orders, DO-rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

§ 217.63 Letters and Memoranda of Understanding.

(a) A Letter or Memorandum of Understanding is an official action that may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (the Department of Energy, the Department of Commerce (if applicable), a Delegate Agency (if applicable), the supplier, and the customer).

(b) A Letter or Memorandum of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this part. Rather, Letters or Memoranda of Understanding are used to confirm production or shipping schedules that do not require modifications to other rated orders.

Subpart G—Compliance

§ 217.70 General provisions.

(a) The Department of Energy may take specific official actions for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or an official action. Such actions include Administrative Subpoenas, Demands for Information, and Inspection Authorizations.

(b) Any person who places or receives a rated order or an allocation order must comply with the provisions of this part.

(c) Willful violation of the provisions of title I or section 705 of the Defense Production Act and other applicable statutes, this part, or an official action of the Department of Energy is a criminal act, punishable as provided in the Defense Production Act and other applicable statutes, and as set forth in § 217.74 of this part.

§ 217.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act and other applicable statutes, this part, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this part.

(b) When undertaking an audit or investigation, the Department of Energy shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this part, the Department of Energy may issue the following documents that constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Energy to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demands for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Energy any information necessary or appropriate to the enforcement or the administration of the Defense Production Act and other applicable statutes, this part, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of the Department of Energy to interview the person's employees or agents, to inspect books, records, documents, other writings, and information, including electronically-stored information, in the person's possession or control at the place where that person usually keeps them or otherwise, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration

of the Defense Production Act and related statutes, this part, or official actions.

(d) The production of books, records, documents, other writings, and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of the Department of Energy is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of Department of Energy as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization, shall include the name, title, or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail-Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the document with someone at least 18 years old at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

§ 217.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of the Department of Energy to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act and other applicable statutes, this part, or official actions, the Department of Energy representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including ex parte application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

§ 217.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, the Department of Energy may inform the person in writing where compliance with the requirements of the Defense Production Act and other applicable statutes, this part, or an official action were not met.

(b) In cases where the Department of Energy determines that failure to comply with the provisions of the Defense Production Act and other applicable statutes, this part, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act and other applicable statutes, this part, or an official action.

§ 217.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of title I or sections 705 or 707 of the Defense Production Act, the priorities provisions of the Selective Service Act and related statutes (when applicable), this part, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. The maximum penalties provided by the Defense Production Act are a $10,000 fine, or one year in prison, or both. The maximum penalties provided by the Selective Service Act and related statutes are a $50,000 fine, or three years in prison, or both.

(b) The Government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this part, or an official action.

(c) In order to secure the effective enforcement of the Defense Production Act and other applicable statutes, this part, and official actions, the following are prohibited:

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act and other applicable statutes, this part, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act and other applicable statutes, this part, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act and other applicable statutes, this part, or an official action. In such instances, the person must immediately notify the Department of Energy that, in accordance with this provision, delivery has not been made.

§ 217.75 Compliance conflicts.

If compliance with any provision of the Defense Production Act and other applicable statutes, this part, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act and other applicable statutes, this part, or an official action, the person must immediately notify the Department of Energy for resolution of the conflict.

Subpart H—Adjustments, Exceptions, and Appeals

§ 217.80 Adjustments or exceptions.

(a) A person may submit a request to the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in section 217.93, for an adjustment or exception on the ground that:

(1) A provision of this part or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequences of following a provision of this part or an official

action is contrary to the intent of the Defense Production Act and other applicable statutes, or this part.

(b) Each request for adjustment or exception must be in writing and contain a complete statement of all the facts and circumstances related to the provision of this part or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the request is being considered unless such interim relief is granted in writing by the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93.

(d) A decision of the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93, under this section may be appealed to the Office of Infrastructure Security and Energy Restoration (For information on the appeal procedure, see § 217.81.)

§ 217.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93, under § 217.80, may appeal to the Office of Infrastructure Security and Energy Restoration who shall review and reconsider the denial.

(b) (1) Except as provided in paragraph (b)(2) of this section, an appeal must be received by the Office of Infrastructure Security and Energy Restoration no later than 45 days after receipt of a written notice of denial from the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93. After this 45-day period, an appeal may be accepted at the discretion of the Office of Infrastructure Security and Energy Restoration for good cause shown.

(2) For requests for adjustment or exception involving rated orders placed for the purpose of emergency preparedness (*see* § 217.14(d)), an appeal must be received by the Office of Infrastructure Security and Energy Restoration, no later than 15 days after receipt of a written notice of denial from the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, as listed in § 217.93. Contract performance under the order shall not be stayed pending resolution of the appeal.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or denied at the discretion of the Office of Infrastructure Security and Energy Restoration.

(e) When a hearing is granted, the Office of Infrastructure Security and Energy Restoration may designate an employee to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Office of Infrastructure Security and Energy Restoration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Energy or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this part or official action in question while the appeal is being considered unless such relief is granted in writing by the Office of Infrastructure Security and Energy Restoration.

(h) The decision of the Office of Infrastructure Security and Energy Restoration shall be made within five (5) days after receipt of the appeal, or within one (1) day for appeals pertaining to emergency preparedness and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

Subpart I—Miscellaneous Provisions

§ 217.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this part, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

§ 217.91 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any transaction covered by this part or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this part or any official action. However, this part does not specify any particular method or system to be used.

(c) Records required to be maintained by this part must be made available for examination on demand by duly authorized representatives of the Department of Energy as provided in § 217.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to the Department of Energy that may be required for the administration of the Defense Production Act and other applicable statutes, and this part.

(e) Section 705(d) of the Defense Production Act, as implemented by E.O. 12919, provides that information obtained under this section which the Secretary deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the Secretary determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to the Department of Energy in connection with the enforcement or administration of the Defense Production Act, this part, or an official action, is deemed to be confidential under section 705(d) of the Defense Production Act and shall be handled in accordance with applicable Federal law.

§ 217.92 Applicability of this part and official actions.

(a) This part and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This part and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

(c) This part and its schedules shall not be construed to affect any administrative actions taken by the Department of Energy, or any outstanding contracts or orders placed pursuant to any of the regulations,

orders, schedules or delegations of authority previously issued by the Department of Energy pursuant to authority granted to the President in the Defense Production Act. Such actions, contracts, or orders shall continue in full force and effect under this part unless modified or terminated by proper authority.

§ 217.93 Communications.

All communications concerning this part, including requests for copies of the part and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Senior Policy Advisor for the Office of Electricity Delivery and Energy Reliability, Office of Infrastructure Security and Energy Restoration, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; (202) 536–0379 (*GC–76EPAS@hq.doe.gov*).

Appendix I to Part 217—Sample Form DOE–XXX

FORM DOE-XXX DEPARTMENT OF ENERGY OFFICE OF ELECTRICITY

FOR DOE USE OMB NO.1910-XXXX

REQUEST FOR SPECIAL PRIORITIES ASSISTANCE

READ INSTRUCTIONS ON LAST PAGE
FILL OUT USING COMPUTER

CASE NO._____
RECEIVED_____
ASSIGNED TO_____

Submission of a completed application is required to request special priorities assistance. See sections 217.40-44 of the Energy Priorities and Allocations System regulations (10 CFR Part 217). It is a criminal offense under 18 U.S.C. 1001 to make a willfully false statement or representation to any U.S. Government agency as to any matter within its jurisdiction. All company information furnished related to this application will be deemed business confidential under Sec. 705(d) of the Defense Production Act of 1950 [50 U.S.C. App.2155(d) which prohibits publication or disclosure of this information unless the President determines that withholding it is contrary to the interest of the national defense. The Department of Energy will assert the appropriate Freedom of Information Act (FOIA) exemptions if such information is the subject of FOIA requests. The unauthorized publication or disclosure of such information by Government personnel is prohibited by law. Violators are subject to fine and/or imprisonment.

OMB Burden Disclosure Statement

This data is being collected to implement the Department of Energy's Energy Priorities and Allocations System regulations, promulgated pursuant to the Defense Production Act of 1950, as amended (DPA). The data you supply will be used to allow you to request special priorities assistance from DOE to fill a rated order issued pursuant to the DPA and DOE's implementing regulations. DOE will also use the information to conduct audits and for enforcement purposes.

Public reporting burden for this collection of information is estimated to average 32 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of the Chief Information Officer, Records Management Division, IM-23, Paperwork Reduction Project (1910-XXXX), U.S. Department of Energy, 1000 Independence Ave SW, Washington, DC, 20585-1290; and to the Office of Management and Budget (OMB), OIRA, Paperwork Reduction Project (1910-XXXX), Washington, DC 20503.

1. APPLICANT INFORMATION

a. Name and complete address of Applicant (Applicant can be any person needing assistance – Government agency, contractor, or supplier. See definition of Applicant in Footnotes section on last page of this form).

Applicant Name_____
Address_____
City_____ State_____ Zip_____
Contact Name_____
Title_____
Telephone_____ Fax_____
Email address_____

b. If Applicant is not end-user Government agency, give name and complete address of Applicant's customer.

Customer name_____
Address_____
City_____ State_____ Zip_____
Contact Name_____
Title_____
Telephone_____ Fax_____
Contract/purchase order no._____
Dated_____ Priority Rating_____

2. APPLICANT ITEM(S). If Applicant is not end-user Government agency, describe item(s) to be delivered by Applicant under its customer's contract or purchase order though the use of the item(s) listed in Block 3. If known, identify Government program and end-item for which these items are required. If Applicant is end-user Government agency and Block 3 item(s) are not end-items, identify the end-item for which the Block 3 item(s) are required. See definition of "item" in Footnotes section on last page of this form.

3. ITEM(s) (including service) FOR WHICH APPLICANT REQUESTS ASSISTANCE

Quantity *Pieces, units*	**Description** *Include identifying information such as model or part number*	**Dollar Value** *Each quantity listed*

[FR Doc. 2010–17289 Filed 7–15–10; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[Docket: EPA–R10–OAR–2010–0432; FRL–9171–3]

Finding of Attainment for PM_{10} for the Mendenhall Valley PM_{10} Nonattainment Area, Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA finds that the Mendenhall Valley nonattainment area in Alaska attained the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter of less than or equal to a nominal ten micrometers (PM_{10}) as of December 31, 1995.

DATES: Comments must be received on or before August 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0432, by any of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: body.steve@epa.gov.*
- *Mail:* Steve Body, U.S. EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Steve Body, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number: (206) 553–0782, e-mail address: *body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the attainment determination as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 22, 2010.

Dennis J. McLerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2010–17416 Filed 7–15–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 191 and 194

[EPA–HQ–OAR–2009–0330; FRL–9175–6]

Notification of Completeness of the Department of Energy's Compliance Recertification Application for the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination and close of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, "we" or "the Agency") has determined that the Department of Energy's (DOE) Compliance Recertification Application (CRA or "application") for the Waste Isolation Pilot Plant (WIPP) is complete. EPA provided written notice of the completeness decision to the Secretary of Energy on June 29, 2010. The text of the letter is contained in the **SUPPLEMENTARY INFORMATION**. The Agency has determined that the application is complete, in accordance with 40 CFR part 194, "Criteria for the Certification and Recertification of the WIPP's Compliance with the 40 CFR part 191 Disposal Regulations" (Compliance Certification Criteria). The completeness determination is an administrative step that is required by regulation, and it does not imply in any way that the CRA demonstrates compliance with the Compliance Criteria and/or the disposal regulations. EPA is now engaged in the full technical review that will determine if WIPP remains in compliance with the disposal regulations. As required by the 1992 WIPP Land Withdrawal Act and our implementing regulations, EPA will make a final recertification decision within six months of issuing the completeness letter to the Secretary of Energy.

DATES: EPA opened the public comment period upon receipt of the 2009 CRA (74 FR 28468, June 16, 2009). Comments must be received on or before August 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0330, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* to *a-and-r-docket@epa.gov*.
- *Fax:* 202–566–1741.
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2009–0330. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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 at *http://www.regulations.gov.* As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Ray Lee, Radiation Protection Division, Center for Radiation Information and Outreach, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; *telephone number:* 202–343–9463; *fax number:* 202–343–2305; *e-mail address: lee.raymond@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

II. Background

The Waste Isolation Pilot Plant (WIPP) was authorized in 1980, under section 213 of the DOE National Security and Military Applications of Nuclear Energy Authorization Act of 1980 (Pub. L. 96–164, 93 Stat. 1259, 1265), "for the express purpose of providing a research and development facility to demonstrate the safe disposal of radioactive wastes resulting from the defense activities and programs of the United States." WIPP is a disposal system for transuranic (TRU) radioactive waste. Developed by DOE, WIPP is located near Carlsbad in southeastern New Mexico. TRU waste is emplaced 2,150 feet underground in an ancient layer of salt that will eventually "creep" and encapsulate the waste containers. WIPP has a total capacity of 6.2 million cubic feet of TRU waste.

The 1992 WIPP Land Withdrawal Act (LWA; Pub. L. 102–579) [1] limits radioactive waste disposal in WIPP to TRU radioactive wastes generated by defense-related activities. TRU waste is defined as waste containing more than 100 nano-curies per gram of alpha-emitting radioactive isotopes, with half-lives greater than twenty years and atomic numbers greater than 92. The WIPP LWA further stipulates that radioactive waste shall not be TRU waste if such waste also meets the definition of high-level radioactive waste, has been specifically exempted from regulation with the concurrence of the Administrator, or has been approved for an alternate method of disposal by the Nuclear Regulatory Commission. The TRU radioactive waste proposed for disposal in WIPP consists of materials such as rags, equipment, tools, protective gear, and sludges that have become contaminated during atomic energy defense activities. The radioactive component of TRU waste consists of man-made elements created during the process of nuclear fission, chiefly isotopes of plutonium. Some TRU waste is contaminated with hazardous wastes regulated under the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. 6901–6992k). The waste proposed for disposal at WIPP derives from Federal facilities across the United States, including locations in Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee, and Washington.

WIPP must meet EPA's generic disposal standards at 40 CFR part 191, subparts B and C, for high-level and TRU radioactive waste. These standards limit releases of radioactive materials from disposal systems for radioactive waste, and require implementation of measures to provide confidence for compliance with the radiation release limits. Additionally, the regulations limit radiation doses to members of the public, and protect ground water resources by establishing maximum concentrations for radionuclides in ground water. To determine whether WIPP performs well enough to meet these disposal standards, EPA issued the WIPP Compliance Criteria (40 CFR part 194) in 1996. The Compliance Criteria interpret and implement the disposal standards specifically for the WIPP site. They describe what information DOE must provide and how EPA evaluates the WIPP's performance and provides ongoing independent oversight. Thus, EPA implemented its environmental radiation protection standards, 40 CFR part 191, by applying the WIPP Compliance Criteria, 40 CFR part 194, to the disposal of TRU radioactive waste at the WIPP. For more information about 40 CFR part 191, refer to **Federal Register** notices published in 1985 (50 FR 38066–38089, Sep. 19, 1985) and 1993 (58 FR 66398–66416, Dec. 20, 1993). For more information about 40 CFR part 194, refer to **Federal Register** notices published in 1995 (60 FR 5766–5791, Jan. 30, 1995) and in 1996 (61 FR 5224–5245, Feb. 9, 1996).

Using the process outlined in the WIPP Compliance Criteria, EPA determined on May 18, 1998 (63 FR 27354), that DOE had demonstrated that the WIPP facility will comply with EPA's radioactive waste disposal regulations at subparts B and C of 40

[1] The 1992 WIPP Land Withdrawal Act was amended by the "Waste Isolation Pilot Plant Land Withdrawal Act Amendments," which were part of the National Defense Authorization Act for Fiscal Year 1997.

CFR part 191. EPA's certification determination permitted WIPP to begin accepting transuranic waste for disposal, provided that other applicable conditions and environmental regulations were met. Disposal of TRU waste at WIPP began in March 1999.

Since the 1998 certification decision (and the initial recertification decision in 2006) EPA has conducted ongoing independent technical review and inspections of all WIPP activities related to compliance with the EPA's disposal regulations. The certification decision identified the starting (baseline) conditions for WIPP and established the waste and facility characteristics necessary to ensure proper disposal in accordance with the regulations. At that time, EPA and DOE understood that future information and knowledge gained from the actual operation of WIPP would result in changes to the best practices and procedures for the facility.

In recognition of this, section 8(f) of the amended WIPP LWA requires EPA to evaluate all changes in conditions or activities at WIPP every five years to determine if WIPP continues to comply with EPA's disposal regulations for the facility. This determination is not subject to standard rulemaking procedures or judicial review, as stated in the aforementioned section of the WIPP Land Withdrawal Act. The first recertification process (2004–2006) included a review of all of the changes made at WIPP since the original 1998 EPA certification decision up until the receipt of the initial CRA in March 2004. This second recertification process includes a review of all the changes made at the facility since March 2004.

Recertification is not a reconsideration of the decision to open WIPP, but a process to reaffirm that WIPP meets all requirements of the disposal regulations. The recertification process will not be used to approve any new significant changes proposed by DOE; any such proposals will be addressed separately by EPA. Recertification will ensure that WIPP is operated using the most accurate and up-to-date information available and provides documentation requiring DOE to operate to these standards.

EPA received DOE's initial CRA on March 26, 2004, and subsequently opened a public comment period on the application and the Agency's intent to evaluate compliance with the disposal regulations and compliance criteria in the **Federal Register** (69 FR 29646, May 24, 2004). Following a number of requests for additional information from DOE, EPA issued its completeness determination on October 20, 2005 (70 FR 61107–61111). After analyzing public comments and completing its technical review, the Agency then announced the first WIPP recertification decision on March 29, 2006, via a letter to the Secretary of Energy.

EPA received DOE's second CRA on March 24, 2009, and announced the Agency's intent to evaluate compliance with the disposal regulations and compliance criteria in the **Federal Register** (74 FR 28468–28471, June 16, 2009). At that time, EPA also began accepting public comments on the application.

In a letter dated June 29, 2010, from EPA's Director of the Office of Radiation and Indoor Air to the Secretary of Energy, the Agency notified DOE that the 2009 CRA for WIPP is complete. This determination is solely an administrative measure and does not reflect any conclusion regarding WIPP's continued compliance with the disposal regulations.

This determination was made using a number of the Agency's WIPP-specific guidances; most notably, the "Compliance Application Guidance" (CAG; EPA Pub. 402–R–95–014) and "Guidance to the U.S. Department of Energy on Preparation for Recertification of the Waste Isolation Pilot Plant with 40 CFR Parts 191 and 194" (Docket A–98–49, Item II–B3–14; December 12, 2000). Both guidance documents include guidelines regarding: (1) Content of certification/recertification applications; (2) documentation and format requirements; (3) time frame and evaluation process; and (4) change reporting and modification. The Agency developed these guidance documents to assist DOE with the preparation of any compliance application for the WIPP. They are also intended to assist in EPA's review of any application for completeness and to enhance the readability and accessibility of the application for EPA and public scrutiny.

EPA has been reviewing the CRA for "completeness" since its receipt. EPA's review identified several areas of the application where additional information was necessary to perform a technical evaluation. EPA sent five letters to DOE requesting additional information, which are detailed below:

- May 21, 2009 (Docket ID: EPA–HQ–OAR–2009–0330–0004)—EPA requested additional information on the performance assessment and chemical portions of the CRA–2009.
- July 16, 2009 (Docket ID: EPA–HQ–OAR–2009–0330–0005)—EPA requested additional information on waste inventory, performance assessment calculations/code documentation, human intrusion, and chemistry (including karst comments raised by stakeholders).
- October 19, 2009 (Docket ID: EPA–HQ–OAR–2009–0330–0006)—EPA requested additional information on waste inventory, chemistry, features/events/processes (FEPs), and performance assessment paramaters/codes.
- January 25, 2010 (addendum to 5/21/09 letter via e-mail; Docket ID: EPA–HQ–OAR–2009–0330–0013, 0013.1)—EPA requested additional information conceptual models and modeling calculations.
- February 22, 2010 (Docket ID: EPA–HQ–OAR–2009–0330–0015)—EPA requested additional information on repository chemistry issues.

DOE submitted the requested information with a series of ten letters, which were sent on the following dates:

- August 24, 2009 (Docket ID: EPA–HQ–OAR–2009–0330–0007, 0007.1–0007.4).
- September 30, 2009 (Docket ID: EPA–HQ–OAR–2009–0330–0008, 0008.1–0008.9).
- November 25, 2009 (Docket ID: EPA–HQ–OAR–2009–0330–0011, 0011.1–0011.3).
- January 12, 2010 (Docket ID: EPA–HQ–OAR–2009–0330–0008, 0008.1–0008.9).
- February 22, 2010 (Docket ID: EPA–HQ–OAR–2009–0330–0012, 0012.1–0012.6).
- March 31, 2010 (Docket ID: EPA–HQ–OAR–2009–0330–0014, 0014.1–0014.3).
- April 12, 2010 (Docket ID: EPA–HQ–OAR–2009–0330–0016, 0016.1–0016.3).
- April 19, 2010 (Docket ID: EPA–HQ–OAR–2009–0330–0017, 0017.1).
- May 26, 2010 (Docket ID: EPA–HQ–OAR–2009–0330–0018, 0018.1–0018.3).
- June 24, 2010 (Docket ID: EPA–HQ–OAR–2009–0330–0025, 0025.1–0025.2).

All completeness related correspondence was placed in our dockets (DOCKET ID: EPA–HQ–OAR–2009–0330) and on our WIPP Web site (*http://www.epa.gov/radiation/wipp*).

Since receipt of the 2009 CRA, the Agency has received a number of public comments from stakeholder groups regarding both the completeness and technical adequacy of the recertification application. In addition to soliciting written public comments, EPA held a series of public meetings in New Mexico (June 2009 and May 2010) to discuss stakeholders concerns and issues related to WIPP recertification. These comments helped in developing EPA's

requests for additional information from DOE, particularly regarding the WIPP waste inventory and groundwater (karst) issues.

EPA will now undertake a full technical evaluation on the complete 2009 CRA in determining whether the WIPP continues to comply with the radiation protection standards for disposal. EPA will also consider any additional public comments and other information relevant to WIPP's compliance. The Agency is most interested in whether new or changed information has been appropriately incorporated into performance assessment calculations for WIPP, and whether the potential effects of changes are properly characterized.

If EPA approves the application, it will set the parameters for how WIPP will be operated by DOE over the following five years. The approved CRA will then serve as the baseline for the next recertification. As required by the WIPP LWA, the Agency will make a final recertification decision within six months of issuing its completeness determination.

June 29, 2010

Honorable Dr. Steven Chu, Secretary U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dear Mr. Secretary: Pursuant to Section 8(f) of the Waste Isolation Pilot Plant (WIPP) Land Withdrawal Act, as amended, and in accordance with the WIPP Compliance Criteria at 40 CFR 194.11, I hereby notify you that the U.S. Environmental Protection Agency (EPA or "the Agency") has determined that the U.S. Department of Energy's (DOE) 2009 Compliance Recertification Application (CRA) for WIPP is complete. This completeness determination is an administrative determination required under the WIPP Compliance Criteria, which implement the Agency's Final Radioactive Waste Disposal Regulations at Subparts B and C of 40 CFR Part 191. While the completeness determination initiates the six-month evaluation period provided for in Section 8(f)(2) of the Land Withdrawal Act, it does not have any generally applicable legal effect. Further, this determination does not imply or indicate that DOE's CRA demonstrates compliance with the Compliance Criteria and/or the Disposal Regulations.

Section 8(f) of the amended Land Withdrawal Act requires EPA to evaluate all changes in conditions or activities at WIPP every five years to determine if the facility continues to comply with EPA's disposal regulations. This second recertification process includes a review of all of the changes made at the WIPP facility since the initial 2004 CRA (and subsequent recertification decision, issued in 2006) was submitted by DOE.

Under the applicable regulations, EPA may recertify the WIPP only after DOE has submitted a "full" (or complete) application (see 40 CFR 194.11). Upon receipt of the CRA on March 24, 2009, EPA immediately began its review to determine whether the application was complete. Shortly thereafter, the Agency began to identify areas of the 2009 CRA that required supplementary information and analyses. In addition, EPA received public comments and held public meetings on the application that identified areas where additional information was needed for EPA's review.

EPA identified completeness concerns in a series of letters/e-mails from the Agency to Dr. Dave Moody, Manager for DOE's Carlsbad Field Office, as well as his staff. This correspondence is detailed below:

- May 21, 2009—EPA requested additional information on the performance assessment and chemical portions of the CRA–2009.
- July 16, 2009—EPA requested additional information on waste inventory, performance assessment calculations/code documentation, human intrusion, and chemistry (including karst comments raised by stakeholders).
- October 19, 2009—EPA requested additional information on waste inventory, chemistry, features/events/processes (FEPs), and performance assessment paramaters/codes.
- January 25, 2010 (addendum to 5/21/09 letter via e-mail)— EPA requested additional information conceptual models and modeling calculations.
- February 19, 2010—EPA requested additional information on repository chemistry issues.

DOE submitted the requested information with a series of 11 letters, which were sent on the following dates:

- August 24, 2009
- September 30, 2009
- November 25, 2009
- January 12, 2010
- February 22, 2010
- March 31, 2010
- April 12, 2010
- April 19, 2010
- May 26, 2010
- June 22, 2010
- June 28, 2010

All completeness-related correspondence was placed in our public docket (EDOCKET EPA–HQ–OAR–2009–0330) and on our website (*http://www.epa.gov/radiation/wipp*).

Based on the information provided by DOE, we conclude that the 2009 CRA is complete. Again, this is the initial, administrative step that indicates DOE has provided information relevant to each applicable provision of the WIPP Compliance Criteria and in sufficient detail for us to proceed with a full technical evaluation of the adequacy of the application. In accordance with Section 8(f)(2) of the amended Land Withdrawal Act, EPA will make its final recertification decision within six months of this letter.

To the extent possible, the Agency began conducting a preliminary technical review of the application upon its submittal by DOE, and has provided the Department with relevant technical comments on an ongoing basis. EPA will continue to conduct its technical review of the 2009 CRA as needed, and will convey further requests for additional information and analyses. The Agency will issue its compliance recertification decision, in accordance with 40 CFR Part 194 and Part 191, Subparts B and C, after it has thoroughly evaluated the complete CRA and considered relevant public comments. The public comment period on our completeness determination will remain open for 30 days following the publication of this letter in the **Federal Register**.

Thank you for your cooperation during our review process. Should your staff have any questions regarding this request, they may contact Tom Peake at (202) 343–9765 or by e-mail at *peake.tom@epa.gov.*

Sincerely,

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

Dated: July 7, 2010.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2010–17141 Filed 7–15–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0912231441–91445–01]

RIN 0648–AY48

Fisheries of the Exclusive Economic Zone Off Alaska; Skates Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands; 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: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendments 95 and 96 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 87 to the FMP for Groundfish of the Gulf of Alaska (GOA), (collectively referred to as "the FMPs"). If approved, Amendment 95 would move skates from the "other species" category to the "target species" category in the FMP. 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" and "non-specified species" categories 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. The proposed rule would remove references to the "other species" category for purposes of the harvest specifications and would add skate species to the reporting codes for the BSAI groundfish fisheries. This proposed 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 must be received by August 30, 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 and 96 to the FMP for Groundfish of the BSAI, Amendment 87 to the FMP for Groundfish of the GOA, the Environmental Assessments (EAs), and the Regulatory Impact Review (RIR) prepared for this action are available from the Alaska Region website at *http://www.alaskafisheries.noaa.gov/regs/summary.htm*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economiczone of the BSAI and GOA are managed under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendments 87, 95, and 96 for review by the Secretary of Commerce (Secretary), and a Notice of Availability of the FMP amendments was published in the **Federal Register** on July 2, 2010 (75 FR 38454), with comments on the FMP amendments invited through August 31, 2010.

Comments may address the FMP amendments, the proposed rule, or both, but must be received by 1700 hours, A.D.T. on August 31, 2101, to be considered in the approval/disapproval decision on the FMP amendments. All comments received by that time, whether specifically directed to the FMP amendments or to this proposed rule, will be considered in the approval/disapproval decision on the FMP amendments.

Background

Amendment 95 was unanimously adopted by the Council in October 2009. If approved by the Secretary, this amendment would move skates from the "other species" category to the "target species" list in the BSAI FMP, allowing the management of skates as a target species complex or as individual skate species. NMFS trawl survey and catch information show that 15 skate species occur in the BSAI. In the Bering Sea subarea, the most abundant species is the Alaska skate, while the most abundant species in the Aleutian Islands subarea is the whiteblotched skate. Individual species of skate could be listed under the skate complex in the "target species" list during the harvest specifications process to allow for management of these individual species.

Amendments 96 and 87 were unanimously 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 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" category in each FMP and place these groups in the "target species" category. The "other species" category would be completely 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 single 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). Implementation of these amendments will promote the goal of ending and preventing overfishing.

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 a vessel. If closing directed fishing for sharks and octopuses, together with applicable limits on retention, 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, while minimizing adverse 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 have been sold, information is available to estimate changes in potential revenue from the proposed action. The estimated revenue for BSAI and GOA octopus is decreased $110,000 to $155,000 based on the retrospective harvest and inseason management methods. Increased costs may occur if 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 make it harder to deliver a quality product.

Proposed Regulatory Amendments

The Council recommended, and the Secretary proposes, the following regulatory revisions and additions to 50 CFR part 679 to implement Amendments 87, 95, and 96.

The definitions for "groundfish", "license limitation groundfish", and "target species," in § 679.2, would be revised to remove reference to the "other species" category. Removing the term "other species category" from these definitions would reduce confusion related to target species and the harvest specifications, as Amendments 96 and 87 would remove the "other species" category from the FMPs for purposes of the harvest specifications, and leave only "target species" as a category for which NMFS must establish harvest specifications. The definition for "other species" would be revised to allow the continued management of BSAI and GOA sharks, sculpins, and octopuses and GOA squids as a group for purposes of prohibited species catch under § 679.21 and maximum retainable amounts specified in Tables 10 and 11 to part 679.

Section 679.20 would be revised by removing the term "other species category" in paragraphs related to harvest limits, reserves, harvest specifications, and fishery closures. This revision would ensure the regulations for harvest specifications and "target species" management are consistent with Amendments 96 and 87, which would remove "other species" from the FMP for purposes of harvest specifications and inseason management.

Section 679.25 would be revised to remove the "other species" category from the paragraph related to reopening an area to achieve TAC for a target species. This revision would ensure the regulations are consistent with removing "other species" from the FMP for purposes of target species management.

Table 2a to part 679 would be revised to add whiteblotched, Alaska, and Aleutian skates, as well as the scientific names for individual skate species. Adding these individual skate species and the scientific names would facilitate the reporting of individual skate species taken during groundfish harvest and would provide more detailed information regarding skate harvests for stock assessments and fisheries management. This revision would ensure the regulations are consistent with Amendment 95, providing the species specific information to support managing skates as a target species group or as individual target species.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendments 87, 95, and 96, other provisions of the Magnuson-Stevens Act and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of E. O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

Factual Basis for Certification

Description and Estimate of the Number of Small Entities to Which the Rule Applies

For purposes of this analysis, a "small entity" is any entity that catches, or catches and processes, less than $4.0 million gross ex-vessel value (or first wholesale gross product value) of groundfish per year.

The proposed regulatory changes for Amendments 96 and 87 do not impose, increase, relax, or remove substantive restrictions on any entity. This proposed regulatory action is not the only regulatory action that the agency will take to implement these amendments, and it does not give effect to these FMP amendments in a manner that will directly impact regulated entities. Because no entities will be directly regulated by the portion of the proposed rule for Amendments 96 and 87, no small entities will be directly regulated by the proposed action for Amendments 96 and 87. Therefore, the proposed action that implements Amendments 96

and 87 does not directly apply to any small entities.

The portion of the proposed rule to implement Amendment 95 may directly regulate small entities, although as noted below, the impacts would not be significant. The entities directly regulated by this action, if adopted, would be the Community Development Quota (CDQ) and non-CDQ fishing operations harvesting species in the "other species" complex in the BSAI, using hook-and-line, pot, or trawl gear. Vessels generally are harvesting skates and the remaining species in the "other species" category, incidentally to other targeted fishing operations; (e.g., fishing for Pacific cod); none of the species in the "other species" category are currently fished as a target. Because any hook-and-line, pot, or trawl operation in the BSAI may harvest the "other species" complex, the universe of potentially directly regulated operations includes all BSAI hook-and-line, pot, and trawl vessels.

In 2007, the universe of potentially directly regulated vessels that caught (or caught and processed) less than $4.0 M gross ex-vessel value (or first wholesale gross product value) of groundfish or "other species," totaled 212 vessels in the BSAI. This included 40 hook-and-line vessels, 71 pot vessels, and 103 trawlers. The portion of the proposed action to implement Amendment 95 potentially applies to all of these entities.

For RFA purposes, the entity size determination is based on operation gross annual revenues from groundfish fishing in and off Alaska. This likely "understates" the actual annual gross revenues earned by many of these operations, because income from non-groundfish commercial fishing activities is not included, owing to an absence of germane data. Moreover, data are not available to fully take account of affiliations between fishing operations and associated processors, or other associated fishing operations. For these reasons, these counts likely overstate the numbers of small entities potentially directly regulated by the proposed action. Average groundfish gross revenues, in 2007, for these small entities were estimated to be $670,000 for hook-and-line catcher vessels, $2.27 million for hook-and-line catcher processors, $1,400,000 for pot catcher vessels, and $1.91 million for trawl catcher vessels (AFSC did not report information for pot and trawl catcher-processors).

Estimate of Economic Impact on Small Entities by Entity Size and Industry

The impacts of this action have been evaluated in the accompanying RIR (See ADDRESSES). The proposed regulatory changes to accompany Amendments 96 and 87 do not impose, increase, relax, or remove substantive restrictions on any entity. Because this portion of the proposed action does not directly regulate any entities, this portion of the proposed action would not have any discernible impacts on small entities.

The proposed regulatory amendment for Amendment 95 would change the codes required for reporting skate catches, and to this extent would further restrict entity behavior. Vessel operators would need to learn how to identify three individual skate species and use the proposed species code from Table 2a to part 679 in their harvest reports. However, all skate harvest must currently be reported using a code from Table 2a to part 679. Once the operator learns how to identify the skate species and becomes familiar with the proposed codes, the expense of reporting skate harvests would be similar to that currently experienced. The RIR notes that this portion of the proposed action is expected to have *de minimis* costs. Because the costs are expected to be so small, the portion of the action to implement Amendment 95 is not expected to have a significant impact on any directly regulated small entities.

Criteria Used to Evaluate Whether the Rule Would Impose "Significant Economic Impacts"

The two criteria recommended to determine the significance of the economic impacts of the action are disproportionality and profitability.

As noted above, there are no economic impacts caused by the portion of the proposed action that implements Amendments 87 and 96. That portion of the proposed action will not result in disproportionate impacts nor impacts on profitability of regulated entities, and therefore will not impose significant economic impacts.

Because the impact of reporting skates under the portion of the proposed action that implements Amendment 95 would be a *de minimis* impact regardless of entity size, the proposed action would not place a substantial number of small entities at a disadvantage, relative to large entities. Any costs attributed to the proposed action are expected to be *de minimis* and thus would have a *de minimis* impact on profits. Because the impacts of the proposed action to implement Amendment 95 are expected to be *de minimis* in terms of disproportionality and profitability, the economic impacts would not be significant.

Criteria Used to Evaluate Whether the Rule Would Impose Impacts on "a Substantial Number" of Small Entities

NMFS guidelines for economic review of regulatory actions explain that the term "substantial number" has no specific statutory definition and the criterion does not lend itself to objective standards applicable across all regulatory actions. Rather, a "substantial number" depends upon the context of the action, the problem to be addressed, and the structure of the regulated industry. The Small Business Administration casts "substantial" within the context of "more than just a few" or *de minimis* ("too few to care about") criteria (See page 28 of NMFS Guidelines for Economic Review of National Marine Fisheries Service Regulatory Actions, available at *https://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/procedures/01–111–05.pdf*).

As described above, the portion of the proposed action that implements Amendments 87 and 96 would not directly regulate any small entities, and therefore would not impose impacts on a "substantial number" of small entities.

Although a substantial number of small entities may be directly regulated by the portion of the proposed action to implement Amendment 95, the impacts are estimated to be *de minimis*. Because the impacts are *de minimis*, the proposed action to implement Amendment 95 would not impose significant impacts on a substantial number of directly regulated small entities, and meets the certification criteria under the RFA.

As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 12, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

2. In § 679.2, revise paragraph (2) of the definition for "Groundfish", and the definitions of "License limitation groundfish", "Other species" and "Target species" to read as follows:

§ 679.2 Definitions.

* * * * *

Groundfish means* * *

(2) Target species specified annually pursuant to § 679.20(a)(2) (See also the definitions for: *License limitation groundfish* ; *CDQ species* ; and *IR/IU species* of this section).

* * * * *

License limitation groundfish means target species specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140 W. longitude, sablefish managed under the IFQ program, and pollock allocated to the Aleutian Islands directed pollock fishery and harvested by vessels 60 feet (18.3 m) LOA or less, are not considered license limitation groundfish.

* * * * *

Other species is a category of target species for the purpose of MRA and PSC management that consists of groundfish species in each management area. These target species are managed as an other species group and identified in Tables 10 and 11 to this part pursuant to § 679.20(e).

* * * * *

Target species are those species or species groups for which a TAC is specified pursuant to § 679.20(a)(2).

* * * * *

3. In § 679.20, revise paragraphs (a)(1)(i) introductory text, (a)(2), (a)(3) introductory text, (a)(3(i), (b)(1)(i), (b)(2) introductory text, (c)(1)(iii), (c)(1)(iv), (c)(3)(ii), (c)(3)(iii), (d)(1)(i), (d)(1)(iii)(B), and (d)(2) to read as follows:

§ 679.20 General limitations.

(a) * * *

(1) * * *

(i) *BSAI and GOA*. The OY for BSAI and GOA target species is a range or specific amount that can be harvested consistently with this part, plus the amounts of "nonspecified species" taken incidentally to the harvest of target species. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

* * * * *

(2) *TAC*. NMFS, after consultation with the Council, will specify and apportion the annual TAC and reserves for each calendar year among the GOA and BSAI target species. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c) of this section. The sum of the TACs so specified must be within the OY range specified in paragraph (a)(1) of this section.

(3) *Annual TAC determination*. The annual determinations of TAC for each target species and the reapportionment of reserves may be adjusted, based upon a review of the following:

(i) *Biological condition of groundfish stocks*. Resource assessment documents prepared annually for the Council that provide information on historical catch trend; updated estimates of the MSY of the groundfish complex and its component species groups; assessments of the stock condition of each target species; assessments of the multispecies and ecosystem impacts of harvesting the groundfish complex at current levels, given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

* * * * *

(b) * * *

(1) * * *

(i) *Nonspecified reserve*. Fifteen percent of the BSAI TAC for each target species, except pollock, the hook-and-line and pot gear allocation for sablefish, and the Amendment 80 species, which includes Pacific cod, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species.

* * * * *

(2) *GOA*. Initial reserves are established for pollock, Pacific cod, flatfish, squids, octopuses, sharks, and sculpins, which are equal to 20 percent of the TACs for these species or species groups.

* * * * *

(c) * * *

(1) * * *

(iii) *GOA*. The proposed specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iv) *BSAI*. The proposed specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

* * * * *

(3) * * *

(ii) *GOA*. The final specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iii) *BSAI*. The final specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

* * * * *

(d) * * *

(1) * * *

(i) *General*. If the Regional Administrator determines that any allocation or apportionment of a target species specified under paragraph (c) of this section has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group.

* * * * *

(iii) * * *

(B) *Retention of incidental species*. Except as described in § 679.20(e)(3)(iii), if directed fishing for a target species or species group is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

* * * * *

(2) *Groundfish as prohibited species closure*. When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the **Federal Register** requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

* * * * *

4. In § 679.25, revise paragraph (a)(2)(iii)(D) to read as follows:

§ 679.25 Inseason adjustments.

(a) * * *

(2) * * *

(iii) * * *

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species.

* * * * *

5. Revise Table 2a to part 679 to read as follows:

TABLE 2A TO PART 679 - SPECIES CODES: FMP GROUNDFISH

Species Description	Code
Atka mackerel (greenling)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
FLOUNDER	
Alaska plaice	133
Arrowtooth and/or Kamchatka	121
Starry	129
Octopus, North Pacific	870
Pacific cod	110
Pollock	270
ROCKFISH	
Aurora (*Sebastes aurora*)	185
Black (BSAI) (*S. melanops*)	142
Blackgill (*S. melanostomus*)	177
Blue (BSAI) (*S. mystinus*)	167
Bocaccio (*S. paucispinis*)	137
Canary (*S. pinniger*)	146
Chilipepper (*S. goodei*)	178
China (*S. nebulosus*)	149
Copper (*S. caurinus*)	138

TABLE 2A TO PART 679 - SPECIES CODES: FMP GROUNDFISH—Continued

Species Description	Code
Darkblotched (*S. crameri*)	159
Dusky (*S. variabilis*)	172
Greenstriped (*S. elongatus*)	135
Harlequin (*S. variegatus*)	176
Northern (*S. polyspinis*)	136
Pacific Ocean Perch (*S. alutus*)	141
Pygmy (*S. wilsoni*)	179
Quillback (*S. maliger*)	147
Redbanded (*S. babcocki*)	153
Redstripe (*S. proriger*)	158
Rosethorn (*S. helvomaculatus*)	150
Rougheye (*S. aleutianus*)	151
Sharpchin (*S. zacentrus*)	166
Shortbelly (*S. jordani*)	181
Shortraker (*S. borealis*)	152
Silvergray (*S. brevispinis*)	157
Splitnose (*S. diploproa*)	182
Stripetail (*S. saxicola*)	183
Thornyhead (all Sebastolobus species)	143
Tiger (*S. nigrocinctus*)	148
Vermilion (*S. miniatus*)	184
Widow (*S. entomelas*)	156
Yelloweye (*S. ruberrimus*)	145
Yellowmouth (*S. reedi*)	175
Yellowtail (*S. flavidus*)	155
Sablefish (blackcod)	710
Sculpins	160

TABLE 2A TO PART 679 - SPECIES CODES: FMP GROUNDFISH—Continued

Species Description	Code
SHARKS	
Other (if salmon, spiny dogfish or Pacific sleeper shark - use specific species code)	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
SKATES	
Whiteblotched (*Bathyraja maculata*)	705
Aleutian (*B. aleutica*)	704
Alaska (*B. parmifera*)	703
Big (*Raja binoculata*)	702
Longnose (*R. rhina*)	701
Other (if Whiteblotched, Aleutian, Alaska, Big, or Longnose - use specific species code listed above)	700
SOLE	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid, majestic	875
Turbot, Greenland	134

[FR Doc. 2010–17436 Filed 7–15–10; 8:45 am]

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Notices

Federal Register
Vol. 75, No. 136
Friday, July 16, 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

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010014) for trade adjustment assistance (TAA) for apples that was filed by the New York Apple Association and accepted for review by USDA on May 4, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service and Foreign Agricultural Service. After a review, the Administrator determined that the import data did not meet the regulatory requirement for the most recent, official USDA full marketing year or full marketing season data. Because the petition was unable to meet this regulatory requirement, it did not qualify for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17336 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010017) for trade adjustment assistance (TAA) for apples that was filed by the Minnesota Apple Growers Association, Inc. (MAGA) and accepted for review by USDA on May 4, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service and Foreign Agricultural Service. After a review, the Administrator determined that the petition was unable to demonstrate an increase in fresh apple imports during the August–December 2009/2010 marketing season. Instead, it demonstrated that imports of fresh apples declined 30 percent during this period, compared to the previous 3-year average. For this reason, the petition does not meet the regulatory requirements for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17337 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010006) for trade adjustment assistance (TAA) for prunes and dried plums that was filed by the Prune Bargaining Association and accepted for review by USDA on May 4, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive,

during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. After a review, the Administrator determined that the import data did not meet the regulatory requirement for the most recent, official USDA full marketing year or full marketing season data. Because the petition was unable to meet this regulatory requirement, it did not qualify for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17343 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010009) for trade adjustment assistance (TAA) for apples that was filed by the Michigan Agricultural Cooperative Marketing Association and accepted for review by USDA on May 4, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. After a review, the Administrator determined that the import data did not meet the regulatory requirement for the most recent, official USDA full marketing year or full marketing season data. Because the petition was unable to meet this regulatory requirement, it did not qualify for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17341 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010007) for trade adjustment assistance (TAA) for spiny lobsters that was filed by the Florida Keys Commercial Fishermen's Association and accepted for review by USDA on May 3, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. After a review, the Administrator determined that the quantity of spiny lobsters imported during January-December 2009 was 22 percent lower, compared to the previous 3-year average. In order to qualify, recent marketing period imports must be higher than the previous 3-year average. Because the petition was unable to meet the regulatory requirement for increased imports, it did not qualify for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17346 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has certified a petition (No. 2010001) for trade adjustment assistance (TAA) for catfish that was filed by the Catfish Farmers of America and accepted for review by USDA on May 3, 2010. Individual producers, nationwide, will be eligible to apply for Fiscal Year (FY) 2010 benefits during an application period ending September 23, 2010.

SUPPLEMENTARY INFORMATION: All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of

the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. Upon a review, the Administrator (FAS) determined that increased imports of catfish during January-December 2009 contributed importantly to a greater than 15-percent decline in the value of production in 2009, compared to the previous 3-year average. This conforms to the eligibility requirements stipulated in Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210).

Individual catfish producers, nationwide, interested in applying for technical training and cash benefits must complete and submit a written application to their local Farm Service Agency Service Center by the application deadline of September 23, 2010. After submitting a completed application, producers may receive technical assistance at no cost and may receive cash benefits, if the applicable program eligibility requirements are satisfied. Applicants must complete the technical assistance under the program in order to be eligible for cash benefits.

Producers Certified as Eligible for TAA for Farmers' Program Should Contact: USDA, Farm Service Agency (at your local service center).

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17348 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has certified a petition (No. 2010005) for trade adjustment assistance (TAA) for shrimp that was filed by the Southern Shrimp Alliance and accepted for review by USDA on May 3, 2010. Individual producers in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas will be eligible to apply for Fiscal Year (FY) 2010 benefits during an application period ending September 23, 2010.

SUPPLEMENTARY INFORMATION: All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. Upon a review, the Administrator (FAS) determined that increased imports of shrimp during January-December 2008 contributed importantly to a greater than 15-percent decline in the quantity of production in 2008, compared to the previous 3-year average. This conforms to the eligibility requirements stipulated in Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210).

Individual shrimp producers in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas interested in applying for technical training and cash benefits must complete and submit a written application to their local Farm Service Agency Service Center by the application deadline of September 23, 2010. After submitting a completed application, producers may receive technical assistance at no cost and may receive cash benefits, if the applicable program eligibility requirements are satisfied. Applicants must complete the technical assistance under the program in order to be eligible for cash benefits.

Producers Certified as Eligible for TAA for Farmers' Program Should Contact: USDA, Farm Service Agency (at your local service center).

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17350 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010002) for trade adjustment assistance (TAA) for U.S. lobster (Homarus americanus) that was filed by the Maine Lobstermen's Association and accepted for review by USDA on May 3, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. After a review, the Administrator determined that while the petition meets the program's 'greater than 15-percent decline' eligibility requirement, import data for the same time period showed a 1.1-percent decrease, rather than the required increase. For this reason, the petition does not meet the regulatory requirements for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17351 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) denied a petition (No. 2010010) for trade adjustment assistance (TAA) for fresh blue crabs that was filed by a group of Georgia fresh blue crab producers and accepted for review by USDA on May 3, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: National average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. After a review, the Administrator determined that the quantity of fresh and frozen blue crab imports declined by 8.5 percent during 2009, compared to the previous 3-year average. In order to qualify, recent marketing period imports must be higher than the average of the previous 3 years. Because the petition was unable to meet the regulatory requirement for increased imports, it did not qualify for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17354 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has certified a petition (No. 2010003) for trade adjustment assistance (TAA) for asparagus that was filed by the National Asparagus Council and accepted for review by USDA on May 3, 2010. Individual producers, nationwide, will be eligible to apply for Fiscal Year (FY) 2010 benefits during an application period ending September 23, 2010.

SUPPLEMENTARY INFORMATION: All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. Upon a review, the Administrator determined that increased imports of asparagus during January-December 2009 contributed importantly to a greater than 15-percent decline in the quantity of production in 2009, compared to the previous 3-year average. This conforms to the eligibility requirements stipulated in Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210).

Individual asparagus producers, nationwide, interested in applying for technical training and cash benefits must complete and submit a written application to their local Farm Service Agency Service Center by the application deadline of September 23, 2010. After submitting a completed application, producers may receive technical assistance provided at no cost and may receive cash benefits, if the applicable program eligibility requirements are satisfied. Applicants must complete the technical assistance provided under the program in order to be eligible for cash benefits.

Producers Certified as Eligible For TAA for Farmers' Program Should Contact: USDA, Farm Service Agency (at your local service center).

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17353 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010011) for trade adjustment assistance (TAA) for cranberries that was filed by a group of New Jersey cranberry producers and accepted for review by USDA on May 3, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service and Foreign Agricultural Service. After a review, the Administrator determined that New Jersey cranberry prices for the official USDA marketing year were higher in 2009/2010 than the previous 3-year average. For this reason, it does not meet the regulatory requirements for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17349 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010008) for trade adjustment assistance (TAA) for crawfish that was filed by the Louisiana Crawfish Farmers Association and accepted for review by USDA on May 3, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or official marketing season, a greater than 15-percent decline in at least one of the following factors: National average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. After a review, the Administrator determined that the import data provided did not meet the regulatory requirement for the most recent, official USDA full marketing year or full marketing season. Because the petition was unable to meet this regulatory requirement, it did not qualify for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov*; or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17347 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010016) for trade adjustment assistance (TAA) for cranberries that was filed by one Washington and two Oregon cranberry growers and accepted for review by USDA on May 3, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: National average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of Chief Economist, Farm Service Agency, Agricultural Marketing Service, and Foreign Agricultural Service. After a review, the Administrator determined that a significant increase in cranberry production, along with high inventory levels, were the primary factors affecting Oregon and Washington cranberry grower prices in 2009/2010. As a result, it was found that imports were not an important factor in determining the average annual price of Oregon and Washington cranberries in 2009/2010. For this reason, the petition does not meet the regulatory requirements for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17345 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator of the Foreign Agricultural Service (FAS) has denied a petition (No. 2010004) for trade adjustment assistance (TAA) for cut lilies that was filed by the North Carolina Flower Growers Association and accepted for review by USDA on May 3, 2010.

SUPPLEMENTARY INFORMATION: To qualify under the program, Subtitle C of Title I of the Trade Act of 2002 (Pub. L. 107–210) states that petitions must demonstrate, using data for the most recent, full marketing year or full official marketing season, a greater than 15-percent decline in at least one of the following factors: national average price, quantity of production, value of production, or cash receipts.

According to the statute, it is also necessary for the petition to demonstrate that an increase in imports of articles like or directly competitive, during the same marketing period, contributed importantly to the decrease in one of the above factors for the agricultural commodity.

All petitions were analyzed by USDA's Economic Research Service and reviewed by the TAA for Farmers Review Committee, comprised of representatives from USDA's Office of the Chief Economist, Farm Service Agency, Agricultural Marketing Service and Foreign Agricultural Service. After a review, the Administrator determined that the average unit price of cut lilies in marketing year 2009/2010, compared with the previous 3-year average, decreased by less than 15 percent. To qualify for the program, average unit price in the most recent marketing year, compared to the previous 3-year

average, must decrease by more than 15 percent. For this reason, the petition does not meet the regulatory requirements for certification for Fiscal Year (FY) 2010.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance for Farmers Staff, FAS, USDA, by phone: (202) 720–0638, or (202) 690–0633; or by e-mail: *tradeadjustment@fas.usda.gov;* or visit the TAA for Farmers' Web site: *http://www.fas.usda.gov/itp/taa.*

Dated: July 8, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–17344 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chap. 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Post Allowance and Refiling.

Form Number(s): PTO/SB/44/50/51/51S/52/53/56 and PTOL–85B.

Agency Approval Number: 0651–0033.

Type of Request: Revision of a currently approved collection.

Burden: 124,359 hours annually.

Number of Respondents: 217,184 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public from approximately 12 minutes (0.20 hours) to 5 hours to gather the necessary information, prepare the appropriate form or other documents, and submit the information in this collection to the USPTO.

Needs and Uses: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and issue them as patents when appropriate. The applicant must then pay the required issue fee to receive the patent and avoid abandonment of the application. The public uses this information collection to pay fees for issuing patents, to request corrections of errors in issued patents, and to apply for reissue patents. This collection previously included information requirements related to patent reexaminations. These items are being removed from this collection and were approved by OMB in February 2010 as a separate new collection, 0651–0064 Patent Reexaminations.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0033 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 16, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–17367 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–801]

Ball Bearings and Parts Thereof From Germany: Notice of Court Decision Not in Harmony With Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 7, 2010, the United States Court of International Trade sustained the Department of Commerce's results of redetermination on remand concerning the final results of the administrative review of the antidumping duty order on ball bearings and parts thereof from Germany. *See SKF USA Inc.,* v. *United States,* Slip Op. 10–76 (CIT July 7, 2010). The Department is now issuing this notice of court decision not in harmony with the Department of Commerce's determination.

DATES: *Effective Date:* July 16, 2010.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–4477.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2008, the Department of Commerce (the Department) published the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom for the period May 1, 2006, through April 30, 2007. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823 (September 11, 2008). SKF USA Inc., SKF France S.A., SKF Aerospace France S.A.S., SKF GmbH,[1] and SKF Industrie S.p.A filed a lawsuit challenging certain aspects of the final results. On December 21, 2009, the United States Court of International Trade (CIT) concluded that the Department acted within its authority and according to law in requesting cost-of-production (COP) data from SKF Germany's unaffiliated suppliers. *See SKF USA Inc.,* v. *United States,* 675 F. Supp. 2d 1264 (CIT December 21, 2009) (*SKF Germany*). The CIT also upheld the Department's decision to reject the COP information submitted by SKF Germany's unaffiliated supplier as untimely and to resort to facts otherwise available. Specifically, the CIT stated that "the Department has broad authority to set, and extend, its deadlines for submission of requested information, but on the uncontested facts of this case it acted within its authority in deeming the COP data an untimely submission." *See SKF Germany,* 675 F. Supp. 2d at 1272–74. The CIT held, however, that "{the Department} acted contrary to law in drawing an inference adverse for SKF {Germany} upon the failure of the unaffiliated supplier to make a timely submission of the requested COP data"

[1] The CIT refers to the German company as "SKF GmbH" in its decision. The Department refers to the company as "SKF Germany" in its determination and in this notice.

without a finding that SKF Germany had failed to act to the best of its ability. *See SKF Germany,* 675 F. Supp. 2d at 1268.

In its remand order, the CIT directed the Department to "recalculate SKF {Germany's} margin after redetermining the constructed value of the subject merchandise SKF {Germany} obtained from the unaffiliated supplier" using information that is not adverse to SKF Germany. *See SKF Germany,* 675 F. Supp. 2d at 1278. In accordance with the CIT's remand order, the Department filed its redetermination on remand of the final results (remand results) on March 16, 2010, in which the Department recalculated the margin for SKF Germany without use of an adverse inference. On July 7, 2010, the CIT affirmed the Department's remand results. *See SKF USA Inc.,* v. *United States,* Slip Op. 10–76 (CIT July 7, 2010).

Decision Not in Harmony

In *SKF Germany,* the CIT ruled that the Department acted contrary to law in drawing an inference adverse for SKF Germany based upon the failure of an unaffiliated supplier to make a timely submission of the requested COP data without a finding that SKF Germany had failed to act to the best of its ability.

As a result of changes to calculations in our remand results, the weighted-average margin for SKF Germany for the period May 1, 2006, through April 30, 2007, changed from 4.15 percent to 1.97 percent. Accordingly, absent an appeal or, if appealed, upon a "conclusive" court decision, we will amend our final results of this review to reflect the recalculation of the margin for SKF Germany.

Suspension of Liquidation

The United States Court of Appeals for Federal Circuit (CAFC) has held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's determination. *See The Timken Company* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990). Publication of this notice fulfills that obligation. The CAFC also held that, in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. *Id.* Therefore, the Department must suspend liquidation pending the expiration of the period to appeal the CIT's July 7, 2010, decision or, if appealed, pending a final decision of the CAFC.

Because entries of ball bearings and parts thereof from Germany produced by, exported to, or imported into the United States by SKF Germany are currently being suspended pursuant to the court's injunction order in effect, the Department does not need to order U.S. Customs and Border Protection to suspend liquidation of affected entries. The Department will not order the lifting of the suspension of liquidation on applicable entries of ball bearings and parts thereof from Germany made during the review period before a court decision in this lawsuit becomes final and conclusive.

We are issuing and publishing this notice in accordance with section 516A(c)(1) of the Tariff Act of 1930, as amended.

Dated: July 12, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–17427 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100625269–0269–02]

RIN 0648–XW94

Endangered and Threatened Wildlife; Notice of 90–Day Finding on a Petition to Revise Critical Habitat for the Endangered Leatherback Sea Turtle Under the Endangered Species Act (ESA)

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

ACTION: Notice of 90–day petition finding.

SUMMARY: We, NMFS announce a 90–day finding on a petition to revise critical habitat for the endangered leatherback sea turtle under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific information indicating that the petitioned action may be warranted for leatherback sea turtles and their habitat under our jurisdiction.

FOR FURTHER INFORMATION CONTACT: Dennis Klemm, NMFS, Southeast Regional Office, Protected Resources Division, *dennis.klemm@noaa.gov*, (727)824–5312; or Marta Nammack, NMFS, Office of Protected Resources, *marta.nammack@noaa.gov*, (301)713 1401.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2010, we received a petition from the Sierra Club asking us and the United States Fish and Wildlife Service (USFWS) to revise, pursuant to the ESA, critical habitat for the endangered leatherback sea turtle. Under the ESA, NMFS and USFWS each have respective areas of jurisdiction over sea turtles, as clarified by the 1977 Memorandum of Understanding Defining the Roles of the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in Joint Administration of the Endangered Species Act of 1973 as to Marine Turtles. NMFS has jurisdiction over sea turtles and their associated habitats in the marine environment, while USFWS has jurisdiction when sea turtles are on land. Thus, if Federal agencies are involved in activities that may affect sea turtles involved in nesting behavior, or may affect their nests or their nesting habitats, those Federal agencies are required to consult with the USFWS under section 7 of the ESA to ensure that their activities are not likely to jeopardize the continued existence of the sea turtles. If a Federal action may affect sea turtles while they are in the marine environment, feeding and migrating for example, the Federal agency involved must engage in a section 7 consultation with NMFS, to ensure that the action is not likely to jeopardize the continued existence of the sea turtles. Similarly, if critical habitat has been designated, and Federal actions may affect such habitat, an ESA section 7 consultation would be required to ensure that the Federal action is not likely to destroy or adversely modify the critical habitat; if the habitat has been designated on land the consultation would be with USFWS, and if the habitat has been designated in the marine environment, the consultation would be with NMFS. This 90–day finding is responsive only to aspects of the petition that fall under our jurisdiction.

The portion of the petitioned critical habitat that falls under NMFS' jurisdiction is described in the petition as: "the waters off the coastline of the Northeast Ecological Corridor of Puerto Rico, sufficient to protect leatherbacks using the Northeast Ecological Corridor, and extending at least to the hundred fathom contour, or 9 nautical miles offshore, whichever is further, and including the existing marine extensions of Espiritu Santo, Cabezas de San Juan, and Arrecifes de la Cordillera Nature Reserves." The petition also asserts that the beaches of the Northeast Ecological Corridor of Puerto Rico

(which would fall under the separate jurisdiction of USFWS) are "centrally important to the U.S. Caribbean leatherback population, and should be designated as critical habitat," and also maintains that the near-shore coastal waters off those beaches (which would fall under NMFS' jurisdiction) "provide room for turtles to mate and access the beaches, and for hatchlings and adults to leave the beaches." It likewise asserts that the coastal zone within the Northeast Ecological Corridor (the "corridor") is particularly vulnerable to developmental pressure and to the growing impacts of climate change, and so warrants protection as critical habitat.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(D) of the ESA of 1973, as amended (16 U.S.C. 1533 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receiving a petition to revise a critical habitat designation, the Secretary of Commerce (Secretary) make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The finding is to be published promptly in the **Federal Register**. If it is found that substantial information indicating that the petitioned action may be warranted is presented in the petition, the Secretary shall determine how he intends to proceed with the requested revision within 12 months after receiving the petition and shall promptly publish notice of such intention in the **Federal Register**. Joint ESA-implementing regulations issued by NMFS and the USFWS (50 CFR 424.14(b)) define "substantial information" as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In making this finding on a petition to revise critical habitat to include additional areas, the Secretary must consider whether the petition contains information indicating that areas petitioned to be added to critical habitat contain physical and biological features essential to, and that may require special management to provide for, the conservation of the species involved (50 CFR 424.14(c)(2)(i)). Thus, in reviewing a petition to revise critical habitat we consider the information presented on three aspects of critical habitat as defined in the ESA: the physical or biological features identified; the explanation of how such features may be essential to a species' conservation; and how those features may require special management considerations.

Analysis of Petition

The petition asserts that the revision of leatherback critical habitat to include the waters off the Northeast Ecological Corridor of Puerto Rico is necessary to protect leatherback sea turtles. The petitioner cites a number of studies about the population status of leatherback sea turtles in the Pacific Ocean, and concludes that populations of leatherback sea turtles in the Atlantic Ocean could experience a similar decline if their habitat is not protected.

The petition identifies the nesting beaches and the open water space off the nesting beaches as the essential features of critical habitat. The petition accurately states what little is known from a few accounts of leatherback mating behavior, that it seems to occur, at least in part, in areas adjacent to nesting beaches. The petition states " the near-shore coastal waters provide room for turtles to mate and to access the beaches, and for hatchlings and adults to leave the beaches after nesting. If these waters are disturbed, reproductive success is likely to decline." Open marine space to access beaches for the purposes of nesting may be relevant to USFWS' review of the petition because nesting activities, and section 7 consultations regarding impacts to such activities are under their jurisdiction.

For leatherback sea turtles, we cannot identify, nor has the petitioner presented, any specific values, ranges, or qualities of "open space," or any thresholds for the quantity of "open space" necessary for hatchling access to open water or for courtship and mating by adults that explains how such space is "essential" to the conservation of the species. The petition merely identifies an area and suggests that all the space therein that could be occupied by leatherback sea turtles should be included in the critical habitat designation. As explained below, this lack of differentiation of habitat used by leatherback sea turtles does not provide substantial information to either identify physical or biological features, or explain how such features could be essential to the species' conservation.

The petition describes the open space feature as all of the marine environment from the coastline of the Northeast Ecological Corridor of Puerto Rico extending to the hundred fathom contour or 9 nautical miles, whichever is further. The 9 nautical mile boundary is based simply on the political boundary of Puerto Rico's territorial waters but has no demonstrated scientific/ecological basis as defining a boundary for a biological or physical feature to be included in a critical habitat designation. The "space" within this area is too varied and undefined to comprise a tangible physical feature, and instead seems to comprise simply all of the space that leatherback sea turtles could theoretically occupy between the shore and the 9 nautical mile or 100 fathom boundary. A critical habitat designation requires the identification of some parameters or values for physical or biological features included in a designation, so that the features can be effectively and meaningfully protected by a designation, including through section 7 consultations evaluating the effects of Federal agency actions on critical habitat through application of the destruction or adverse modification standard. This petition, however, includes no information that would provide a basis for implementing section 7 consultations on impacts to designated critical habitat, because no sufficiently defined features of the habitat have been identified, so there is no habitat aspect that could be identified as being impacted by a proposed Federal action, and thus no trigger for section 7 consultation. As discussed above, our regulations at 50 CFR 424.14(c)(2) specifically direct us to consider whether a petition contains this information.

The petition also cites our 1979 designation of critical habitat off the nesting beaches of Sandy Point, St. Croix (50 CFR 226.207; 44 FR 17711, March 23, 1979) as rationale for likewise designating the waters off the Northeast Ecological Corridor of Puerto Rico. However, that designation did not identify physical or biological features that are essential to the leatherback's conservation with any degree of specificity. As explained in our consultation handbook (USFWS NMFS 1998, at 4–39), many early critical habitat designations were issued without identification of constituent elements or habitat qualities essential to a species' conservation. The 1979 critical habitat designation off of St. Croix did not identify essential features for the leatherback's conservation, and thus that designation alone does not provide substantial information establishing that features meeting the ESA's definition of critical habitat exist in the nearshore waters off the Northeast Ecological Corridor of Puerto Rico.

Even if open space in the nearshore waters off the Northeast Ecological corridor out to either the 9 nautical mile or 100–fathom boundary could be viewed as a tangible physical feature, there is not substantial scientific or

commercial information to indicate that this feature is essential to the conservation of leatherback sea turtles. In other words, there is not substantial information to indicate that the successful conservation of leatherback sea turtles requires including this open space feature in a designation of critical habitat. The petition's discussions of the status of leatherback sea turtles rely primarily on Pacific population assessments to illustrate the precarious situation for leatherback sea turtles. More recent, readily available sources of information specific to Atlantic populations were not cited. The Turtle Expert Working Group published An Assessment of the Leatherback Turtle Population in the Atlantic Ocean in 2007 (NOAA Technical Memorandum NMFS-SEFSC–555) that characterizes the Atlantic population as stable or increasing overall. That assessment characterizes the nesting trend for the North Caribbean stock, which includes Puerto Rico, as increasing. Further, this assessment concludes that inter-nesting threats throughout the North Caribbean for those rookeries are generally "low" in a range including "low," "medium," and "high." No new or substantial information is presented to support the petitioner's assertions that leatherback populations in the Atlantic, or in the North Caribbean, have seriously declined in the years since the original critical habitat designation in St. Croix, or that the Atlantic populations are likely to follow the Pacific population trajectory if critical habitat is not revised to include open marine space off the Northeast Ecological corridor.

As discussed above, the petitioner provided no information, nor is any available in the literature and other material readily available in our files, to prescribe some parameters of an open space feature off the Northeast Ecological Corridor that is essential to the leatherback sea turtle's conservation, thus there is not substantial scientific information indicating that habitat features may exist that meet the first two criteria of the definition of critical habitat. Without such parameters there is no basis on which to conclude that such a feature may require special management considerations or protections, to address potential threats or impacts to the feature, or management needs of the feature, to provide for the conservation of leatherback sea turtles. Thus, there is not substantial scientific information indicating the third aspect of the definition of critical habitat may be met that special management considerations may be required to protect essential physical or biological features to provide for the conservation of the species.

Petition Finding

After considering the petition, the information cited by the petitioner, and relevant information readily available in our files, we conclude that, with respect to areas under NMFS' jurisdiction, the petition does not present substantial scientific information indicating that the petitioned revision of designated critical habitat for leatherback sea turtles may be warranted.

Authority

The authority for this action is the ESA, as amended (16 U.S.C. 1533 *et seq.*).

Dated: July 14, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–17531 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the 2008–2009 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 16, 2010.

FOR FURTHER INFORMATION CONTACT: Austin Redington or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1664 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce ("Department") published the antidumping duty order on stainless steel bar ("SSB") from India. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan*, 60 FR 9661 (February 21, 1995). On March 24, 2009, in accordance with section 751(a) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated an administrative review of the order for two companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 74 FR 12310 (March 24, 2009). On March 15, 2010, the Department published its preliminary results of the 2008–2009 antidumping duty administrative review. *See Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 12199 (March 15, 2010). The final results for this review are currently due no later than July 13, 2010.

Extension of Time Limit of Final Results

Section 751(a)(3)(A) of the Act requires the Department to issue final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days.

Completion of the final results of the administrative review within the 120-day period in this case is not practicable because, following the preliminary results, the Department received additional cost information from Venus, as requested by the Department, which required the Department to produce a post–preliminary analysis involving a comprehensive cost analysis, significantly delaying the briefing schedule. *See* Memorandum from Susan Kuhbach, Senior Office Director to Ronald K Lorentzen, Assistant Secretary, entitled "Post–Preliminary Analysis Calculation Memorandum for Venus Wire Industries Pvt. Ltd.," dated May 19, 2010. Further, the Department requires additional time to review and address the detail and complexity of the cost accounting issues and arguments brought forward in the case and rebuttal briefs from both Venus Wire Industries Pvt. Ltd. and the domestic interested parties. Thus, we have determined it is not practicable to complete this review within the time specified under the Act, we are extending the time period for issuing the final reand sults of the administrative review by 45 days in accordance with section 751(a)(3)(A) of the Act. Therefore, the final results are now due no later than August 27, 2010.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: July 12, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–17423 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–840]

Lightweight Thermal Paper from Germany: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–3692 or (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 23, 2009, the U.S. Department of Commerce (the Department) published a notice of initiation of the administrative review of the antidumping duty order on lightweight thermal paper from Germany (LTWP), covering the period November 20, 2008, to October 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 68229 (December 23, 2009). The notice of the preliminary results is currently due no later than August 9, 2010.[1]

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days. We determine that completion of the preliminary results of this review within the 245-day period is not practicable because of the allegations raised by petitioner. Specifically, petitioner alleges that during the period of review (POR) Papierfabrik August Koehler AG and Koehler America, Inc. (collectively, Koehler) made a substantial number of sales below the cost of production in the home market, and that Koehler's home market sales of a certain model constitute a fictitious market.

During the investigation, the Department did not find that Koehler's sales were at prices less than the cost of production. *See Lightweight Thermal Paper from Germany: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 27498, 27502 (May 13, 2008), unchanged in the final results. However, based on an allegation submitted by petitioner on April 16, 2010, the Department determined that there are reasonable grounds to believe or suspect that Koehler made sales of the subject merchandise in Germany at prices below its cost of production, pursuant to section 773(b) of the Act and initiated a cost of production review.

Given the complexity of the issues in this case, the Department needs more time to gather and analyze additional information. In accordance with section 751(a)(3)(A) of the Act, we are fully extending the time period for issuing the preliminary results of this review by 120 days. Therefore, the preliminary results are now due no later than December 7, 2010. The final results continue to be due 120 days after publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 12, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–17426 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–DS–S

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this antidumping duty administrative review is now August 9, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010."

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Emerging Technology and Research Advisory Committee; Notice of Partially Closed Meeting

The Emerging Technology and Research Advisory Committee (ETRAC) will meet on August 3 and 4, 2010, 8:30 a.m., Room 3884, at the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on emerging technology and research activities, including those related to deemed exports.

Agenda

Tuesday, August 3: 8:30 a.m.–10:45 a.m.

Open Session

1. Welcome and introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Committee business.
4. Public comments.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sec. 10(a)(1) and 10(a)(3).

Wednesday, August 4: 8:30 a.m.–10:45 a.m.

Open Session

1. Welcome and introductions.
2. Committee business.
3. Committee work plan.
4. Public comments.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than July 27, 2010.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on July 8, 2010, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 §§ (10)(d)), that the portion of the meeting dealing with matters the disclosure of portion of the meeting

dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information, call Yvette Springer at (202) 482–2813.

Dated: July 13, 2010.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2010–17398 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW09

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Operation and Maintenance of a Liquefied Natural Gas Facility off Massachusetts

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Neptune LNG LLC (Neptune) to take marine mammals, by harassment, incidental to port commissioning and operations, including maintenance and repair activities, at its Neptune Deepwater Port.

DATES: Effective July 12, 2010, through July 11, 2011.

ADDRESSES: A copy of the authorization and application may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

The Maritime Administration (MARAD) and U.S. Coast Guard (USCG) Final Environmental Impact Statement (Final EIS) on the Neptune LNG Deepwater Port License Application is available for viewing at *http://www.regulations.gov* by entering the search words "Neptune LNG."

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713 2289, ext 156.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45 day time limit for NMFS review of an application followed by a 30 day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild ["Level A harassment"]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering ["Level B harassment"].

Summary of Request

NMFS received an application on December 14, 2009, from Neptune for the taking, by harassment, of marine mammals incidental to port commissioning and operations, including maintenance and repair activities, at its Neptune Deepwater Port (Port) facility in Massachusetts Bay. NMFS reviewed Neptune's application and identified a number of issues requiring further clarification. After addressing comments from NMFS, Neptune modified its application and submitted a revised application on March 11, 2010.

NMFS issued a 1–year IHA to Neptune in June 2008 for the construction of the Port (73 FR 33400, June 12, 2008), which expired on June 30, 2009. NMFS issued a second 1–year IHA to Neptune for the completion of construction and beginning of Port operations on June 26, 2009 (74 FR 31926, July 6, 2009). This IHA expired on June 30, 2010.

During the period of this third IHA, Neptune intends to commission its second shuttle and regasification vessel (SRV) and conduct limited port operations. There is also a chance that some maintenance and repairs may need to be conducted on the Port facility. The Neptune Port is located approximately 22 mi (35 km) northeast of Boston, Massachusetts, in Federal waters approximately 260 ft (79 m) in depth. The purpose of the Port is the importation of liquefied natural gas (LNG) into the New England region. Take of marine mammals may occur during port operations from thruster use during maneuvering of the SRVs while docking and undocking, occasional weathervaning (turning of a vessel at anchor from one direction to another under the influence of wind or currents) at the Port, and during thruster use of dynamic positioning (DP) maintenance vessels should a major repair be necessary. Neptune has requested an authorization to take 12 marine mammal species by Level B harassment. They are: North Atlantic right whale; humpback whale; fin whale; sei whale; minke whale; long-finned pilot whale; Atlantic white-sided dolphin; harbor porpoise; common dolphin; Risso's dolphin; bottlenose dolphin; and harbor seal. In the 2009 IHA, NMFS also authorized take of killer whales and gray seals. NMFS has determined that it would be appropriate to authorize take, by Level B harassment only, of these

two species as well for port operations and maintenance.

Description of the Specified Activity

On March 23, 2007, Neptune received a license to own, construct, and operate a deepwater port from MARAD. The Port, which is located in Massachusetts Bay, consists of a submerged buoy system to dock specifically designed LNG carriers approximately 22 mi (35 km) northeast of Boston, Massachusetts, in Federal waters approximately 260 ft (79 m) in depth. The two buoys are separated by a distance of approximately 2.1 mi (3.4 km). The locations of the Neptune Port and the associated pipeline are shown in Figure 2–1 in Neptune's application (see **ADDRESSES**). During the time period of this IHA, Neptune plans to commission its second SRV and begin limited operations of the Port.

Neptune will be capable of mooring LNG SRVs with a capacity of approximately 140,000 cubic meters (m3). Up to two SRVs will temporarily moor at the Port by means of a submerged unloading buoy system. Two separate buoys will allow natural gas to be delivered in a continuous flow, without interruption, by having a brief overlap between arriving and departing SRVs. The annual average throughput capacity will be around 500 million standard cubic feet per day (mmscfd) with an initial throughput of 400 mmscfd, and a peak capacity of approximately 750 mmscfd.

The SRVs will be equipped to store, transport, and vaporize LNG and to odorize, meter and send out natural gas by means of two 16–in (40.6–cm) flexible risers and one 24–in (61–cm) subsea flowline. These risers and flowline will lead to a 24–in (61–cm) gas transmission pipeline connecting the deepwater port to the existing 30–in (76.2–cm) Algonquin Hubline™ (Hubline™) located approximately 9 mi (14.5 km) west of the Neptune deepwater port location. The Port will have an expected operating life of approximately 25 years. Figure 1–1 of Neptune's application shows an isometric view of the Port (see **ADDRESSES**). A detailed overview of Port operations and maintenance and repair activities, as well as the types of sounds those activities produce, was provided in the Notice of Proposed IHA (75 FR 24906, May 6, 2010). No changes have been made to the proposed operations or maintenance and repair activities.

Comments and Responses

A notice of receipt of Neptune's application and NMFS' proposal to issue an IHA to Neptune published in the **Federal Register** on May 6, 2010 (75 FR 24906). During the 30–day public comment period, NMFS did not receive any comment letters. The Marine Mammal Commission (MMC) submitted comments after the close of the 30–day comment period. Those comments and responses are addressed here.

Comment 1: The MMC concurs with the need for the monitoring and mitigation measures proposed by NMFS and the applicant and recommends that NMFS include all of them in any IHA, especially to mitigate the risk of ship collisions with North Atlantic right whales and other cetacean species.

Response: All measures proposed in the Notice of Proposed IHA are included in the IHA.

Comment 2: The MMC concurs with the need to reinitiate section 7 consultation and recommends that NMFS complete the consultation and issue the IHA only if the resulting Biological Opinion concludes that the cumulative effects of the proposed action, in combination with other activities in the action area, are not likely to jeopardize the continued existence of the North Atlantic right, humpback, fin, sperm, sei, or blue whales.

Response: Section 7 consultation under the Endangered Species Act (ESA) was reinitiated in March 2010. That consultation is now complete and makes the following conclusion. After reviewing the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the action, and the cumulative effects in the action area, it is NMFS' biological opinion that the operation of the Neptune LNG deepwater port, including required maintenance and repair work, is likely to adversely affect, but is not likely to jeopardize the continued existence of the North Atlantic right, humpback, fin, and sei whale.

NMFS' January 2007 Biological Opinion considered impacts from port and pipeline construction and operation on sperm and blue whales in addition to the other cetacean species cited in the MMC's comment. The 2007 opinion concluded that those activities were not likely to adversely affect sperm and blue whales. Because no additional effects to these two species are anticipated from the repair and maintenance activities and no effects beyond those analyzed in 2007 for operations are likely, sperm and blue whales were not further analyzed in the 2010 Biological Opinion.

Description of Marine Mammals in the Area of the Specified Activity

Massachusetts Bay (as well as the entire Atlantic Ocean) hosts a diverse assemblage of marine mammals, including: North Atlantic right whale; blue whale; fin whale; sei whale; minke whale; humpback whale; killer whale; long-finned pilot whale; sperm whale; Atlantic white-beaked dolphin; Atlantic white-sided dolphin; bottlenose dolphin; common dolphin; harbor porpoise; Risso's dolphin; striped dolphin; gray seal; harbor seal; harp seal; and hooded seal. Table 3–1 in Neptune's application outlines the marine mammal species that occur in Massachusetts Bay and the likelihood of occurrence of each species. Of the species listed here, the North Atlantic right, blue, fin, sei, humpback, and sperm whales are all listed as endangered under the ESA and as depleted under the MMPA. The northern coastal stock of bottlenose dolphins is considered depleted under the MMPA. Certain stocks or populations of killer whales are listed as endangered under the ESA or depleted under the MMPA; however, none of those stocks or populations occurs in the proposed activity area.

Of these species, 14 are expected to occur in the area of Neptune's proposed operations. These species include: the North Atlantic right, humpback, fin, sei, minke, killer, and long-finned pilot whale; Atlantic white-sided, common, Risso's, and bottlenose dolphins; harbor porpoise; and harbor and gray seals. The Notice of Proposed IHA (75 FR 24906, May 6, 2010) provided a description of certain marine mammal species that are considered rare in the project area.

Information on those species that may be impacted by this activity is provided in Neptune's application and sections 3.2.3 and 3.2.5 in the MARAD/USCG Final EIS on the Neptune LNG proposal (see **ADDRESSES**). Please refer to those documents for more information on these species. In addition, general information on these marine mammal species can also be found in the NMFS U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Report (Waring *et al.*, 2009), which is available at: *http://www.nefsc.noaa.gov/publications/tm/tm213/*. A brief summary on several commonly sighted marine mammal species distribution and abundance in the vicinity of the action area was provided in the Notice of Proposed IHA (75 FR 24906, May 6, 2010).

Brief Background on Marine Mammal Hearing

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data, Southall *et al.* (2007) designate "functional hearing groups" for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low-frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 22 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, 14 marine mammal species (12 cetacean and two pinniped species) are likely to occur in the Neptune Port area. Of the 12 cetacean species likely to occur in Neptune's project area, five are classified as low-frequency cetaceans (i.e., North Atlantic right, humpback, fin, minke, and sei whales), six are classified as mid-frequency cetaceans (i.e., killer and pilot whales and bottlenose, common, Risso's, and Atlantic white-sided dolphins), and one is classified as a high-frequency cetacean (i.e., harbor porpoise) (Southall *et al.*, 2007).

Potential Effects of the Specified Activity on Marine Mammals

Potential effects of Neptune's proposed port operations and maintenance/repair activities would most likely be acoustic in nature. LNG port operations and maintenance/repair activities introduce sound into the marine environment. Potential acoustic effects on marine mammals relate to sound produced by thrusters during maneuvering of the SRVs while docking and undocking, occasional weathervaning at the port, and during thruster use of DP maintenance vessels should a major repair be necessary. The potential effects of sound from the proposed activities associated with the Neptune Port might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.*, 1995). However, for reasons discussed in the Notice of Proposed IHA (75 FR 24906, May 6, 2010) and later in this document, it is unlikely that there would be any cases of temporary, or especially permanent, hearing impairment resulting from these activities. As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases but potentially for longer periods of time;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent, and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding, or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause a temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

The Notice of Proposed IHA (75 FR 24906, May 6, 2010) included a discussion of the effects of anthropogenic sound on mysticetes, odontocetes, and pinnipeds, including tolerance, masking, disturbance, and hearing impairment and other physiological effects. That discussion did not take into consideration the monitoring and mitigation measures proposed by Neptune and NMFS. Based on the discussion contained in the proposed IHA notice, it is highly unlikely that marine mammals could receive sounds strong enough (and over a sufficient duration) to cause permanent threshold shift (or even TTS) during port operations and maintenance/repair activities. The modeled broadband source level for 100 percent thruster use during port operations is 180 dB re 1 μPa at 1 m (rms). This does not reach the threshold of 190 dB currently used for pinnipeds. The threshold for cetaceans is 180 dB; therefore, cetaceans would have to be immediately adjacent to the vessel for even the possibility of hearing impairment to occur. Based on this and mitigation measures included in the IHA (described later in this document in the "Mitigation" section), only Level B behavioral harassment is anticipated occur, and it is highly unlikely that any type of hearing impairment would occur as a result of Neptune's activities.

Anticipated Effects on Habitat

The primary potential impacts to marine mammals and other marine

species are associated with elevated sound levels produced by the Port operations and maintenance/repair activities. However, other potential impacts from physical disturbance are also possible. Major repairs to the Neptune port and pipeline may affect marine mammal habitat in several ways: cause disturbance of the seafloor; increase turbidity slightly; and generate additional underwater sound in the area. These underwater sound levels will cause some species to temporarily disperse from or avoid repair areas, but they are expected to return shortly after the repair is completed. Operation of the Port will result in long-term, continued disturbance of the seafloor, regular withdrawal of seawater, and generation of underwater sound. The Notice of Proposed IHA (75 FR 24906, May 6, 2010) contained a full discussion of the potential impacts to marine mammal habitat and prey species in the project area.

NMFS determined that repair activities would not create long-term habitat changes, and marine mammals displaced by the disturbance to the seafloor are expected to return soon after repair activities cease. Marine mammals also could be indirectly affected if benthic prey species were displaced or destroyed by repair activities. However, affected species are expected to recover soon after the completion of repairs and will represent only a small portion of food available to marine mammals in the area. In conclusion, NMFS has determined that Neptune's port operations and maintenance/repair activities are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

Mitigation

In order to issue an incidental take authorization (ITA) under Sections 101(a)(5)(A) and (D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation Measures in Neptune's IHA Application

Neptune submitted a "Marine Mammal Detection, Monitoring, and Response Plan for the Operations Phase" (the Plan) as part of its MMPA application (Appendix D of the application; see **ADDRESSES**). The measures, which include safety zones and vessel speed reductions, are fully described in the Plan and summarized here. Any maintenance and/or repairs needed will be scheduled in advance during the May 1 to November 30 seasonal window, whenever possible, so that disturbance to North Atlantic right whales will be largely avoided. If the repair cannot be scheduled during this time frame, additional mitigation measures are required.

(1) Mitigation Measures for Major Repairs (May 1 to November 30)

(A) During repairs, if a marine mammal is detected within 0.5 mi (0.8 km) of the repair vessel, the vessel superintendent or on-deck supervisor will be notified immediately. The vessel's crew will be put on a heightened state of alert. The marine mammal will be monitored constantly to determine if it is moving toward the repair area.

(B) Repair vessels will cease any movement in the area if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) from the operating repair vessel. Repair vessels will cease any movement in the construction area if a right whale is sighted within or approaching to a distance of 500 yd (457 m) from the operating vessel. Vessels transiting the repair area, such as pipe haul barge tugs, will also be required to maintain these separation distances.

(C) Repair vessels will cease all sound emitting activities if a marine mammal other than a right whale is sighted within or approaching to a distance of 100 yd (91 m) or if a right whale is sighted within or approaching to a distance of 500 yd (457 m), from the operating repair vessel. The back-calculated source level, based on the most conservative cylindrical model of acoustic energy spreading, is estimated to be 139 dB re 1 μPa.

(D) Repair activities may resume after the marine mammal is positively reconfirmed outside the established zones (either 500 yd (457 m) or 100 yd (91 m), depending upon species).

(E) While under way, all repair vessels will remain 500 yd (457 m) away from right whales and 100 yd (91 m) away from all other marine mammals to the extent physically feasible given navigational constraints.

(F) All repair vessels 300 gross tons or greater will maintain a speed of 10 knots (18.5 km/hr) or less. Vessels less than 300 gross tons carrying supplies or crew between the shore and the repair site will contact the Mandatory Ship Reporting System (MSRS), the USCG, or the marine mammal observers (MMOs) at the repair site before leaving shore for reports of recent right whale sightings or active Dynamic Management Areas (DMAs) and, consistent with navigation safety, restrict speeds to 10 knots (18.5 km/hr) or less within 5 mi (8 km) of any recent sighting location and within any existing DMA.

(G) Vessels transiting through the Cape Cod Canal and Cape Cod Bay (CCB) between January 1 and May 15 will reduce speeds to 10 knots (18.5 km/hr) or less, follow the recommended routes charted by NOAA to reduce interactions between right whales and shipping traffic, and avoid aggregations of right whales in the eastern portion of CCB.

(2) Additional Port and Pipeline Major Repair Measures (December 1 to April 30)

If unplanned/emergency repair activities cannot be conducted between May 1 and November 30, Neptune is required to implement the following additional mitigation measures:

(A) If on-board MMOs do not have at least 0.5–mi (0.8–km) visibility, they shall call for a shutdown of repair activities. If dive operations are in progress, then they shall be halted and brought on board until visibility is adequate to see a 0.5–mi (0.8–km) range. At the time of shutdown, the use of thrusters must be minimized. If there are potential safety problems due to the shutdown, the captain will decide what operations can safely be shut down and will document such activities.

(B) Prior to leaving the dock to begin transit, the barge will contact one of the MMOs on watch to receive an update of sightings within the visual observation area. If the MMO has observed a North Atlantic right whale within 30 minutes of the transit start, the vessel will hold for 30 minutes and again get a clearance to leave from the MMOs on board. MMOs will assess whale activity and visual observation ability at the time of the transit request to clear the barge for release.

(C) A half-day training course will be provided to designated crew members assigned to the transit barges and other support vessels. These designated crew members will be required to keep watch on the bridge and immediately notify the navigator of any whale sightings. All watch crew will sign into a bridge log book upon start and end of watch. Transit route, destination, sea conditions, and any protected species sightings/mitigation actions during

watch will be recorded in the log book. Any whale sightings within 3,281 ft (1,000 m) of the vessel will result in a high alert and slow speed of 4 knots (7.4 km/hr) or less. A sighting within 2,461 ft (750 m) will result in idle speed and/or ceasing all movement.

(D) The material barges and tugs used for repair work shall transit from the operations dock to the work sites during daylight hours, when possible, provided the safety of the vessels is not compromised. Should transit at night be required, the maximum speed of the tug will be 5 knots (9.3 km/hr).

(E) Consistent with navigation safety, all repair vessels must maintain a speed of 10 knots (18.5 km/hr) or less during daylight hours. All vessels will operate at 5 knots or less at all times within 3.1 mi (5 km) of the repair area.

(3) Speed Restrictions in Seasonal Management Areas (SMAs)

Repair vessels and SRVs will transit at 10 knots (18.5 km/hr) or less in the following seasons and areas, which either correspond to or are more restrictive than the times and areas in NMFS' final rule (73 FR 60173, October 10, 2008) to implement speed restrictions to reduce the likelihood and severity of ship strikes of right whales:

- CCB SMA from January 1 through May 15, which includes all waters in CCB, extending to all shorelines of the Bay, with a northern boundary of 42° 12' N. latitude;
- Off Race Point SMA year round, which is bounded by straight lines connecting the following coordinates in the order stated: 42° 30' N. 69° 45' W.; thence to 42° 30' N. 70° 30' W.; thence to 42° 12' N. 70° 30' W.; thence to 42° 12' N. 70° 12' W.; thence to 42° 04' 56.5'' N. 70° 12' W.; thence along mean high water line and inshore limits of COLREGS limit to a latitude of 41° 40' N.; thence due east to 41° 41' N. 69° 45' W.; thence back to starting point; and
- Great South Channel (GSC) SMA from April 1 through July 31, which is bounded by straight lines connecting the following coordinates in the order stated:

42° 30' N. 69° 45' W.
41° 40' N. 69° 45' W.
41° 00' N. 69° 05' W.
42° 09' N. 67° 08' 24'' W.
42° 30' N. 67° 27' W.
42° 30' N. 69° 45' W.

(4) Additional Mitigation Measures

(A) In approaching and departing from the Neptune Port, SRVs shall use the Boston Traffic Separation Scheme (TSS) starting and ending at the entrance to the GSC. Upon entering the TSS, the SRV shall go into a "heightened awareness" mode of operation, which is outlined in detail in the Plan (see Neptune's application).

(B) In the event that a whale is visually observed within 0.6 mi (1 km) of the Port or a confirmed acoustic detection is reported on either of the two auto-detection buoys (ABs; more information on the acoustic devices is contained in the "Monitoring and Reporting" section later in this document) closest to the Port, departing SRVs shall delay their departure from the Port, unless extraordinary circumstances, defined in the Plan, require that the departure is not delayed. The departure delay shall continue until either the observed whale has been visually (during daylight hours) confirmed as more than 0.6 mi (1 km) from the Port or 30 minutes have passed without another confirmed detection either acoustically within the acoustic detection range of the two ABs closest to the Port or visually within 0.6 mi (1 km) from Neptune.

(C) SRVs that are approaching or departing from the Port and are within the Area to be Avoided (ATBA) surrounding Neptune shall remain at least 0.6 mi (1 km) away from any visually detected right whales and at least 100 yards (91 meters) away from all other visually detected whales unless extraordinary circumstances, as defined in Section 1.2 of the Plan in Neptune's application, require that the vessel stay its course. The ATBA is defined in 33 CFR 150.940. It is the largest area of the Port marked on nautical charts and it is enforceable by the USCG in accordance with the 150.900 regulations. The Vessel Master shall designate at least one lookout to be exclusively and continuously monitoring for the presence of marine mammals at all times while the SRV is approaching or departing Neptune.

(D) Neptune will ensure that other vessels providing support to Neptune operations during regasification activities that are approaching or departing from the Port and are within the ATBA shall be operated so as to remain at least 0.6 mi (1 km) away from any visually detected right whales and at least 100 yd (91 m) from all other visually detected whales.

Additional Mitigation Measures Required by NMFS

In addition to the mitigation measures in Neptune's IHA application, NMFS has included the following measures in the IHA in order to ensure the least practicable impact on the affected species or stocks:

(1) Neptune must immediately suspend any repair and maintenance or operations activities if a dead or injured marine mammal is found in the vicinity of the project area, and the death or injury of the animal could be attributable to the LNG facility activities. Neptune must contact NMFS and the Northeast Stranding and Disentanglement Program. Activities will not resume until review and approval has been given by NMFS.

(2) MMOs will direct a moving vessel to slow to idle if a baleen whale is seen less than 0.6 mi (1 km) from the vessel.

(3) Use of lights during repair or maintenance activities shall be limited to areas where work is actually occurring, and all other lights must be extinguished. Lights must be downshielded to illuminate the deck and shall not intentionally illuminate surrounding waters, so as not to attract whales or their prey to the area.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's measures, as well as other measures considered by NMFS, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species

and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Neptune proposed both visual and acoustic monitoring programs in the Plan contained in the IHA application. Summaries of those plans, as well as the proposed reporting, are contained next. The monitoring and reporting programs contained in the Plan are included in the IHA.

Passive Acoustic Monitoring

Neptune LNG will deploy and maintain a passive acoustic detection network along a portion of the TSS and in the vicinity of Neptune. This network will consisting of autonomous recording units (ARUs) and near-real-time ABs. To develop, implement, collect, and analyze the acoustic data obtained from deployment of the ARUs and ABs, as well as to prepare reports and maintain the passive acoustic detection network, Neptune LNG has engaged the Cornell University Bioacoustic Research Program (BRP) in Ithaca, New York, and the Woods Hole Oceanographic Institution (WHOI) in Woods Hole, Massachusetts.

During June 2008, an array of 19 passive seafloor ARUs was deployed by BRP for Neptune. The layout of the array centered on the terminal site and was used to monitor the noise environment in Massachusetts Bay in the vicinity of Neptune during construction of the port and associated pipeline lateral. The ARUs were not designed to provide real-time or near-real-time information about vocalizing whales. Rather archival noise data collected from the ARU array were used for the purpose of understanding the seasonal occurrences and overall distributions of whales (primarily North Atlantic right whales) within approximately 10 nm (18.5 km) of the Neptune Port. Neptune LNG will maintain these ARUs in the same configuration for a period of five years during full operation of Neptune in order to monitor the actual acoustic output of port operations and to alert NOAA to any unanticipated adverse effects of port operations, such as large scale abandonment by marine mammals of the area. To further assist in evaluations of the Neptune's acoustic output, source levels associated with DP of SRVs at the buoys will be estimated using empirical measurements collected from the passive detection network.

In addition to the ARUs, Neptune LNG has deployed 10 ABs within the Separation Zone of the TSS for the operational life of the Port. The purpose of the AB array is to detect the presence of vocalizing North Atlantic right whales. Each AB has an average detection range of 5 nm (9.3 km) of the AB, although detection ranges will vary based on ambient underwater conditions. The AB system will be the primary detection mechanism that alerts the SRV Master to the occurrence of right whales in the TSS and triggers heightened SRV awareness. The configurations of the ARU array and AB network (see Figure 3 in the Plan in Neptune's application) were based upon the configurations developed and recommended by NOAA personnel.

Each AB deployed in the TSS will continuously screen the low-frequency acoustic environment (less than 1,000 Hz) for right whale contact calls occurring within an approximately

5–nm (9.3–km) radius from each buoy (the ABs' detection range) and rank detections on a scale from 1 to 10. Each AB shall transmit all detection data for detections of rank greater than or equal to 6 via Iridium satellite link to the BRP server website every 20 minutes. This 20–minute transmission schedule was determined by consideration of a combination of factors including the tendency of right whale calls to occur in clusters (leading to a sampling logic of listening for other calls rather than transmitting immediately upon detection of a possible call) and the amount of battery power required to complete a satellite transmission. Additional details on the protocol can be found in Neptune's application.

Additionally, Neptune shall provide empirically measured source level data for all sources of noise associated with LNG port maintenance and repair activities. Measurements should be carefully coordinated with noise-producing activities and should be collected from the passive acoustic monitoring network.

Visual Monitoring

During maintenance- and repair-related activities, Neptune LNG shall employ two qualified MMOs on each vessel that has a DP system. All MMOs must receive training and be approved in advance by NOAA after a review of their qualifications. Qualifications for these MMOs shall include direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico. The MMOs (one primary and one secondary) are responsible for visually locating marine mammals at the ocean's surface and, to the extent possible, identifying the species. The primary MMO shall act as the identification specialist, and the secondary MMO will serve as data recorder and will assist with identification. Both MMOs shall have responsibility for monitoring for the presence of marine mammals.

The MMOs shall monitor the area where maintenance and repair work is conducted beginning at daybreak using the naked eye, hand-held binoculars, and/or power binoculars (e.g, Big Eyes). The MMOs shall scan the ocean surface by eye for a minimum of 40 minutes every hour. All sightings must be recorded on marine mammal field sighting logs.

While an SRV is navigating within the designated TSS, three people have lookout duties on or near the bridge of the ship including the SRV Master, the Officer-of-the-Watch, and the Helmsman on watch. In addition to standard watch procedures, while the SRV is within the ATBA and/or while actively engaging in the use of thrusters an additional lookout shall be designated to exclusively and continuously monitor for marine mammals. Once the SRV is moored and regasification activities have begun, the vessel is no longer considered in "heightened awareness" status. However, when regasification activities conclude and the SRV prepares to depart from Neptune, the Master shall once again ensure that the responsibilities as defined in the Plan are carried out. All sightings of marine mammals by the designated lookout, individuals posted to navigational lookout duties, and/or any other crew member while the SRV is within the TSS, in transit to the ATBA, within the ATBA, and/or when actively engaging in the use of thrusters shall be immediately reported to the Officer-of-the-Watch who shall then alert the Master.

Reporting Measures

Since the Neptune Port is within the Mandatory Ship Reporting Area (MSRA), all SRVs transiting to and from Neptune shall report their activities to the mandatory reporting section of the USCG to remain apprised of North Atlantic right whale movements within the area. All vessels entering and exiting the MSRA shall report their activities to WHALESNORTH. Vessel operators shall contact the USCG by standard procedures promulgated through the Notice to Mariner system.

For any repair work associated with the pipeline lateral or other port components, Neptune LNG shall notify the appropriate NOAA personnel as soon as practicable after it is determined that repair work must be conducted. During maintenance and repair of the pipeline lateral or other port components, weekly status reports must be provided to NOAA. The weekly

report must include data collected for each distinct marine mammal species observed in the project area during the period of the repair activity. The weekly reports shall include the following:

- The location, time, and nature of the pipeline lateral repair activities;
- Whether the DP system was operated and, if so, the number of thrusters used and the time and duration of DP operation;
- Marine mammals observed in the area (number, species, age group, and initial behavior);
- The distance of observed marine mammals from the repair activities;
- Observed marine mammal behaviors during the sighting;
- Whether any mitigation measures were implemented;
- Weather conditions (sea state, wind speed, wind direction, ambient temperature, precipitation, and percent cloud cover, etc.);
- Condition of the marine mammal observation (visibility and glare); and
- Details of passive acoustic detections and any action taken in response to those detections.

For minor repairs and maintenance activities, the following protocols will be followed:

- All vessel crew members will be trained in marine mammal identification and avoidance procedures;
- Repair vessels will notify designated NOAA personnel when and where the repair/maintenance work is to take place along with a tentative schedule and description of the work;
- Vessel crews will record/document any marine mammal sightings during the work period; and
- At the conclusion of the repair/maintenance work, a report will be delivered to designated NOAA personnel describing any marine mammal sightings, the type of work taking place when the sighting occurred, and any avoidance actions taken during the repair/maintenance work.

During all phases of project repair/maintenance activities and operation, sightings of any injured or dead marine mammals will be reported immediately to the USCG and NMFS, regardless of whether the injury or death is caused by project activities. Sightings of injured or dead marine mammals not associated with project activities can be reported to the USCG on VHF Channel 16 or to NMFS Stranding and Entanglement Hotline. In addition, if the injury or death was caused by a project vessel (e.g., SRV, support vessel, or construction vessel), USCG must be notified immediately, and a full report must be provided to NMFS, Northeast Regional Office. The report must include the following information: (1) the time, date, and location (latitude/longitude) of the incident; (2) the name and type of vessel involved; (3) the vessel's speed during the incident; (4) a description of the incident; (5) water depth; (6) environmental conditions (e.g., wind speed and direction, sea state, cloud cover, and visibility); (7) the species identification or description of the animal; (8) the fate of the animal; and (9) photographs or video footage of the animal (if equipment is available).

An annual report on marine mammal monitoring and mitigation will be submitted to NMFS Office of Protected Resources and NMFS Northeast Regional Office within 90 days after the expiration of the IHA. The weekly reports and the annual report should include data collected for each distinct marine mammal species observed in the project area in the Massachusetts Bay during the period of LNG facility operations and repair/maintenance activities. Description of marine mammal behavior, overall numbers of individuals observed, frequency of observation, and any behavioral changes and the context of the changes relative to operation and repair/maintenance activities shall also be included in the annual report. Additional information that will be recorded during operations and repair/maintenance activities and contained in the reports include: date and time of marine mammal detections (visually or acoustically), weather conditions, species identification, approximate distance from the source, activity of the vessel when a marine mammal is sighted, and whether thrusters were in use and, if so, how many at the time of the sighting.

General Conclusions Drawn from Previous Monitoring Reports

Throughout the construction period, Neptune submitted weekly reports on marine mammal sightings in the area. While it is difficult to draw biological conclusions from these reports, NMFS can make some general conclusions. Data gathered by MMOs is generally useful to indicate the presence or absence of marine mammals (often to a species level) within the safety zones (and sometimes without) and to document the implementation of mitigation measures. Though it is by no means conclusory, it is worth noting that no instances of obvious behavioral disturbance as a result of Neptune's activities were observed by the MMOs. Of course, these observations only cover the animals that were at the surface and within the distance that the MMOs could see. Based on the number of sightings contained in the weekly reports, it appears that NMFS' estimated take levels are accurate. As operation of the Port has not yet commenced, there are no reports describing the results of the visual monitoring program for this phase of the project. However, it is anticipated that visual observations will be able to continue as they were during construction.

As described previously in this document, Neptune was required to maintain an acoustic array to monitor calling North Atlantic right whales (humpback and fin whale calls were also able to be detected). Cornell BRP analyzed the data and submitted a report covering the initial construction phase of the project, which occurred in 2008. While acoustic data can only be collected if the animals are actively calling, the report indicates that humpback and fin whales were heard calling on at least some of the ARUs on all construction days, and right whale calls were heard only 28 percent of the time during active construction days. The passive acoustic arrays will remain deployed during the time frame of this IHA in order to obtain information during the operational phase of the Port facility.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. Only take by Level B harassment is anticipated as a result of Neptune's operational and repair/maintenance activities. Anticipated take of marine mammals is associated with thruster sound during maneuvering of the SRVs while docking and undocking, occasional weathervaning at the Port, and during thruster use of DP maintenance vessels should a major repair be necessary. The regasification process itself is an activity that does not rise to the level of taking, as the modeled source level for this activity is 110 dB (rms). Certain species may have a behavioral reaction to the sound emitted during the activities. Hearing impairment is not anticipated. Additionally, vessel strikes are not anticipated, especially because of the speed restriction measures that are

proposed that were described earlier in this document.

For continuous sounds, such as those produced by Neptune's proposed activities, NMFS uses a received level of 120–dB (rms) to indicate the onset of Level B harassment. The basis for Neptune's "take" estimate is the number of marine mammals that potentially could be exposed to sound levels in excess of 120 dB. This has been determined by applying the modeled zone of influence (ZOI; e.g., the area ensonified by the 120–dB contour) to the seasonal use (density) of the area by marine mammals and correcting for seasonal duration of sound-generating activities and estimated duration of individual activities when the maximum sound-generating activities are intermittent to occasional. Nearly all of the required information is readily available in the MARAD/USCG Final EIS, with the exception of marine mammal density estimates for the project area. In the case of data gaps, a conservative approach was used to ensure that the potential number of takes is not underestimated.

The Notice of Proposed IHA (75 FR 24906, May 6, 2010) included an in-depth discussion of the methodology used by NMFS to estimate take by harassment incidental to operation and repair/maintenance activities at the Neptune Port facility. A summary is provided next.

Results of sound modeling tests indicate that the 120–dB radius from thruster use by the SRV is estimated to be 1.6 nm (3 km), creating a maximum ZOI of 8.5 nm^2 (29 km^2). This zone is smaller than the one that was used to estimate the level of take in the previous IHA. However, the vessels used in the 2009 tests more closely resemble the vessels that will be used by Neptune for regasification by the SRV. Other vessels would be required for use during maintenance and repair activities at the port facility. Sounds generated during those activities would be similar or less than those generated during original construction of the facility. Therefore, NMFS has used the 120–dB contour estimated for construction in the previous IHAs for repair and maintenance activities. Depending on water depth, the 120–dB contour during repair and maintenance activities will extend from the source (the Port) out to 3.9 km (2.1 nm) and cover an area of 52 km^2 (15 nm^2).

NMFS used the data on cetacean distribution within Massachusetts Bay, such as those published by the National Centers for Coastal Ocean Science (NCCOS, 2006), to determine potential takes of marine mammals in the vicinity of the project area. Sighting data for the following species are contained in the report: North Atlantic right, fin, humpback, minke, pilot, and sei whales and Atlantic white-sided dolphins. The NCCOS study used cetacean sightings from two sources: (1) the North Atlantic Right Whale Consortium (NARWC) sightings database held at the University of Rhode Island (Kenney, 2001); and (2) the Manomet Bird Observatory (MBO) database, held at the NMFS Northeast Fisheries Science Center (NEFSC). The NCCOS study then combined these two data sets by extracting cetacean sighting records, updating database field names to match the NARWC database, creating geometry to represent survey tracklines and applying a set of data selection criteria designed to minimize uncertainty and bias in the data used.

For a detailed description and calculation of the cetacean abundance data and sightings-per-unit-effort (SPUE), refer to the NCCOS study (NCCOS, 2006). SPUE for all four seasons were analyzed, and the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance. Based on the data, the relative abundance of North Atlantic right, fin, humpback, minke, sei, and pilot whales and Atlantic white-sided dolphins, as calculated by SPUE in number of animals per square kilometer, is 0.0082, 0.0097, 0.0265, 0.0059, 0.0084, 0.0407, and 0.1314 n/km, respectively. Table 1 in this document outlines the density, abundance, take estimates, and percent of population for the 14 species for which NMFS has authorized Level B harassment.

In calculating the area density of these species from these linear density data, NMFS used 0.4 km (0.25 mi), which is a quarter the distance of the radius for visual monitoring, as a conservative hypothetical strip width (W). Thus the area density (D) of these species in the project area can be obtained by the following formula:

$D = SPUE/2W$.

Based on the calculation, the estimated take numbers by Level B harassment for the 1–year IHA period during operation of the SRV for North Atlantic right, fin, humpback, minke, sei, and pilot whales and Atlantic white-sided dolphins, within the 120–dB ZOI of the LNG Port facility area of approximately 8.5 nm^2 (29 km^2) maximum ZOI, corrected for 50 percent underwater, are 23, 27, 72, 16, 6, 110, and 357, respectively. This estimate is based on an estimated 50 SRV trips for the period July 12, 2010, through July 11, 2011, that will produce sounds of 120 dB or greater.

Based on the same calculation method described above for Port operations (but using the 120–dB ZOI of approximately 52 km^2 (15 nm^2), the estimated take numbers by Level B harassment for North Atlantic right, fin, humpback, minke, sei, and pilot whales and Atlantic white-sided dolphins for the 1–year IHA period incidental to Port maintenance and repair activities, corrected for 50 percent underwater, are 11, 13, 36, 8, 11, 56, and 179, respectively. These numbers are based on 14 days of repair and maintenance activities occurring between July 12, 2010, through July 11, 2011. It is unlikely that this much repair and maintenance work would be required this soon after completion of the construction phase of the facility.

The total estimated take of these species as a result of both operations and repair and maintenance activities of the Neptune Port facility between July 12, 2010, through July 11, 2011, is: 33 North Atlantic right whales; 40 fin whales; 108 humpback whales; 24 minke whales; 17 sei whales; 166 long-finned pilot whales; and 536 Atlantic white-sided dolphins. These numbers represent a maximum of 9.6, 1.8, 12.8, 0.7, 4.4, 0.5, and 0.8 percent of the populations for these species or stocks in the western North Atlantic, respectively. It is likely that individual animals will be "taken" by harassment multiple times (because certain individuals may occur in the area more than once while other individuals of the population or stock may not enter the proposed project area). Additionally, the highest value SPUE for the season with the highest abundance of each species was used to determine relative abundance. Moreover, it is not expected that Neptune will have 50 SRV transits and LNG deliveries in the first year of operations. Therefore, these percentages are the upper boundary of the animal population that could be affected. Thus, the actual number of individual animals being exposed or taken is expected to be far less.

In addition, bottlenose dolphins, common dolphins, Risso's dolphins, killer whales, harbor porpoises, harbor seals, and gray seals could also be taken by Level B harassment as a result of the deepwater LNG port project. Because these species are less likely to occur in the area, and there are no density estimates specific to this particular area, NMFS based the take estimates on typical group size. Therefore, NMFS estimates (and has authorized) that up to approximately 10 bottlenose dolphins, 20 common dolphins, 20 Risso's dolphins, 20 killer whales, 5 harbor porpoises, 15 harbor seals, and

15 gray seals could be exposed to continuous noise at or above 120 dB re 1 μPa rms incidental to operations and repair and maintenance activities during the one year period of the IHA, respectively.

Because Massachusetts Bay represents only a small fraction of the western North Atlantic basin where these animals occur NMFS has determined that only small numbers of the affected marine mammal species or stocks would be potentially affected by the Neptune LNG deepwater project. The take estimates presented in this section of the document do not take into consideration the mitigation and monitoring measures required by the IHA.

TABLE 1. DENSITY ESTIMATES, POPULATION ABUNDANCE ESTIMATES, TOTAL AUTHORIZED TAKE (WHEN COMBINE TAKES FROM OPERATION AND MAINTENANCE/REPAIR ACTIVITIES), AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN FOR THE POTENTIAL AFFECTED SPECIES.

Species	Density (n/km^2)	Abundance[1]	Total Authorized Take (operation & maintenance)	Percentage of Stock or Population
North Atlantic right whale	0.0082	345	33	9.6
Fin whale	0.0097	2,269	40	1.8
Humpback whale	0.0265	847	108	12.8
Minke whale	0.0059	3,312	24	0.7
Sei whale	0.0084	386	17	4.4
Long-finned pilot whale	0.0407	31,139	166	0.5
Atlantic white-sided dolphin	0.1314	63,368	536	0.8
Bottlenose dolphin	NA	7,489	10	0.1
Common dolphin	NA	120,743	20	0.02
Risso's dolphin	NA	20,479	20	0.1
Killer whale	NA	NA	20	NA
Harbor porpoise	NA	89,054	5	0.01
Harbor seal	NA	99,340	15	0.02
Gray seal	NA	125,541-169,064	15	0.01

[1] Abundance estimates taken from NMFS Atlantic and Gulf of Mexico SAR; NA=Not Available

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) the number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

No injuries or mortalities are anticipated to occur as a result of Neptune's port operation and maintenance and repair activities, and none have been authorized by NMFS. Additionally, animals in the area are not anticipated to incur any hearing impairment (i.e., TTS or PTS), as the modeling results for the SRV indicate a source level of 180 dB (rms).

While some of the species occur in the project area year-round, some species only occur in the area during certain seasons. Sei whales are only anticipated in the area during the spring. Therefore, if shipments and/or maintenance/repair activities occur in other seasons, the likelihood of sei whales being affected is quite low. Additionally, any repairs that can be scheduled in advance will be scheduled to avoid the peak time that North Atlantic right whales occur in the area, which usually is during the early spring. North Atlantic right, humpback, and minke whales are not expected in the project area in the winter. During the winter, a large portion of the North Atlantic right whale population occurs in the southeastern U.S. calving grounds (i.e., South Carolina, Georgia, and northern Florida). The fact that certain activities will occur during times when certain species are not commonly found in the area will help reduce the amount of Level B harassment for these species.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24–hr cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Operational activities are not anticipated to occur at the Port on consecutive days. Once Neptune is at full operations, SRV shipments would occur every 4–8 days, with thruster use needed for a couple of hours. Therefore, Neptune will not be creating increased sound levels in the marine environment for several days at a time.

Of the 14 marine mammal species likely to occur in the area, four are listed as endangered under the ESA: North Atlantic right, humpback, fin, and sei whales. All of these species, as well as the northern coastal stock of bottlenose dolphin, are also considered depleted under the MMPA. The affected humpback and North Atlantic right whale populations have been increasing in recent years. However, there is insufficient data to determine population trends for the other depleted species in the project area. There is currently no designated critical habitat or known reproductive areas for any of these species in or near the project area. However, there are several well known North Atlantic right whale feeding grounds in the CCB and GSC. As mentioned previously, to the greatest extent practicable, all maintenance/repair work will be scheduled during the May 1 to November 30 time frame to avoid peak right whale feeding in these areas, which occur close to the Neptune Port. No mortality or injury is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

The population estimates for the species that may be taken by harassment from the most recent U.S. Atlantic SAR were provided earlier in this document (see Table 1). From the most conservative estimates of both marine mammal densities in the project area and the size of the 120–dB ZOI, the maximum calculated number of individual marine mammals for each species that could potentially be harassed annually is small relative to the overall population sizes (12.8 percent for humpback whales and 9.6 percent for North Atlantic right whales and no more than 4.4 percent of any other species).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that operation, including repair and maintenance activities, of the Neptune Port will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from Neptune's activities will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

On January 12, 2007, NMFS concluded consultation with MARAD and USCG under section 7 of the ESA on the proposed construction and operation of the Neptune LNG facility and issued a Biological Opinion. The finding of that consultation was that the construction and operation of the Neptune LNG terminal may adversely affect, but is not likely to jeopardize, the continued existence of North Atlantic right, humpback, and fin whales, and is not likely to adversely affect sperm, sei, or blue whales and Kemp's ridley, loggerhead, green, or leatherback sea turtles.

On March 2, 2010, MARAD and USCG sent a letter to NMFS requesting reinitiation of the section 7 consultation. MARAD and USCG determined that certain routine planned operations and maintenance activities, inspections, surveys, and unplanned repair work on the Neptune Deepwater Port pipelines and flowlines, as well as any other Neptune Deepwater Port component (including buoys, risers/umbilicals, mooring systems, and sub-sea manifolds), may constitute a modification not previously considered in the 2007 Biological Opinion. Construction of the Port facility has been completed, and, therefore, is no longer part of the proposed action. Consultation with NMFS' Northeast Regional Office is now complete. The 2010 Biological Opinion contains the following conclusion. After reviewing the best available information on the status of endangered and threatened species under NMFS jurisdiction, the environmental baseline for the action area, the effects of the action, and the cumulative effects in the action area, it is NMFS' biological opinion that the operation of the Neptune LNG deepwater port, including required maintenance and repair work, is likely to adversely affect, but is not likely to jeopardize the continued existence of the North Atlantic right, humpback, fin, and sei whale.

National Environmental Policy Act (NEPA)

MARAD and the USCG released a Final EIS/Environmental Impact Report (EIR) for the proposed Neptune LNG Deepwater Port (see **ADDRESSES**). A notice of availability was published by MARAD on November 2, 2006 (71 FR 64606). The Final EIS/EIR provides detailed information on the proposed project facilities, construction methods, and analysis of potential impacts on marine mammals.

NMFS was a cooperating agency in the preparation of the Draft and Final EISs based on a Memorandum of Understanding related to the Licensing of Deepwater Ports entered into by the U.S. Department of Commerce along with 10 other government agencies. On June 3, 2008, NMFS adopted the USCG and MARAD FEIS and issued a separate Record of Decision for issuance of authorizations pursuant to sections 101(a)(5)(A) and (D) of the MMPA for the construction and operation of the Neptune LNG Port facility.

Authorization

As a result of these determinations, NMFS has issued an IHA to Neptune for the take of marine mammals incidental to port commissioning and operations, including repair and maintenance activities at the Neptune Deepwater Port, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 12, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–17434 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes a service from the Procurement List previously furnished by such agency.

DATES: *Effective Date:* 8/16/2010.

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 5/21/2010 (75 FR 28589–28590) and 5/28/2010 (75 FR 29994–29995), 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 services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services 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 services to the Government.

2. The action will result in authorizing small entities to furnish the products and 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 products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 8415–01–580–0091—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0247—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0241—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0135—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0133—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0132—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0130—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0129—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0128—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0127—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0126—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0113—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0109—Cap, Patrol, Multi-Cam
NSN: 8415–01–580–0097—Cap, Patrol, Multi-Cam
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 requirement of the U.S. Army, as aggregated by the Department of the Army Research, Development, and Engineering Command, Natick, MA

NSN: 7510–01–411–7000—Portfolio, Clear Front Report Cover
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, PA
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 General Services Administration.

NSN: MR 824—Mandolin Slicer
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Military Resale, Defense Commissary Agency, Fort Lee, VA
Coverage: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

NSN: MR 823—Food Chopper
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Military Resale, Defense Commissary Agency, Fort Lee, VA
Coverage: C-List for the requirement of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

NSN: 9390–01–078–8660—Tape, Reflective
NPA: Bestwork Industries for the Blind, Inc., Runnemede, NJ
Contracting Activity: Defense Logistics Agency, Defense Supply Center Philadelphia, Philadelphia, PA
Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency, Defense Supply Center Philadelphia.

Services

Service Type/Locations: Janitorial and Grounds Maintenance, Customs and Border Patrol (CBP): Three Points Transport Base, 16434 W. Ajo Way, Robles Junction, AZ; 41455 S. Sasabe Highway, Sasabe, AZ
Vehicle Maintenance Facility, 9480 W. Adams Road, Eloy, AZ
Papago Farms, FR 21, Sells, AZ
Sonoita Checkpoint, Highway 83 MP 40.8, Sonoita, AZ
Willcox Station Facilities, 200 W. Rex Allen Jr. Road, Willcox, AZ
Willcox Checkpoint, Highway 80 MP 313, Willcox, AZ
Willcox Highway 191 Checkpoint, Highway 191, MP 41, Willcox, AZ
Equestrian Training, 3293 E. Kimsey Road, Willcox, AZ
Intelligence and Operations Coordination Center, 2430 S. Swan Road, Tucson, AZ
NPA: J.P. Industries, Inc., Tucson, AZ
Contracting Activity: Dept of Homeland Security, Bureau of Customs and Border Protection, Office of Procurement, Washington, DC

Service Type/Locations: Laundry Service, Naval Hospital, 6000 West Hwy 98, Pensacola, FL
NPA: Wiregrass Rehabilitation Center, Inc., Dothan, AL
Contracting Activity: Dept of the Navy, FISC Jacksonville, Jacksonville, FL

Service Type/Locations: Laundry Service, Naval Hospital System, 2800 Child Street, Jacksonville, FL
NPA: GINFL Services, Inc., Jacksonville, FL
Contracting Activity: Dept of the Navy, FISC Jacksonville, Jacksonville, FL

Service Type/Locations: Food Service Attendants, Combat Readiness Training Center (CRTC) Dining Facility, 1401 Robert B. Miller Jr. Drive, Garden City, GA
NPA: Trace, Inc., Boise, ID
Contracting Activity: Dept of the Air Force, FA6643 HQ AFRES LGC, Robins AFB, GA

Deletion

On 5/28/2010 (75 FR 29994–29995), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of a proposed deletion from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below is 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 provide a service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with a service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Locations: Food Service Attendant, Brunswick Naval Air Station: Building 201, New Brunswick, ME

NPA: Pathways, Inc., Auburn, ME

Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command, Norfolk, VA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–17412 Filed 7–15–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from the Procurement List.

SUMMARY: The Committee is proposing to add services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete a product previously furnished by such agency.

DATES: Comments must be received on or before: 8/16/2010.

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, tel.: (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 services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will 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 proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Contact Center Service, Office of the Comptroller of the Currency—Financial Management, Washington, DC (Offsite: 3510 Capital City Boulevard, Lansing, MI).

NPA: Peckham Vocational Industries, Inc., Lansing, MI.

Contracting Activity: U.S. Department of Treasury, Office of the Comptroller of the Currency—Financial Management, Washington, DC.

Service Type/Location: Transcription Service, U.S. Army War College, Carlisle, PA.

NPA: InspiriTec, Inc., Philadelphia, PA.

Contracting Activity: Department of the Army, Mission and Installation Contracting Command—Carlisle Barracks, Carlisle, PA.

Deletion

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 additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish a product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with a product proposed for deletion from the Procurement List.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

NSN: 8415–00–205–3895—Apron, Construction Workers.

NPA: Blind Industries & Services of Maryland, Baltimore, MD.

Contracting Activity: GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–17413 Filed 7–15–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities; Notice of Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Consumer Product Safety Commission ("Commission") will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 2012, which begins October 1, 2011. Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 2012 will become part of the public record.

DATES: The hearing will begin at 10 a.m. on August 11, 2010. Requests to make oral presentations and the written text of any oral presentations must be received by the Office of the Secretary not later than 5 p.m. Eastern Standard Time (EST) on August 4, 2010.

ADDRESSES: The hearing will be in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, Maryland 20814. Requests to make oral presentations and texts of oral presentations should be captioned "Agenda and Priorities FY 2012" and sent by electronic mail ("e-mail") to *cpsc-os@cpsc.gov*, or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, no later than 5 p.m. EST on August 4, 2010.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make an oral presentation, please send an e-mail, call, or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *cpsc-os@cpsc.gov*; telephone (301) 504–7923; facsimile (301) 504–0127. An electronic copy of the CPSC budget request for

fiscal year 2011 can be found at *http://www.cpsc.gov/cpscpub/pubs/reports/2011plan.pdf.*

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act ("CPSA") (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission conduct a public hearing and provide an opportunity for the submission of comments.

Persons who desire to make oral presentations at the hearing on August 11, 2010, should send an e-mail, call, or write Todd A. Stevenson, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, e-mail *cpsc-os@cpsc.gov*, telephone (301) 504–7923, facsimile (301) 504–0127 not later than 5 p.m. EST on August 4, 2010. Presentations should be limited to approximately ten minutes.

Persons desiring to make presentations must submit the text of their presentations to the Office of the Secretary not later than 5 p.m. EST on August 4, 2010. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on August 11, 2010, and will conclude the same day.

Dated: July 12, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–17397 Filed 7–15–10; 8:45 am]

BILLING CODE 6355–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Draft Guidance, "Federal Greenhouse Gas Accounting and Reporting"

AGENCY: Council on Environmental Quality.

ACTION: Notice of Availability, Draft Guidance, "Federal Greenhouse Gas Accounting and Reporting."

SUMMARY: On October 5, 2009, President Obama signed Executive Order (E.O.) 13514—Federal Leadership in Environmental, Energy, and Economic Performance (74 FR 52117) in order to establish an integrated strategy toward sustainability in the Federal Government and to make reduction of greenhouse gas (GHG) emissions a priority for Federal agencies. Among other provisions, E.O. 13514 requires agencies to measure, report, and reduce their GHG emissions.

Section 9(a) of E.O. 13514 directed the Department of Energy's (DOE's) Federal Energy Management Program (FEMP), in coordination with the Environmental Protection Agency (EPA), Department of Defense (DoD), General Services Administration (GSA), Department of the Interior (DOI), Department of Commerce (DOC), and other agencies as appropriate, to develop recommended Federal GHG reporting and accounting procedures. On April 5, 2010, DOE–FEMP submitted the final recommendations on Federal GHG reporting and accounting procedures to the Chair, Council on Environmental Quality (CEQ).

Section 5(a) of E.O. 13514 directed that the Chair of CEQ issue guidance for Federal GHG accounting and reporting. Based on the final recommendations, CEQ has prepared a draft guidance document. CEQ is committed to open government principles and leading by example to ensure that the Federal Government is transparent in its processes for accounting and reporting of Federal GHG emissions.

The Federal Government seeks to continually improve both the quality of data and methods necessary for calculating GHG emissions. Over time, additional requirements, methodologies and procedures will be included in revisions to this document and supporting documents to improve the Federal Government's overall ability to accurately account for and report GHG emissions. In particular, while a detailed approach to accepted and peer-reviewed life cycle methodologies is beyond the scope of the current version of this guidance document, the Federal Government is interested in including such approaches in future versions, and may request comment on inclusion of life cycle methodologies in future versions of this Guidance document.

CEQ provides this draft guidance for public review and comment to ensure accessibility of Federal accounting and reporting requirements and to enhance the quality of public involvement in governmental decisions relating to the environment.

DATES: Comments should be submitted on or before August 16, 2010.

ADDRESSES: The Draft Guidance, "Federal Greenhouse Gas Accounting and Reporting" documents are available at: *http://www.whitehouse.gov/ceq/sustainability.* Comments on the Draft Guidance, "Federal Greenhouse Gas Accounting and Reporting," should be submitted electronically to *GHG.guidance@ceq.eop.gov,* or in writing to The Council on Environmental Quality, Attn: Leslie Gillespie-Marthaler, 722 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leslie Gillespie-Marthaler, Senior Program Manager, Office of the Environmental Executive (OFEE) at (202) 456–5117.

SUPPLEMENTARY INFORMATION: The Chair, Council on Environmental Quality is required, under section 5(a) of E.O. 13514, to issue guidance for Federal agency greenhouse gas accounting and reporting. Federal agencies are required, under Section 2(c) of E.O. 13514, to establish and report to the CEQ Chair and OMB Director a comprehensive inventory of absolute GHG emissions, including scope 1, scope 2, and specified scope 3 emissions for fiscal year 2010, and thereafter, annually.

The Draft Guidance, "Federal Greenhouse Gas Accounting and Reporting" establishes government-wide requirements for Federal agencies in calculating and reporting GHG emissions associated with agency operations. The Draft Guidance is accompanied by a separate Draft Technical Support Document for Federal GHG Accounting and Reporting (TSD), which provides detailed information on Federal inventory reporting requirements and calculation methodologies. Specifically, CEQ is interested in comments on section/chapter 4 regarding renewable energy. CEQ will seek public comment on this draft guidance for 30 days.

Public comments are requested on or before August 16, 2010.

Dated: July 12, 2010.

Nancy H. Sutley,

Chair, Council on Environmental Quality.

[FR Doc. 2010–17352 Filed 7–15–10; 8:45 am]

BILLING CODE 3125–W0–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of the Environmental Impact Statement (EIS) Development Process for the Proposed Beluga to Fairbanks (B2F) Natural Gas Transportation Pipeline

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of withdrawal.

SUMMARY: On January 22, 2009, the Alaska District, U.S. Army Corps of Engineers (Corps) published a notice of intent to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the construction of the proposed Beluga to Fairbanks (B2F) Alaska natural gas transportation pipeline. On June 24, 2010, the Corps received a request from the Alaska Natural Gas Development Authority discontinuing the EIS development process associated with the proposed B2F pipeline.

FOR FURTHER INFORMATION CONTACT: Questions can be answered by: Ms. Serena Sweet, Regulatory Division, telephone: (907) 753–2819, toll free in AK: (800) 478–2712, *Fax:* (907) 753–5567, *e-mail: serena.e.sweet@usace.army.mil, mail:* U.S. Army Corps of Engineers, CEPOA–RD, Post Office Box 6898, Elmendorf AFB, Alaska 99506–0898. Additional information may be obtained at *http://www.angdab2feis.com*.

Dated: July 2, 2010.

Serena E. Sweet,

Project Manager, Alaska District, U.S. Army Corps of Engineers.

[FR Doc. 2010–17321 Filed 7–15–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 14, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 12, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Student Assistance General Provisions—Subpart K—Cash Management.

OMB #: Pending.

Frequency: On Occasion

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies (SEAs) or Local Educational Agencies (LEAs).

Reporting and Recordkeeping Hour Burden:

Responses: 479,595.

Burden Hours: 54,377.

Abstract: The proposed regulations require institutions to provide a way for a Federal Pell Grant eligible student to obtain or purchase, by the seventh day of a payment period, the books and supplies required for the payment period when certain conditions are met. If, 10 days before the beginning of the payment period the institution could disburse Title IV, Higher Education Act of 1965, as amended (HEA) program funds for which the student was eligible, and if disbursed a credit balance would result, the institution is required to provide to the student the lesser of the presumed credit balance or the amount needed by the student for books and supplies, as determined by the institution.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4325. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov,* 202–401–0526. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–17410 Filed 7–15–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 14, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of

Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 13, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Student Support Services Annual Performance Report.

OMB #: 1840–0525.

Form #: N/A.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Government, State Educational Agencies (SEAs) or Local Educational Agencies (LEAs).

Reporting and Recordkeeping Hour Burden:

Responses: 947.

Burden Hours: 5,682.

Abstract: The Department of Education is requesting a reinstatement without change of the previously approved annual performance report, which was discontinued on November 30, 2009 (OMB No.: 1840–0525), to collect data under the Student Support Services (SSS) Program. Reinstating the report would allow the Department to collect consistent performance data for as much of the grant cycle as possible from current SSS grantees, which were given a one-time, one-year extension due to the negotiated rulemaking process underway to implement the Higher Education Opportunity Act (HEOA) revisions to the Higher Education Act (HEA), the authorizing statute for the program. Beginning next year and pending a final rule, all new and continuing grantees will submit performance data consistent with the changes made by the HEOA.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4344. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–17411 Filed 7–15–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to Sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA state plans previously submitted by Alaska.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plan published herewith should be made in writing to the chief election official of the individual state at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA state plans filed by the fifty states, the District of Columbia and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that states, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA Section 254(a)(11) through (13). HAVA Sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the third revision to the state plan for Alaska.

The amendments to Alaska's state plan include passing legislation to bring the state into compliance with HAVA requirements, developing new staff positions to manage HAVA, updating forms and training materials, and designing improved voter outreach programs. In accordance with HAVA Section 254(a)(12), all the state plans submitted for publication provide information on how the respective state succeeded in carrying out its previous state plan. Alaska confirms that its amendments to the state plan were developed and submitted to public comment in accordance with HAVA Sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from July 16, 2010, the state is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA Section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this state plan and encourages further public comment, in writing, to the state election official listed below.

Chief State Election Official

Ms. Gail Fenumiai, Elections Director, Alaska Division of Elections, P.O. Box 110017, Juneau, Alaska 99811–0017, Phone: (907) 465–4611, Fax: (907) 465–3203.

Thank you for your interest in improving the voting process in America.

Dated: July 7, 2010.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–P

State of Alaska

HAVA State Plan
2010 Updated

As required by Public Law 107-252,
Help America Vote Act 2002, Section 253 (b)

Gail M. Fenumiai, Director
Alaska State Division of Elections
240 Main Street, Suite 400
P.O. Box 110017
Juneau, Alaska 99811-0017
(907) 465-4611

"When initially implementing HAVA, Alaska had few changes to make to our election laws, our voter registration system and our voting equipment. Since few changes were necessary, Alaska was able to concentrate on improvements to our processes. We continue to work on improvements to our election process and to ensure they comply with both state and federal legal requirements. We are committed to maintaining the public's trust and confidence in our election processes."

Craig Campbell, Lieutenant Governor

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ALASKA STATE PLAN INTRODUCTION

The Lieutenant Governor of Alaska is responsible for the overall direction of the Division of Elections. The Lieutenant Governor appoints a director and under the Director of Elections, the division is responsible for planning, implementing and conducting all statewide and federal elections as well as all voter registration activities and maintenance of Alaska's voter registration database.

The division is divided into four geographically-based election regions managed by Election Supervisors. The Election Supervisors are responsible for voter registration and election management activities for all elections within their region, as designated by the director. In addition to the four regional offices located in Juneau, Anchorage, Fairbanks and Nome, the division has opened a satellite office of the Region II Elections Office in the fastest growing municipality in Alaska, the Matanuska-Susitna Borough. The division also opened an Absentee and Petition Office in Anchorage to facilitate and improve absentee voting by mail and by fax. The Region II satellite office in the Matanuska-Susitna Borough and the Absentee office were both opened in the spring of 2006 and continue to provide improved access to voter registration and voting. In addition, the Absentee office ensures the division's absentee voting programs comply with the Uniformed and Overseas Citizens Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment Act (MOVE Act) and provides improved access to voting for military and overseas voters.

Alaska Statute Title 15 and Alaska Administrative Code Title 6 govern the federal and state election process. Alaska falls under Section 5 of the Voting Rights Act (VRA) of 1965 which requires U.S. Department of Justice preclearance for any substantive change in the election process that directly affects the voter. Alaska also falls under the minority language assistance requirements of §§4(f)(4) and 203 of the VRA.

The Division of Elections maintains a statewide electronic voter registration mainframe database, implemented in 1985, referred to as the Voter Registration and Election Management System (VREMS). Each election office has real-time access to VREMS for viewing and updating voter information. The division processes all voter registration applications in VREMS and assigns each applicant a unique voter registration number. Immediately upon entering information in the system, any state election office can view the information processed. Because the old mainframe system is

antiquated, the division began working on the development and implementation of a new pc-based statewide voter registration database in 2005. Unfortunately, the vendor developing the new system was not successful in performing their duties as stipulated in the contract requirements and the contract was terminated. Although the new system is not completed, the division will continue our work on the development of a new voter registration system that utilizes updated technology.

Alaska has over 488,000 registered voters. According to the Alaska Department of Labor and Workforce Development, the estimated voting age population in 2005 was 454,226. Alaska attributes its inflated registration rolls to the fact that Alaska Statute Title 15 allows a person who is temporarily out of state to remain registered in Alaska if that person has the "intent" to return (military and military spouses are exempt from intent requirements). Because of Alaska's Permanent Fund Dividend program benefits and no state income tax, many Alaskans choose to maintain their Alaska residency even if they currently live outside the state.

Voter registration is available in each state election office and other numerous locations throughout the State of Alaska. The Director of Elections has appointed as voter registration agencies all Division of Motor Vehicles (DMV) offices, Public Assistance offices, Armed Forces Recruitment offices, Municipal Clerks' offices, and various offices that provide services to persons with disabilities. In addition to the registration agencies, voter registration is available in most libraries throughout the state, tribal council offices, schools, the University of Alaska, and through individually appointed voter registrars. Voter registration applications are also available on the division's website www.elections.alaska.gov for easy access.

Individuals may register to vote in person, by mail, by fax machine or by scanning a completed voter registration application and sending via email. Voters must be registered to vote at least 30 days before an election. If a voter's registration application is incomplete, the division notifies the voter in writing and provides the voter an opportunity to complete a new voter registration application. The only exception to the registration deadline is during Presidential elections. A voter may register and have their vote count for President and Vice President on Election Day.

Alaska has 40 state house districts and 20 state senate districts. Within these districts, there are 438 precincts, each with a designated polling place. Following is a breakdown of voter turnout during the past several general elections:

1996 = 59.1%
1998 = 50.1%
2000 = 60.8%
2002 = 50.5%
2004 = 66.6%
2006 = 51.1%
2008 = 66.03%

Alaska has approximately 151 rural communities with precincts that are isolated from connecting road systems; the only way to access these communities is by airplane or boat. Of the 438 precincts in Alaska, 31 have 100 or fewer registered voters.

In 1998, the Division of Elections replaced all punch card voting systems used in statewide and federal elections with an optical scan voting system. Since that time, Alaska has and continues to expand the use of the optical scan voting throughout the state. Since the adoption of the initial State Plan, Alaska has increased the number of precincts using optical scan to count ballots. There are now 133 hand count precincts and 305 optical scan precincts, all of which use a uniform paper ballot regardless of how the ballots are tallied. All absentee, questioned, and special needs ballots voted in Alaska's primary and general elections are counted using the optical scan ballot tabulators.

In addition to hand count and optical scan units, Alaska makes available a touch screen voting unit in every precinct during an election in which a federal race appears on the ballot to comply with the requirements of HAVA. The touch screen voting units, which were first introduced during the 2006 primary election, allow voters with disabilities the ability to cast a private and independent ballot. In accordance with Alaska Statute, each touch screen voting unit is equipped with a voter-verifiable paper audit trail (VVPAT). The VVPAT is considered the "official ballot" during recounts. With the implementation of touch screen voting, the division has and continues to develop a variety of forms, brochures and instructions in an effort to train election officials and educate the public about touch screen voting.

In 2003, the Division of Elections updated many sections of the election law to comply with HAVA, namely HB 266, signed into law by the Governor on June 16, 2003. This bill addressed improving the questioned ballots (Alaska's form of provisional voting), the definition of a questioned voter, voter

registration, training of election officials, preparation of election materials, forms, and supplies for polling places, voter identification, absentee voting, and counting ballots. In 2005, HB 94 passed additional amendments also affecting voting. These bills updated several forms to conform with HAVA standards, specifically:

a) a new voter acknowledgement card;
b) a revised by-mail ballot return envelope;
c) a revised by-mail ballot return envelope used by military and overseas voters;
d) a revised voted ballot envelope used by voters who must submit proof of identification when voting by mail;
e) a revised poster instructing voters how to complete the ballot and providing information regarding questioned voting used during primary and general elections;
f) a revised poster displaying specific election information, and how to report fraud;
g) a revised poster which details the types of identification which voters may present when voting in-person;
h) an informational flier regarding questioned voting used during primary and general elections; and
i) a new voter registration application, questioned and absentee-in person voted ballot envelope.

There are several alternative voting methods available to Alaska voters who are unable to vote at their assigned polling place. For many voters in remote areas of Alaska the only voting method available is by mail absentee ballot.

Absentee By Mail – Any qualified voter in Alaska may apply to receive an absentee ballot by mail. Alaska Statute 15.20.081 was amended in 2003 to improve accommodation for absentee uniformed services and overseas voters to allow a single absentee by mail ballot application to be valid through the next two general elections. In addition, this statute was further amended in both 2005 and 2006, to reduce the number of witness signatures required on an absentee by mail ballot from two witnesses to a single witness and to change the deadline for when an absentee by mail ballot application must be received by the division. The deadline changed from seven days prior to an election to ten days prior to an election.

Early and Absentee In Person Voting – Beginning 15 days prior to Election Day, any qualified voter may vote early in the office of the Election Supervisor overseeing the jurisdiction where the voter is registered. In addition to early voting, any qualified voter may vote an absentee in person ballot through an absentee voting official. Alaska has numerous absentee voting locations available throughout the state, and all locations are published on the division's website at least 45 days prior to an election. The dates and hours of the absentee voting is advertised in local papers, and all absentee voting locations are listed in the Official Election Pamphlet (OEP) that is mailed to every household where there is a registered voter. An absentee voting location may have ballots available to voters for a single, multiple, or all 40 house districts.

Absentee By Fax Voting – Beginning 15 days prior to Election Day, any qualified voter may apply for a faxed ballot. Absentee by fax applications are available on the division's website, from any elections office, and in the division's election pamphlets that are mailed to all voters. When a voter chooses to vote via fax, the voter is faxed a ballot to the fax number specified, and the voter may return the voted ballot either by fax or by mail. Alaska Statute 15.20.066 was amended in 2005 to require only one witness signature to sign and attest to the date on which the voter signs the certificate. In 2010, the time period for applying for a faxed ballot was extended for military and overseas voters in compliance with the MOVE Act. Military and overseas voters may now apply at any time for a faxed ballot.

Special Needs Voting – If a voter is unable to vote at his or her assigned polling place due to age, illness, or disability, the voter may assign a personal representative to pick up and deliver the ballot and other voting material to the voter. After the voter votes the ballot, the representative returns the voted ballot to the election official. Special Needs voting is available at the polls on Election Day or through any absentee voting official.

Questioned Voting – Questioned, or Provisional, voting is available for any voter who does not have identification and is not personally known by the election official, or whose name does not appear on the precinct register at the polling place where the voter is attempting to vote. Following an election, questioned ballots are delivered to the appropriate regional election office for verification in the statewide voter registration database of voter eligibility before being counted.

Each absentee, questioned, and special needs ballot cast is placed inside a secrecy sleeve and then sealed inside an envelope. The outside of the envelope contains voter information: name, address, identifier, and signature. A bipartisan review board located in each regional office reviews the voter's

ballot envelope, the data is entered into the voter registration database, and the envelope is assigned a sequence number. At the time the ballot envelope is reviewed, the registration database searches for other voting activity by that voter for the same election and reports if the voter has voted more than once.

In addition to conducting all statewide and federal elections, the Division of Elections is also responsible for conducting elections in areas of the state that are not incorporated into municipal governments. These elections include rural school board, coastal resource service area, liquor option, incorporation, dissolution and consolidation elections. In 2004, the division conducted a by mail election for Alaska Seafood Marketing Institute as well. Although the division is not responsible for conducting local municipal elections such as those for borough assembly or city council, it provides voter registration lists, precinct registers and voter history for municipal elections. The division also assists municipalities by providing for the use of the division's polling place equipment and in some areas, ballot counting equipment.

Since the 2005 and 2008 State Plans, the state has become compliant with HAVA requirements and has made improvements to our election processes such as:

- An accessible touch screen voting unit, equipped with a voter verifiable paper trail, is available in every precinct during elections in which a federal race appears on the ballot.
- The requirements for a new statewide voter registration database have been developed to replace the antiquated, existing voter registration database, and the division continues to work on implementation of a new database.
- With new office locations in Anchorage and the Matanuska-Susitna Borough, the division is even more accessible to voters and has improved access to voting for military and overseas voters.
- The division has expanded its HAVA section to include a HAVA Election Systems Manager position responsible for the overall supervision and administration of the division's HAVA program, and an Election Systems and Database Manager responsible for implementation of improvements to the voter registration system.
- Language assistance improvements to limited English proficient Alaska Native voters through improved audio announcements, video announcements, outreach and ongoing assessment. In addition, language assistance improvements for the Yup'ik language include a full-time staff person, fluent in Yup'ik and English, the formation of a Yup'ik translation panel, creation of a glossary of election terms in Yup'ik, both written and audio version, Yup'ik sample ballots, an audio translation of the voter registration, absentee voting and special needs voting processes, audio translations of ballot measure information and candidate statements and adding a Yup'ik audio translation of the ballot on the touch screen voting units used in the Bethel Census Area.
- Other projects, such as the development of the division's media plan and improvements to the division's web site, will increase voter participation and outreach.

The Alaska State Plan is organized as specified in HAVA, Section 254, providing a description of current election procedures used in Alaska and outlining how Alaska will meet the requirements mandated by HAVA.

Section 1. Title III Requirements and Other Activities

How the State of Alaska will use the requirements payment to meet the requirements of Title III, and, if applicable under section 251 (a)(2), to carry out other activities to improve the administration of elections.

1.A Section 301(a), Voting Systems Standards Requirements

The State of Alaska transitioned from a punch card voting system to an optical scan voting system in 1998. Prior to 2006, the state used a hybrid of two types of voting systems in its established polling locations: 149 precincts used a hand count paper ballot system, and 290 precincts used an optical scan (Accu-Vote OS 2000) paper ballot system. The State of Alaska now has 133 hand count precincts and 305 optical scan precincts and has implemented the use of one touch screen voting unit in each polling place and each early voting location. Although the touch screen voting unit is intended for use by persons with disabilities, any voter may use the equipment. The State will continue to expand the use of the optical scan system in hand count precincts to improve the overall administration of elections. Absentee and questioned ballot counting is also conducted using the optical scan voting system.

In 2002, the state enacted legislation requiring that the new voting systems purchased allow voters with disabilities or visual impairments to use the systems privately and independently. With the passage of HAVA, the state was required to purchase DRE units for each established polling location. The division requested and received a capital appropriation for FY04 to purchase 55 Accu-Vote touch screen voting units. The division used HAVA funds to purchase an additional 45 units, bringing the statewide total to 100 touch screen units. In July, 2006, the division purchased an additional 405 units, bringing the statewide total to 505 touch screen voting units. Every unit is equipped with a VVPAT, which allows the voter to confirm their selections before casting their ballot. The touch screen voting units were first implemented statewide during the 2006 primary election, and are now available for use in all elections where there is a federal race on the ballot. Approximately 1 percent of the state's ballots are cast using the touch screen voting equipment.

The touch screen voting units provide a variety of accessible features for blind and visually impaired voters, including: alternative language capability, headsets offering audio ballots, as well as keypad and stylus options for voters with dexterity difficulties. The division is in the process of adding an audio translation in the Yup'ik Alaska Native language to the touch screen voting units used in the Bethel Census Area.

The state purchased transport cases for the touch screen voting units in May 2006 and used them during the 2006 election year. The transport cases were intended to provide a stable platform and secure container in which to ship the touch screen voting units through the United States Postal Service to Alaska's remote and often frigid polling locations. The transport cases were sent on small aircraft and upon arriving in many communities were transported to the polling place by ATV. Many cases returned damaged due to the transportation methods available in rural Alaska. The division has retrofitted several of the damaged cases to remove exterior parts and will continue to retrofit cases to better handle the shipping stress to and from remote polling locations.

Transporting the touch screen units and training election officials to use the new technology in rural Alaska is a significant expense to the division for each election the voting units are used. The division provides extensive training programs for election staff prior to each election cycle and will continue to improve upon our training programs, including training more election workers on the use of this equipment. The manufacturer of the touch screen units, as part of the contract, will continue training division staff in the proper use of the new equipment.

During the initial deployment of the touch screen voting units, the division hosted public demonstrations in Juneau, Anchorage and Fairbanks to familiarize the public with the units, and educate voters on the accessible features of the touch screen units. The division advertised the demonstrations using local newspapers, media releases, public service announcements, the division's website and through personal invitation. Representatives from local disability agencies were contacted and invited to attend the demonstration. During the event, people were invited to try the machines and cast a sample ballot. Brochures, instructions and forms were available for the public to learn more about the touch screen units. Feedback received during the demonstrations helped prepare better instructions on how to train election workers on the touch screen unit. Separate demonstrations were also held for state legislators and media members to report accurately to Alaska's constituency on the use of the new voting equipment. Alaska continues to work with the public and disability organizations to provide demonstrations of the units prior to state and federal elections.

Due to the increased public scrutiny of electronic voting systems, Alaska has continuously had to defend the testing, security and auditing processes used in Alaska to ensure safe and accurate elections. With recent studies that have identified vulnerabilities in the voting system used in Alaska and elsewhere, the division has worked with the University of Alaska to review the testing and security procedures used in Alaska and make recommendations for improvements. The division has begun, and will continue to implement the findings and recommendations provided by the University of Alaska to ensure our ballot tabulation system is secure and that security risks are mitigated.

The implementation of touch screen voting in each precinct in the state has had a significant impact on the cost to conduct state and federal elections. The State of Alaska will continue to utilize HAVA funds to help pay the additional costs associated with touch screen voting.

Maintenance

To accommodate and house the touch screen voting units, the state acquired additional storage space. Heated and accessible storage space was needed for the elections offices as well as some of the communities that have multiple units stored at their locations. In some cases, the division relocated regional offices to ensure access to the new voting equipment.

The division has developed procedures for the shipping and storage of the touch screen voting units to the polling locations. Election workers in these rural locations are responsible for setting up and operating the units; training and familiarity is very important. The touch screen voting units are shipped by small bush plane and then may be transported to the polling place by four-wheeler, snow machine, dog sled or by foot on dirt paths to the polling locations.

In 2006, the division created procedures to contract with rural election workers to store the touch screen voting units in the community between the primary and general elections in order to avoid significant damage and costs associated with the transport of the voting units. The contract stipulated that the election worker would provide heated storage and perform a functionality review to verify the equipment was operable. In return, the State of Alaska agreed to pay the election worker a storage fee of $75 after the election, provided that the election worker complies with the terms of the agreement. The Division of Elections found that storing the equipment in the communities between the primary and general election was not a good solution and now has the equipment returned to division offices after each election so that the equipment can be properly tested.

Based on the 2006 and 2008 election cycle, the division found that the cost to ship the touch screen voting units one way to rural locations was approximately $55 per unit and now with current shipping rates, the cost will be approximately $66 per unit. The division ships, and receives these units back, from approximately 226 precincts. With the increased shipping costs, the division spends over $27,000 per election on shipping costs for the touch screen voting equipment.

Due to transportation issues, limited space and lack of resources available in the division's Nome office, the division developed a program to utilize the Matanuska-Susitna Borough satellite office for storage, maintenance and shipping of the touch screen units used in the 97 polling places assigned to the Nome region.

The division has purchased hardware warranty and maintenance agreement for each piece of voting equipment and has implemented an inventory and equipment maintenance program to ensure that all voting equipment is maintained and repaired in a timely manner. In addition, the division will need to develop a program and procedures for upgrades to the voting system based on Election Assistance Commission (EAC) certification. In preparation for each election cycle, staff in the regional offices and the satellite and absentee offices is tasked with conducting routine maintenance inspections, functionality testing and identifying potential problems with the units before breakdowns occur. The inventory system will increase user accountability and allow for better equipment tracking.

1.B Section 302, Provisional Voting and Voting Information Requirements

The state currently has a provisional voting process established, known as "Questioned Voting."

State law requires that any voter who votes at a polling location where his or her name does not appear on the precinct register, or if the voter does not have identification and is not personally known by the election official, to vote a questioned ballot.

The division established a toll-free access system to provide voter information. This system allows the voter to determine if his or her questioned ballot was counted and, if not counted, why the ballot or a portion of the ballot did not count.

The division has the following toll-free access systems:

a. The division currently uses an interactive toll-free telephone system that allows voters to determine their assigned polling place based on their current voter registration record. Additionally, voters can determine their party affiliation for determining ballot type eligibility during the primary election. At this time, the division has not expanded the current polling place locator system to provide more voter information. The division will continue to look at improving the information this system provides to voters when developing a new voter registration system.

b. The division established a toll-free telephone number for voters to call to determine whether their questioned ballot was counted. When a voter casts a questioned ballot, the election official provides them with written instructions on how to access the system to determine whether their ballot was counted, partially counted, or rejected.

c. In 2008, the division established toll-free telephone numbers for each division office to provide better access to voters. In addition, a toll-free telephone number was established to provide language assistance to limited English proficient Yup'ik voters.

In addition, the division has established, and will continue to improve upon, a system for voters to check the status of their absentee ballot application, including information as to when their ballot was mailed or faxed and when their voted ballot was received, by using an absentee ballot locator portal on the division's website. The division will implement modifications to the website portal so that it meets the free access requirements outlined in the MOVE Act.

In accordance with Alaska Statute, the division sends a letter to each absentee and questioned voter whose vote was not counted or was only partially counted. The division will continue this practice in addition to the systems outlined above.

Voting Information

The Division of Election, under current State law, is required to mail an *OEP* to each registered voter's household prior to the general election. In addition, the division distributes to each registered voter's household a *Primary Election Ballot Measures Pamphlet (BMP)* if a ballot measure appears on the primary ballot.

State law requires full public notice of an election (AS 15.15.070). This public notice is achieved through newspaper advertisements and posting notices in communities that do not have newspapers of general circulation. Advertisements include information regarding the date and time of the election, the offices up for election or retention, absentee voting, any questions or propositions that appear on the ballot and information on polling place changes. Other methods of informing voters include radio advertisements in English and languages covered under the Voting Rights Act, audio translation of voter registration, absentee voting and special needs voting processes, media releases and conferences, public service announcements, direct mailings, and information posted on the Division of Elections website. In addition, there are sample ballots, posters, informational flyers and instructions posted in polling locations as well as at all elections offices.

The division modified registration, questioned and absentee voting forms as well as other election materials to meet HAVA requirements. In 2003, the division submitted the forms to the U.S. Department of Justice (DOJ) Civil Rights Division and received preclearance. Modification to the division's voter registration and absentee ballot applications were also necessary due to the requirements of the Military Spouses Residency Relief Act and the MOVE Act. The division will continue to make modifications to election materials based on "best practices" produced by the EAC and changes in state or federal statutes.

1.C Section 303, Computerized Statewide Voter Registration List Requirements and Requirements for Voters Who Register By Mail

Alaska has had a statewide voter registration and election management system (VREMS) in use since 1985; however, it is not a fully interactive system. VREMS is an antiquated system, maintained in the Natural programming language and is on a mainframe. As technology has advanced, it has become difficult for the division to find programmers knowledgeable in Natural programming.

In 2005, the division prepared and released a request for proposal for vendors to develop and implement a new statewide voter registration system. Since that time, the division has worked with a vendor on the development of a new registration system that will meet updated technology requirements and allow for better management of the state's voter registration and election processes. Due to the unique system features required in Alaska, the project to replace the voter registration system was not successful. Although the system was not implemented, the division remains committed to upgrading the voter registration system and will continue to assign resources to the planning and development of a new voter registration and election management system that meets state and federal requirements.

Until a new system is implemented, the division will review and determine if modifications to the existing system are necessary to comply with new federal requirements, such as the MOVE Act.

The State of Alaska is in full compliance with the requirement to verify voter registration information as required in Section 303(a) (5). A Memorandum of Agreement dated August 2003 between the Division of Elections and the DMV allows the Division of Elections to match identifying information provided by a first-time, by mail registrant on his or her registration application to information maintained in the DMV database. The Alaska DMV has completed the process of verifying the last four digits of the social security number information with the American Association of Motor Vehicle Administrators (AAMVA). The verification program is currently used by the division staff processing voter registration applications received by mail or by fax to verify the identity of voters.

For those first time registrants, who registered by mail or fax and whose identity could not be verified, the division implemented the use of an acknowledgement card to send to these voters, instead of a voter identification card. The acknowledgement card notifies voters that their registration application was processed and that when voting they will be required to provide identification.

1.D Other Activities to Improve Election Administration

Office Expansion

Using HAVA funds appropriated in 2002, the Division of Elections created three new elections offices across the State. Opened in the spring of 2006, the offices provide additional ways for voters to access the division, and allow for more staff to improve on the administration of elections. The three new offices are the Absentee and Petition office in Anchorage and two satellite offices, one in Kenai and one in the Matanuska-Susitna Borough.

In 2007, it was determined that the Kenai satellite office had not been utilized by the public as had been initially projected, and was closed in October 2007. The Matanuska-Susitna satellite office and the Absentee and Petition office utilize HAVA funds for their operation expenses. The staff and resources in the offices are utilized entirely for the administration and preparation of state and federal elections and for improving the election process. These offices have worked on many projects to improve the election process such as improved access for military and overseas voters and implementation of new requirements, voter education through an improved website, development of additional on-line tools for voter registration and absentee voting, testing and repairing voting equipment and assisting with polling place accessibility surveys. Between June 2007 and January 2008, the division performed monthly tracking and submitted to the EAC quarterly reports justifying the use of HAVA monies to fund the offices.

The establishment and ongoing operation of the Absentee and Petition office has enabled the division to continue to provide improved services to our military, overseas and absentee voters on a regular basis. The Matanuska-Susitna satellite office has enabled the division to improve the administration of elections by improved access to voter registration and election information to voters residing in a fast-growing area of the state. These offices will continue to work on specific projects to improve the administration of elections as well as provide better access of information to voters.

The Absentee and Petition office will continue to make contact with all military and overseas voters prior to federal elections. This office will also implement changes mandated by the MOVE Act. Although Alaska currently provides for electronic voting through fax, the application period is limited to 15 days prior to an election. With the passage of MOVE, Alaska has updated the absentee ballot application so that military and overseas citizens are not limited to the 15-day application period for a fax ballot. Alaska will need to make other statutory and procedural changes for compliance with the MOVE Act. In addition, the Absentee and Petition office will look to improve its processes for sending out absentee by mail ballots, including the use of automation equipment and possibly on-line tools for tracking ballots.

Accessibility

The division continues to identify and make improvements to accessibility for disabled voters through the use of several staff positions assigned to address accessibility issues. The division conducts outreach, demonstrations and solicits feedback on the voting process from disability organizations. The division ensures the accessibility of polling places across the state through the use of accessibility surveys that help determine what temporary solutions, if any, are needed to ensure polling places are accessible to disabled voters. The division includes disability awareness information in election worker training materials. With the assistance of the state's webmaster, the office of Disability Support Services for the University of Alaska, Anchorage and the Alaska Center for the Blind and Visually Impaired, the division is creating a screen-reader accessible version of the voter registration and absentee ballot applications. Once finalized, these applications will be available for distribution and placement on the division's website.

Prior to the 2008 election cycle, division staff worked with other election officials to survey newly established polling places as well as older locations to find areas where accessibility equipment can enhance the polling location. With the help of the State ADA Coordinator, the division identified equipment needs for each location, and made arrangements for the purchase and installation of accessibility equipment. During the 2008 election cycle, the division participated in the I Vote, I Count coalition to empower the disability community to vote. The division will continue to utilize staff resources to address accessibility and make improvements to polling places, including educating voters and disability organizations about accessibility for voting.

Section 2. Alaska's Distribution of Requirements Payment

How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of --

(A) The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) The methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

(A) The State of Alaska, Division of Elections conducts all federal elections. Therefore, there will be no distribution of requirement payments to local governments or entities.

The division serves Alaskans through four regional offices located in Juneau, Anchorage, Fairbanks, and Nome in addition to the Matanuska-Susitna satellite office in Wasilla and the Absentee & Petition office in Anchorage. The Division of Elections manages funds necessary for improving the elections' system, voter registration, voter access and education, outreach, and to ensure the regional needs are met and that the state remains in compliance with the Act.

The criteria will be measured in terms of achieving compliance while maximizing improvements to all aspects of the election process, as well as the responsible use of available funds. The division will use standard financial reporting and accounting practices to track expenditure of authorized funds.

(B) The division monitors the funds in accordance with the statewide performance measures adopted under section 254 (a) (8). The division centrally manages the distribution of all funds appropriated to the Election Fund, including but not limited to the requirements payments. Alaska incorporates priorities and timelines into the budgeting process to ensure it implements mandates and improvements in a wise and timely manner.

The Division of Legislative Audit annually audits the State of Alaska. The Statewide Single Audit is conducted in accordance with auditing standards generally accepted in the United States of America;

Government Auditing Standards, issued by the Comptroller General of the United States; and compliance with the Federal Single Audit Act Amendments of 1996 and the related Circular A-133 issued by the U.S. Office of Management and Budget.

The State of Alaska Division of Elections monitors the duties and hours of staff and HAVA funded offices by requiring a bi-monthly justification to be completed and used to exhibit accountability. Additionally, the Division of Elections conducts regular meetings to ensure the focus and scope of responsibilities is in alignment with improving federal elections within the State of Alaska.

Section 3. Voter Education, Election Official Education and Training, and Poll Worker Training

How the State of Alaska will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

Voter Education and Outreach

Voter education and outreach efforts in Alaska vary depending on the type of election and level of changes affecting voters. The Director's office coordinates all outreach efforts for statewide and federal elections. These outreach efforts include numerous public notices, newspaper and radio advertising, public service announcements, direct mail, other publications (such as brochures and pamphlets), speeches and presentations, and continuous direct contact with the statewide media. As an ongoing effort to provide voter education and outreach to Alaska's Native language groups, the division will continue to ensure the language assistance plan provides effective assistance through tribal outreach, recruitment and training of bilingual workers, audio translation of information, outreach, publicity and ongoing assessment.

When a ballot measure appears during a primary election, the division distributes a *BMP* to every registered voter household in Alaska. The *BMP* contains detailed information regarding the ballot measure(s) and general information regarding the election. Before every general election, each registered voter household in Alaska is mailed an *OEP*. The Division of Elections produces a specific guide for each of the four election regions. The *OEP* contains information about candidates appearing on the ballot (including photographs), information about the retention of judges (including photographs), information about ballot measures (including statements of support and opposition), sample ballots, polling place information, absentee and alternate voting information, voter assistance information, and election district maps. The election pamphlets are translated onto an audio tape which is made available at the State Library and the regional offices so the election information contained in the books is in an accessible format for disabled voters. The division also prepares and distributes a Filipino (Tagalog) version of every pamphlet to voter's registered in precincts on Kodiak Island Borough, in compliance with§§ 4(f)(4) and 203 of the VRA. In addition, the division is

working on a process to provide an audio translation of candidate statements and ballot measure information in Yup'ik.

In addition to printed materials, the division's website provides a vast array of information on voter registration, election issues, election results, historical information and electronic versions of all election pamphlets. In 2005, the division launched a new, streamlined website to increase public access and usability. New additions to the website include information on the touch screen voting unit, expanded explanations of voting methods, and increased information on ballot measures and the initiative process. In response to The Pew Center on the States study on state elections web sites, the division is updating and expanding our website. Website improvements are being made to add more on-line tools such as an interactive on-line voter registration and absentee ballot application, on-line voter registration lookup as well as additional polling place accessibility and language assistance information. The division will continue to monitor the usability and effectiveness of the information posted to the web and make improvements as necessary.

The division provides an interactive toll-free telephone system for voters to obtain their polling place location, and determine their party affiliation. An additional, separate toll-free system allows voters to determine whether their questioned ballot was counted and toll-free telephone numbers were established in each division office, including a toll-free number for Yup'ik language assistance.

As new voting systems and election laws are implemented, Alaska continues its voter outreach efforts. With the implementation of the new touch screen voting units in 2006, demonstrations were held in locations around the state to educate voters on the accessible features and security measures of the units. The division targeted the demonstrations specifically at assisting the disability community. Local disability agencies were contacted and invited to attend the demonstrations. Furthermore, the division prepared supplemental brochures for election officials which review proper etiquette for voters with special needs. The division will continue to prepare and conduct outreach demonstrations during future elections.

Before implementing a new, complex primary election system in 2002, Alaska instituted a well-funded, comprehensive outreach plan aimed at educating voters specifically about primary ballot choices. Division staff continues to provide voters with information on what ballots are available during each primary election, and who is eligible to vote each ballot.

The division strives to enhance its educational efforts through positive relationships with the media. The division developed a Media Plan, which details the division's outreach programs. The division continues to participate in radio and television interviews and responds to questions from the print media regularly, beginning several months before a statewide election.

The division recognizes the need to enhance its outreach and communications program to continue educating the voting public. The division currently offers a variety of methods to communicate with and educate the public, including:

- Launching a redesigned website for increased accessibility and usability.
- Providing toll-free access systems for voters to obtain voter registration and election information as well as determine whether their ballot was counted and to obtain Yup'ik language assistance.
- Publishing the division's election security and testing procedures.
- Coordinating public outreach/training with organizations assisting the disability community on use of the new touch screen voting units.
- Developing the Youth Vote Ambassador Program, where students have the opportunity to serve as election poll workers on Election Day.
- Creating two new division offices in the Matanuska-Susitna Borough and Anchorage to better serve voters.
- Improving Election Day signage, including signs that help voters identify the accessible features available at the polling place.
- Increasing public outreach through advertisements, public service announcements and media releases and taking steps to provide copies of all outreach in required minority languages.
- Adding audio translation of information in minority languages to the division's website.

In addition to the efforts described above, the division continues to strive to:

- Implement an interactive statewide voter registration database.

- Coordinate voter education and awareness efforts with Alaska Native organizations and community groups, including groups providing services to individuals with disabilities.
- Target voter education efforts to address the needs of the disability community and individuals with alternative language needs.
- Provide awareness training for all Division employees and election officials to recognize the special needs of voters with disabilities.

Election Official Training

Election officials are essential to achieve an efficient, secure, and reliable election process. In Alaska, the four regional election supervisors are responsible for providing a comprehensive training program to election officials in their respective regions prior to statewide and federal elections. Training needs are determined by the election supervisors and are community-based and targeted towards the following election officials:

- Precinct election boards
- Absentee voting officials
- Accu-Vote coordinators
- Accu-Vote field workers
- Absentee ballot review boards
- Questioned ballot review boards
- Regional Accu-Vote boards
- State Review Board

With the implementation of touch screen voting, Alaska recognized the need to re-shape its precinct election boards to improve the election process. Prior to 2006, Alaska used a precinct election board consisting of an election chairperson and election judges. The chairperson is responsible for supervising the overall election activities in the polling place. In 2006, an additional worker was added to each precinct election board as the co-chairperson. The co-chairperson was the election worker responsible for the touch screen voting unit in that polling place.

Improving and implementing statewide training resources and procedures is an ongoing process improved upon each election year. Working as a team, the HAVA section and the four election supervisors develop uniform training materials that are coordinated with election official handbooks and distributed with Election Day ballots and supplies. All training materials and handbooks are created for the type of ballot counting utilized at each precinct: hand count or optical scan. In addition, every precinct receives training on and instructional materials for the touch screen voting unit. Among the materials developed for use with the touch screen units are: the *Touch Screen Voting Unit Handbook*, the *Touch Screen Voting Unit Brochure*, *Touch Screen Voting Procedures Poster* and the *Touch Screen Opening and Closing Instructions*. In 2008, the division enhanced training materials with the creation of specific guidelines for providing language and other assistance to voters and continues to make improvements to training materials covering these subjects.

The regional offices conduct hands-on training sessions in two modules: election procedures, including language and voter assistance, and equipment procedures. The equipment procedures module provided an opportunity for election workers to experience the operation of the touch screen voting equipment and practice setting it up, voting, printing election results and taking the unit down. This module added an additional 2 to 3 hours to each training session.

Alaska faces many unique challenges when providing election official training, especially for precinct election boards in the field on Election Day. Due to the state's vast size and the large number of precincts not connected by a road system, our training programs are categorized into two groups: urban and rural.

Prior to 2004, in order to train precinct polling place officials in rural Alaska, Election Supervisors and their assistants spent several months prior to an election traveling in small bush planes, ferries and boats to Alaskan communities to conduct training. Due to limited flights scheduled to these remote communities, chartered flights were often required and the election training official could train only one community per day. With 438 precincts throughout the state, the challenge to provide training is formidable. Because traveling for training was so time intensive, election workers were trained so far in advance of the election that training materials were not always finalized. In addition, election workers may not have been appointed or agreed to serve in all precincts, and those who did receive training may not retain the procedures at the time of the election.

The division now conducts hub training for the training of its election workers in rural areas of Alaska. The purpose of this training method is for the division to more effectively train election workers closer to Election Day. When utilizing hub training, the division sends the election workers from each selected rural precinct to one larger, more "central" community where all the workers are trained simultaneously. For those workers unable to attend the training, the chairperson is asked to provide the workers with training. Hub training has enabled the division to train rural election workers closer to Election Day, and has provided an improvement to the conduct of elections in rural areas of Alaska.

Urban-based training is generally conducted closer to the Election Day. However, travel is required to some urban communities and these officials may be trained 30 to 45 days before the election. Election boards in Anchorage, Fairbanks, Juneau and Nome are trained one to two weeks prior to the election. In urban areas, training sessions for precinct election boards are usually conducted with multiple election boards present. In some areas, training is presented using a PowerPoint presentation.

With the many challenges the division faces to properly train election workers, handbooks for the various types of officials are critical to their ability to conduct their duties correctly. The division continues to develop the handbooks in such a way that if an election official has not received in person training, the official will still be able to clearly understand and implement proper procedures on Election Day by receiving telephone instructions and looking at the handbooks. The division will also develop a training video that will be available to those workers unable to attend training.

In an effort to ensure all election officials have the training and resources available to conduct successful elections, the division started to implement a systematic approach to training that includes:

- Development of a new regional and community-needs comprehensive statewide training plan. This includes improved training methods and the hiring of regional training coordinators, bringing the rural-based training closer to Election Day.
- Improvement of training and Election Day materials and handbooks that are more flexible, accommodating updates and changes. New materials include information on the touch screen voting units and awareness training materials for assisting voters with disabilities.
- Continued research for implementation of better training options, such as video creation.
- Recognizing the differences between urban and rural training and coordinating training needs, methods, and approaches with various Alaska Native organizations to obtain input and guidance on delivering training to individuals with diverse cultural backgrounds.
- Incorporating recommendations provided by the EAC for successful practices for poll worker recruitment and training.

Section 4. Voting System Guidelines and Processes

How the State of Alaska will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

In 2005, the Alaska Legislature enacted Alaska Statute 15.20.910, which provides for standards for voting machines and vote tally systems. Under this law, the division director may approve voting systems or vote tally systems depending on relevant factors, including whether the Federal Election Commission (FEC) has certified the system to be in compliance with the voting system standards approved by the FEC. According to state law, the voting system or vote tally system must be equipped with a VVPAT.

The division meets all of the voting system requirements required under HAVA as outlined in the attached matrix. The state's touch screen voting units are equipped with a VVPAT that can be used during any recount or election contest. The VVPAT also allows for compliance with Alaska Statute 15.15.430(a)(3) which now requires that, "unless a ballot for an election district contains nothing but uncontested offices, a hand count of ballots from one randomly selected precinct in each election district that accounts for at least five percent of the ballots cast in that district." According to Alaska Statute, if there is a difference of over one percent between the results of the hand count and the results certified by the election board, the entire house district must be recounted. The hand count procedure was first used in the 2006 primary election and has been used in each subsequent election. To date, the hand count results have not differed significantly from the results certified by the election board, and a district-wide recount has not been necessary for any race.

To maintain compliance with the Act and Alaska Statute, Alaska will continue providing one touch screen voting unit in every polling location during elections where a federal race appears on the ballot.

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
Section 301. VOTING SYSTEM STANDARDS		
REQUIREMENTS - Each voting system used in an election for federal office shall meet the following requirements: (1) IN GENERAL (A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical-scanning voting system, or direct recording electronic system) shall--		
(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before ballot is cast and counted;	Meets requirements.	No action necessary.
(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and	Meets requirements.	No action necessary.

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and	Meets requirements.	No action necessary.
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.	Meets requirements.	No action necessary.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.	Meets requirements.	No action necessary.
(2) AUDIT CAPACITY -		
(A) IN GENERAL - The voting system shall produce a record with an audit capacity for such system.	Meets requirements.	No action necessary.
(B) MANUAL AUDIT CAPACITY -		

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
(iii) if the voter selects votes for more than one candidate for a single office - (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.	Meets requirements.	No action necessary.
(B) A State or jurisdiction that uses a paper ballot voting system, a punch-card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots) may meet the requirements of subparagraph (A)(iii) by--		

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
voting system equipped for individuals with disabilities at each polling place; and		
(C) if purchased with funds made available under Title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).	Not applicable.	
(4) ALTERNATIVE LANGUAGE ACCESSIBILITY - The voting system shall provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).	Meets requirements.	No action necessary.
(5) ERROR RATES - The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.	Meets requirements.	No action necessary.

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.	Meets requirements.	No action necessary.
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.	Meets requirements.	No action necessary.
(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.	Meets requirements.	No action necessary.
(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES – The voting system shall--		
(A) be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters;	Meets requirements.	No action necessary.
(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other	Meets requirements.	No action necessary.

Requirements	Status of Alaska's Current Voting Systems (Meets, partially meets or does not meet)	Planned Action
(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE - Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting systems used in the State.	Meets requirements.	No action necessary.

Section 5. Alaska's HAVA Election Fund

How the State has established an election fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

In accordance with state law and in coordination with the Alaska Department of Administration, Division of Finance and the Department of Revenue, Division of Treasury, the Division of Elections established an election fund within the state's treasury whose appropriations are accounted for separately within the state accounting system. The General Fund and Other Non-Segregated Investments (GeFONSI) fund contain both federal and general funds. Accounting structures are in place to ensure that federal fund receipts and expenditures are tracked separately from the general funds portion relating to the 5 percent state match required under HAVA. The Election Fund consists of the following amounts:

a. Amounts appropriated or otherwise made available by the state for carrying out the activities for which the requirements payment is made to the State under this part.
b. The requirements payment made to the state under this part.
c. Such other amounts as may be appropriated under law.
d. Interest earned on deposits of the fund.

The Governor's Finance Officer and the Division of Elections' Administrative Supervisor works with the Department of Administration, Division of Finance to ensure compliance with all mandated fiscal controls and policies.

Section 6. Alaska's Budget for Implementing HAVA

The State's proposed budget for activities under this part (HAVA Section 254 (a)(1)), based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on-

(A) the costs of the activities required to be carried out to meet the requirements of Title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

Title I, Section 101 and Title II, Section 251 Funds

Table 6.1 represents the amount of funds appropriated to the State of Alaska under Title I, Section 101 and Title II, Section 251 in FY03, FY04. This table also represents additional funds available for appropriation to the State of Alaska for FY08, FY09 and FY10.

Table 6.1 HAVA Appropriations

Federal Fiscal Year	Total Federal Funds Available for Appropriation	Alaska's Payment	State Match
(§ 101) 2002 Title I Section 101	$650,000.0	$5,000.0	None
(§ 252, 257) 2003 Title II Section 251	$830,000.0	$4,150.0	$298.6 *
(§ 252, 257) 2004 Title II Section 251	$1,500,000.0 ($ rounded up)	$7,446.8	$469.2 *
(§ 252, 257) 2008 Title II Section 251	$115,000,000	$575.0	$30.2
(§ 252, 257) 2009 Title II Section 251	$100,000,000	$500.0	$26.3
(§ 252, 257) 2010 Title II Section 251	$70,000,000	$350.0	$18.4
Total Available Funds	$3,580,000.0	$18,021,803	$768.0

*represents overpayment of 5% state match

Accessibility Grants:

Title II also authorizes the Secretary of Health and Human Services to distribute payments to states to assure access for individuals with disabilities. Alaska has applied for and received $500,000 in accessibility grants for FY03, FY04, FY05 and FY06 and FY07. All accessibility grant funds will be expended in accordance with the requirements of Title II Section 261.

Reimbursement Payment:

The Consolidated Appropriations Resolution, Public Law 108-7, signed February 20, 2003, provided $15,000,000 in federal appropriated funds to the General Services Administration (GSA), for Election Reform Reimbursements. This one-time reimbursement was for states that purchased electronic voting equipment to replace punch card and lever voting machines prior to 2000 making them ineligible to receive funds under Title I Section 102 of HAVA. Alaska qualified for and received a one-time reimbursement of $1.1 million deposited back into the state's general fund for electronic voting machines purchased in 1998 to replace all punch card voting equipment.

Alaska's budget in Table 6.2 represents the HAVA funds authorized for appropriation by the Alaska Legislature and is based on the levels of funding as shown in Table 6.1. The budget represents the cost of implementing requirements of Title III and "other" activities as specified in Title I of HAVA, including improvements to election administration. Costs associated with the maintenance and operations of implementing these requirements are also reflected in the budget. It is important to note that the maintenance and operation costs associated with these requirements will have an impact on the state's budget in future years when federal funding is no longer available. Any funds remaining, after the implementation of requirements, will be used for the overall improvement of election administration in Alaska.

Table 6.2

Expenditures Description	Total Authorized Appropriations
AR 05-2202 **HAVA Title I, Section 101** AccuVote System Payment	$387,789
AR 08-2218 **HAVA Title I, Section 101** Meeting Requirements of Title III • Meeting Requirements • Accessible Voting Equipment • Voter Registration • Voter Education • Management State Plan • Language Accessibility • Free Access • Polling Place Accessibility Improvements • Office Expansion	$2,446,085
AR 08-2219 **HAVA Title I, Section 101** Improve Election Administration • Office Expansion	$2,166,126
AR 08-2217 **HAVA Title II, Section 251** Requirements Payment • Voter Registration • Voter Education • Accessibility for Voters • Language Accessibility • List Maintenance • DMV/SSN Requirements • Polling Place Improvements • Election Administration	$4,150,000
AR 09-2208 **HAVA Title II, Section 251** Voter Registration System Replacement	$5,450,000
AR 10-2224 **HAVA Title II, Section 251** Statewide Accessible Voting Equipment	$523,000
AR 13-2241 **HAVA Title II, Section 251** Elections Reform under HAVA	$1,473,503
State Match Funds	$298,600 $469,200
Accrued Interest	$2,348,217
Total Available Appropriations	$19,712,820

Additional Notes for Title III requirements:

(1) *Voting System* - Alaska purchased optical scan units in 1998 to replace its punch card voting system. Alaska has 438 voting precincts. 305 of the precincts are equipped with optical scan and 133 are hand-count precincts. HAVA funds will continue to be used to implement a HAVA-compliant DRE voting system and to purchase additional optical scan units for use when converting hand-count precincts to optical scan precincts. HAVA funds will be used for installation, training and maintenance costs.

The $1.1 million reimbursement Alaska received under the Consolidated Appropriations Resolution, PL108-7, was deposited into the state's general fund and is not included in the state's budget for implementing requirements of HAVA.

(2) *Provisional Voting* - Provisional voting, known as *Questioned* voting in Alaska, has been available to voters in Alaska since the early 1980s. There were minimal changes needed to meet the provisional voting requirements of HAVA.

(3) *Computerized Statewide Voter Registration System* - Alaska is working on replacing the antiquated VREMS with a new pc-based database system.

Alaska has certified to the United States Election Assistance Commission that it has met all requirements of HAVA Title III and intends to use HAVA Title II requirements payments to carry out other activities to improve the administration of elections for federal office.

Section 7. Maintenance of Effort

How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

In accordance with HAVA section 254 (a)(7), Alaska will maintain the same level of expenditures on similar activities funded by the requirements payment that was spent in the fiscal year ending prior to November 2000. Alaska's expenditures for these activities totaled $537,500.

The Division of Elections administers all state and federal elections. These elections occur in even calendar years. The division receives an increment to the annual operating budget in an odd fiscal year beginning July 1 in order to conduct primary and general elections. This increment provides for the expenditures associated with election officials, polling place recruitment, temporary employees, ballot printing and distribution, election supplies, Election Day support, and other costs associated with conducting an election.

Other expenditures in an even-numbered calendar year are spent in preparation of election activities that occur after July 1. These activities include election official training, voter education, advertising, production of election pamphlets, information technology support, and the purchasing of equipment and supplies. The maintenance of effort for the State's FY00 budget represents a portion of the total operating budget that is appropriated to carry out election administrative activities in an even fiscal year.

Section 8. HAVA Performance Goals and Measures

How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

The Division of Elections will establish performance goals in conjunction with the Alaska State Legislature during the deliberation of the annual operating budget. The "Missions and Measures" process undertaken by the Legislature in concurrence with the consideration of the annual operating budget has been established as a respected means for developing performance measures that accurately quantify program success.

The Director of the Division of Elections, as the "Chief State Election Official" under section 253(e), is responsible for coordination of the state's responsibilities under this Act. Therefore, the director is ultimately responsible for ensuring that the division meets each performance goal. In addition, the Legislature will be monitoring the division's efforts through the annual preparation of the state's operating budget.

Plan Elements	Official	Time frame
Voting Systems §301	Director of Elections	Completed
Provisional Voting §302	Director of Elections	Completed
Voter Registration §303(a) §303(b)	Director of Elections	§303(a) Implemented §303(b) Implemented
Other Activities §101 (b)(1), §251 (b)(2)		
Technical Infrastructure	Admin. Asst.	Continuous

	Supervisor	
Free-Access System	Admin Asst. Supervisor HAVA Coordinator	Implemented
Education and Training §254(a)(3)	Regional Supervisors Election Special Assistant HAVA Section	Continuous
Budget and Fiscal Controls §254(a)(2) §254(a)(6) §254(a)(7) §254(a)(10)	Admin. Asst. Supervisor Admin. Asst. Supervisor Director	Continuous State monitors HAVA account each month
Complaint Procedures §254(a)(9) §402	Director of Elections	Completed

Section 9. State-based Administrative Complaint Procedure

A description of the uniform, nondiscriminatory State-based administrative complaint procedure in effect under section 402.

The State of Alaska, Division of Elections has developed administrative regulations to establish the required complaint procedure. These regulations constitute a new article 6 AAC 25.400 – 490 that are now a part of the division's administrative regulations set out at Title 6, Chapter 25 of the Alaska Administrative Code.

These regulations satisfy the requirements of HAVA Section 402 by providing a uniform and nondiscriminatory complaint procedure. Under these procedures, any person who believes there has been a violation of HAVA Title III may file a complaint. The complaint must in writing, sworn, and notarized. At the complainant's request, there will be a hearing on the record. If the state finds a violation, it shall provide an appropriate remedy. If there is no violation, the State will dismiss the complaint and publish the results. The division will make a final determination on a complaint within 90 days. If the division cannot meet this deadline, the complaint will proceed under alternative dispute resolution procedures.

The division adopted these administrative regulations on August 29, 2003.

Additionally, the division developed an Administrative Complaint form that can be found at any Division of Elections office and on the division's web site.

Section 10. Effect of Title I Payments

If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Under Section 103, Guaranteed Minimum Payment, Alaska received the minimum payment of $5 million and established an Election Fund.

Current activities carried out under the plan have improved the administration of elections for federal office and the election process as a whole.

Upon receipt of Title I monies, the Division of Elections is using the funds for one or more of the following:

- **Developing the State plan for requirements payments to be submitted under Part 1 of Subtitle D of Title II.**

  The State Plan is created and updated by the Election Systems Manager and costs for plan maintenance are tracked by that position.

- **Educating voters concerning voting procedures, voting rights, and voting technology.**

  Implementation and development of the division's website, the maintenance of the free-access systems, and preparation of training materials used by voters have been completed to comply with the Act. In addition, the division provides touch screen voting unit demonstrations to the public and specifically targets members and groups of the disabled community.

- **Training election officials, poll workers, and election volunteers.**

  The division has improved training systems with the goal of training more election workers closer to an election. The challenge continues to be training citizens with diverse physical, social and cultural differences across a vast geographical area in a short time period. In order to bring election worker training closer to Election Day, the division has created a new training assistant position for each region. In some regions of the state, the division trained election workers one month before the election.

- **Improving, acquiring, leasing, modifying and/or replacing voting systems and technology and methods for casting and counting votes.**

  The division is continuing the process of implementing a new statewide voter database to replace the antiquated VREMS system.

  In addition, the division has developed methods to improve the security of the touch screen voting units and has purchased transport cases to protect the units during shipment.

- **Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Indigenous Native citizens, and to individuals with limited proficiency in the English language.**

  The division has developed a polling place survey and worked in coordination with the State ADA coordinator on the assessment of polling places within Alaska. Prior to implementing a new polling place, the division conducts an accessibility survey to evaluate and determine if the facility is accessible or what temporary solutions are needed to make it accessible. Accessibility improvements to polling places will be made using the Health and Human Services accessibility grant funds.

  In addition, the division is working on improvements to the division's language accessibility plan for limited English proficient Alaska Native voters. The division's plan provides for tribal outreach, recruitment and training of bilingual workers, translated information,

outreach, publicity and ongoing assessment. The division has hired a full-time Yup'ik Language Assistance Program Coordinator to provide for improved language assistance to Yup'ik voters. In addition, the division formulated a Yup'ik translation panel to develop a Yup'ik glossary of election terms in an audio and written format. The glossary provides an effective tool for bilingual workers to use when providing language assistance. Audio translations of the voter registration, absentee voting and special needs voting processes were created and distributed to Yup'ik tribal offices and will be posted to the division's website. The division has also created specific training materials for bilingual workers that outline the procedures for providing effective language assistance during the electoral process. In 2010, an audio translation of the ballot in Yup'ik will be added to the division's touch screen voting equipment in the Bethel Census Area.

- **Establishing free-access telephone systems for voters to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.**

The division currently uses an interactive toll-free telephone system for voters to verify their polling location and party affiliation. Additionally, voters may contact another toll-free number to determine the count of their ballot or file an administrative complaint. In 2008, the division implemented toll-free telephone numbers for offices to provide improved access to information for voters.

In addition to the toll-free telephone numbers established by the division, improvements were made to the division's website to allow voters to check their registration status, complete an interactive voter registration and absentee ballot application, and to allow absentee voters to check the status of their absentee ballot by using the division's absentee ballot locator. Using this web-based tool, voters can log on with an identifier such as a social security number and see if their application has been processed, a ballot has been sent, and if a voted ballot was received back.

Section 11. Alaska's HAVA State Plan Management

How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The Director of Elections, as the "Chief State Election Official" under Section 253(e), is responsible for coordination of the state's responsibilities under this Act. The division director, appointed by the Lieutenant Governor, oversees the day-to-day operations of the division. These responsibilities include tracking resource requirements, managing HAVA funds, and ensuring that additional implementation projects are in compliance and on schedule.

The division employs an Election Systems Manager to oversee the implementation of HAVA-related projects and activities. Under the purview of the director, the Election Systems Manager strives to continually improve polling place accessibility and language assistance programs, increase voter outreach efforts, and manage the implementation and use of all voting equipment and the voter registration database. In addition, the Election Systems Manager is responsible for updating the HAVA State Plan.

The updated HAVA State Plan is an essential component in the division's continuing efforts to improve accessibility and accountability in the election process. Alaska has already implemented many aspects of HAVA, and the division sees the ongoing management of the State Plan as a continuation of the state's commitment to election reform. Each element is being managed closely to achieve compliance, maximize improvements to all aspects of the election process, and continue responsible use of available funds.

The State understands and agrees to comply with HAVA requirements related to ongoing management of the State Plan. More specifically, the State agrees that it may not make any material change in the administration of the State Plan unless the change:

(A) is developed and published in the Federal Register in accordance with HAVA Section 255 in the same manner as the State Plan;

(B) is subject to public notice and comment in accordance with HAVA Section 256 in the same manner as the State Plan; and

(C) takes effect only after the expiration of the 30-day period that begins on the date the change is published in the Federal Register.

Section 12. Changes to State Plan from Previous Fiscal Year

In the case of a State with a State Plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State Plan for the previous fiscal year and of how the State succeeded in carrying out the State Plan for such previous fiscal year.

The State of Alaska's 2010 HAVA Updated State Plan remains consistent, with steady progress towards the goals established in the initial 2003 and the updated 2005 and 2008 State Plans. The State of Alaska passed legislation to bring the state into compliance with HAVA requirements, developed new staff positions to manage HAVA, updated forms and training materials, and continues to design improved voter outreach programs.

Since the 2008 State Plan, the division continued to work on the development of a new voter registration system, made improvements to language assistance for Alaska Native voters, including the development and production of a Yup'ik glossary of election terms in written and audio format, has created a new and improved website based on recommendations included in The Pew Center on the States election website study, developed on-line tools for voters to check their registration status as well as to complete voter registration and absentee ballot applications, developed additional educational brochures for voters and election workers and modified the voter registration and absentee ballot applications for compliance with the Military Spouses Residency Relief Act and the MOVE Act.

Since the 2008 State Plan, the division implemented security measures for the touch screen voting equipment as outlined in the election security study conducted by the University of Alaska, Anchorage and has procured software to allow for the management of security keys on this equipment. In addition to the extra security measures adopted, the division has retrofitted the shipping containers for the units to reduce damage to the units during shipment. The division, utilizing the Health and Human Services grant funds, purchased privacy panels for the touch screen voting units to provide for improved privacy for voters utilizing the equipment. The division also worked with disability organizations and provided demonstrations across the state to educate voters about the touch screen voting unit.

Since the 2008 plan, the division has implemented more recommendations provided by the University of Alaska, Anchorage in the election security study, including password management, the use of tamper-evident seals on equipment, functionality and testing procedures, and physical security protocols.

Although the division's voter registration system replacement project was not successfully implemented, the division continues to work on the development of system requirements and will continue to commit resources to plan for and develop a new voter registration system.

The division has implemented the use of toll-free telephone numbers in divisional offices, including the establishment of a toll-free language assistance line for limited English proficient Yup'ik voters.

The division has begun reviewing the MOVE Act to determine what changes are needed to existing procedures to comply with the new requirements. The MOVE Act required a change to Alaska's absentee ballot application and we have made that change and submitted it to the U.S. Department of Justice for preclearance. Although Alaska already offers a method of electronic voting, Alaska statute limits the application period to 15 days prior to an election. In addition, changes will be needed to the free-access system as well as to the on-line absentee ballot application tool to comply with the new requirements. Alaska will be requesting a hardship exemption on the 45-day absentee ballot mailing requirement included in the MOVE Act. The state will also look at ways to improve the processing time for mailing ballots through the use of automation equipment.

Section 13. State Plan Development and Committee

A description of the committee that participated in the development of the State Plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The draft of Alaska's initial State Plan was created by the Division of Elections, with the legal guidance of the State's Attorney General's office, and input from the State Plan Committee. The division continues to seek consultation from the State Attorney General's office in our implementation of HAVA and input from the State Plan Committee on updates to the plan.

The Division of Elections updated the 2010 Alaska State Plan and distributed it to members of the State Plan Committee. Comments from the committee will be taken into account before the plan is finalized. Once the plan is finalized, it will be posted on the division's website and published for public comment for 30 days. Following the public comment period, the Division of Elections will make any necessary changes and submit to the EAC for posting in the Federal Register.

The State Plan Committee members continue to reflect a cross section of election stakeholders throughout the state, in accordance with Section 255 of the Act. The following Alaskans were appointed to the State Plan Committee in 2007:

Gail Fenumiai, Director of the Division of Elections, Chair of the Committee

Shelly Growden, Election System Manager, Division of Elections

Alyce Houston, Region I Election Supervisor, Juneau

Carol Thompson, Absentee & Petition Manager, Anchorage

Michelle Speegle, Region III Election Supervisor, Fairbanks

Edna Baker, Region IV Election Supervisor, Nome

Jim Beck, Executive Director, Access Alaska

Lynne Koral, First Vice-President, Alaska Independent Blind

Jason Burke, State of Alaska ADA Coordinator

Sarah Felix, Assistant Attorney General, State of Alaska

[FR Doc. 2010–17419 Filed 7–15–10; 8:45 am]
BILLING CODE 6820–KF–C

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0332; FRL–8833–9]

Methyl Parathion; Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of products containing methyl parathion, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a April 28, 2010 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel all these product registrations. These are the last products containing this pesticide registered for use in the United States. In the April 28, 2010 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received comments on the notice but none merited its further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective July 16, 2010.

FOR FURTHER INFORMATION CONTACT: Kelly Ballard, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8126; fax number: (703) 305–5290; e-mail address: *ballard.kelly@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 Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0332. 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 Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces the cancellations, as requested by registrants, of products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—METHYL PARATHION PRODUCT CANCELLATIONS

EPA Registration Number	Product Name
4787–33	Cheminova Methyl Parathion Technical
67760–43	Cheminova Methyl Parathion 4 EC
70506–193	PENNCAP-M Micro-encapsulated Insecticide

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 2.—REGISTRANTS OF CANCELLED PRODUCTS

EPA Company Number	Company Name and Address
4787	Cheminova A/S 1600 Wilson Boulevard, Suite 700 Arlington, VA 22209
67760	Cheminova, Inc. 1600 Wilson Boulevard, Suite 700 Arlington, VA 22209
70506	United Phosphorus 630 Freedom Business Center, Suite 402 King of Prussia, PA 19406

III. Summary of Public Comments Received and Agency Response to Comments

Two comments from the general public were received. The first comment was from the Independent Scientific Research Advocates, and refers to the toxicity issues of organophosphates as a class of chemicals, and does not specifically refer to this cancellation action for methyl parathion. The second comment was from the USA Rice Federation, and notes the concern over the loss of methyl parathion. USA Rice would like EPA to expedite a replacement chemical for methyl parathion, and would support the expedition. The Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation, or further review for purposes of this order.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of methyl parathion registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are subject of this notice is July 16, 2010. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or

amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment on April 28, 2010 (75 FR 22402) (FRL–8822–6). The comment period closed on May 28, 2010.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

As specified in the Memorandum of Agreement, all use, sales and distributions of existing stocks of manufacturing-use products will be prohibited as of December 31, 2012. Registrants are prohibited from selling and distributing end-use products as of December 31, 2012. Persons other than the registrants are permitted to sell or distribute end-use products prior to August 31, 2013. All sales and distributions of end-use products shall be prohibited as of August 31, 2013, except for export consistent with section 17 of FIFRA or for proper disposal. Additionally, all use of existing stocks of the end-use products shall be prohibited as of December 31, 2013.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 7, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–17404 Filed 7–15–10; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8991–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements filed 07/05/2010 through 07/09/2010 pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the website 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. 20100252, Final EIS, USACE, CA, Rio del Oro Specific Plan Project, New Information on Biological Resource and Water Supply, City of Rancho Cordova, Sacramento County, CA, Wait Period Ends: 08/16/2010, Contact: Lisa M. Gibson, 916–557–5288.

EIS No. 20100253, Draft EIS, BLM, UT, Greater Natural Buttes Area Gas Development Project, Proposes to Develop Oil and Gas Resources within the 162–911–Acre, Uintah County, UT, Comment Period Ends: 08/30/2010, Contact: Stephanie Howard, 435–781–4469.

EIS No. 20100254, Draft EIS, USACE, CA, Folsom South of U.S. 50 Specific Plan Project, Proposed land Use Development in the Specific Plan Area, City of Folsom, Sacramento County, CA, Comment Period Ends: 09/07/2010, Contact: Lisa M. Gibson, 916–557–5288.

EIS No. 20100255, Draft EIS, NPS, WA, Ross Lake National Recreation Area Project, General Management Plan, Implementation, Skagit and Whatcom Counties, WA, Comment Period Ends: 09/10/2010, Contact: Roy Zipp, 360–873–4590 Ext 31.

EIS No. 20100256, Final Supplement, FSA, 00, PROGRAMMATIC—Expansion of the Emergency Conservation Program, To Restore Farmland (Cropland, Hayland and Pastureland) to a Normal Productive State after a Natural Disaster, Wait Period Ends: 08/16/2010, Contact: Matthew T. Ponish, 202–270–6853.

EIS No. 20100257, Final EIS, NPS, DC, National Mall Plan, To Prepare a Long-Term Plan that will Restore National Mall, Implementation, Washington, DC, Wait Period Ends: 08/16/2010, Contact: Susan Spain, 202–245–4692.

EIS No. 20100258, Draft EIS, BLM, OR, North Steens 230-kV Transmission Line Project, Construction and Operation of a Transmission Line and Access Roads Associated with the Echanis Wind Energy Project, Authorizing Right-of-Way Grant, Harney County, OR, Comment Period Ends: 08/30/2010, Contact: Skip Renchler, 541–573–4400.

EIS No. 20100259, Draft EIS, FAA, RI, Theodore Francis Green Airport Improvement Program, Proposing Improvements to Enhance Safety and the Efficiency of the Airport and the New England Regional Airport System, City of Warwick, Kent County, RI, Comment Period Ends: 08/30/2010, Contact: Richard Doucette, 781–238–7613.

EIS No. 20100260, Draft EIS, DOI, CO, Over The River (OTR) Project, Propose to Install a Temporary Work of Art, Require the Use of Federal, Private and State Lands Adjacent to the River, Western Fremont County and Southeast Portion of Chaffee County, CO, Comment Period Ends: 08/30/2010, Contact: Vincent Hooper, 719–269–8555.

EIS No. 20100261, Final EIS, USFS, CO, Willow Creek Pass Fuel Reduction Project, Implementation, Hahns Peak/Bear Ears Ranger District, Medicine Bow-Routt National Forests, Routt County, CO, Wait Period Ends: 08/16/2010, Contact: Robert A. Bringuel, 978–870–2227.

Amended Notices

EIS No. 20100121, Draft EIS, DOI, CA, Stanford University Habitat Conservation Plan, Authorization for Incidental Take and Implementation, San Mateo and Santa Clara Counties, CA, Comment Period Ends: 08/30/2010, Contact: Gary Stern, 707–575–6060. Revision to FR Notice Published 04/16/2010: Extending Comment Period from 7/15/2010 to 8/30/2010.

EIS No. 20100157, Draft EIS, USFS, NV, Mountain City, Ruby Mountains, and Jarbidge Ranger Districts, Combined Travel Management Project, Implementation, Humboldt-Toiyabe National Forest, Elko and White Pine Counties, NV, Comment Period Ends: 12/17/2010, Contact: James Winfrey, 775–355–5308. Revision to FR Notice Published 05/07/2010: Extending Comment Period from 6/21/2010 to 12/17/2010.

EIS No. 20100210, Draft EIS, USACE, 00, Fargo-Moorhead Metropolitan Area Flood Risk Management, Proposed Construction of Flood Protection Measures, Red River of the

North Basin, ND and MN, Comment Period Ends: 08/09/2010, Contact: Aaron Snyder, 651–290–5489. Revision to FR Notice Published 06/11/2010: Extending Comment Period from 7/26/2010 to 8/9/2010.

Dated: July 13, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–17406 Filed 7–15–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0332; FRL–8834–2]

Methyl Parathion; Registration Review Proposed Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decision for the pesticide methyl parathion and opens a public comment period on the proposed decision. 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, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. 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 September 14, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0332, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460–0001.

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0332. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact*: Kelly Ballard, Chemical Review Manager, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8126; fax number: (703) 305–5290; e-mail address: *ballard.kelly@epa.gov*.

For general information on the registration review program, 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, farm worker, 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 chemical review manager 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.

II. Background

A. What Action is the Agency Taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decision for the pesticide, methyl parathion, case number 0153, and opens a 60–day public comment period on the proposed decision. Methyl parathion is a restricted use organophosphate insecticide and acaricide registered for use on alfalfa, almonds, barley, canola/rapeseed, corn (field, pop, and sweet), cotton, grass (forage), oats, onions, potatoes (sweet and white), rice, rye, soybeans, sunflowers, walnuts, and wheat. There are no residential uses.

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan, for public comment. A Final Work Plan was posted to the docket following public comment on the initial docket.

As stated in the Methyl Parathion Preliminary Work Plan and Methyl Parathion Final Work Plan for registration review, the Agency had intended to revise the existing risk assessments for methyl parathion. However, after the publication of the Methyl Parathion Final Work Plan, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, the Agency announced receipt of requests to voluntarily cancel all methyl parathion product registrations from the registrants of methyl parathion. After a 30–day comment period, the EPA granted the voluntary cancellation requests, establishing effective cancellation dates (FRL–8033–8) for all of the products registered for use in the United States containing the active ingredient, methyl parathion.

Following public comment, the Agency will issue a final registration review decision for products containing methyl parathion.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, required EPA to establish by regulation procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60–day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for methyl parathion. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a "Response to Comments Memorandum" in the docket. The final registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review*. Links to earlier documents related to the registration review of this pesticide are provided at: *http://www.epa.gov/oppsrrd1/registration_review/methyl-parathion/index.html.*

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

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, Methyl parathion.

Dated: July 7, 2010.

Richard P. Keigwin,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–17403 Filed 7–15–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation website at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: July 12, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10255	Bay National Bank	Baltimore	MD	7/9/2010
10256	Home National Bank	Blackwell	OK	7/9/2010
10257	Ideal Federal Savings Bank	Baltimore	MD	7/9/2010
10254	USA Bank	Port Chester	NY	7/9/2010

[FR Doc. 2010–17394 Filed 7–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0161; Docket 2010–0083; Sequence 25]

Federal Acquisition Regulation; Information Collection; Reporting Purchases From Sources Outside the United States

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning reporting purchases from sources outside the United States.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 14, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0161 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0161" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0161". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0161" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. Attn.: Hada Flowers/IC 9000–0161.

Instructions: Please submit comments only and cite Information Collection 9000–0161, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia Davis, Procurement Analyst, Acquisition Policy Division, Contract Policy Branch, GSA (202) 219–0202 or e-mail *Cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The information on place of manufacture will be used by each Federal agency to prepare the report required for submission to Congress.

B. Annual Reporting Burden

Respondents: 95,365.
Responses per Respondent: 40.
Total Responses: 3,814,600.
Hours per Response: .01.
Total Burden Hours: 38,146.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCA), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0161, Reporting Purchases from Sources Outside the United States, in all correspondence.

Dated: July 12, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–17362 Filed 7–15–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012; Docket 2010–0083; Sequence 28; Information Collection; OMB Control No. 9000–0012]

Termination Settlement Proposal Forms—FAR (Standard Forms 1435 Through 1440)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0012).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440).

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to

respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 14, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0012 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0012" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0012". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0012" on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0012.

Instructions: Please submit comments only and cite Information Collection 9000–0012, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Respondents: 872.
Responses per Respondent: 2.4.
Total Responses: 2,092.
Hours per Response: 2.4.
Total Burden Hours: 5,023.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (SF's 1435 through 1440), in all correspondence.

Dated: July 12, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–17366 Filed 7–15–10; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10165, CMS–10003 and CMS–901A and 901D]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

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:* Revision of a currently approved collection; *Title of Information Collection:* Electronic Health Records Demonstration System (EHRDS)—practice application and profile update system; *Use:* In 2008, the Secretary of the Department of Health and Human Services directed the Centers for Medicare & Medicaid Services to develop a new demonstration initiative using Medicare waiver authority to reward the delivery of high-quality care supported by the adoption and use of electronic health records (EHRs). This continues to be a critical priority under the current administration. The goal of this demonstration is to foster the implementation and adoption of EHRs and health information technology (HIT) more broadly as effective vehicles to improve the quality of care provided and transform the way medicine is practiced and delivered. Adoption of HIT has the potential to provide significant savings to the Medicare program and improve the quality of care rendered to Medicare beneficiaries.

The new electronic EHR demonstration system was first developed with the intention of having practices applying to participate in Phase 2 of the demonstration use an on-line application form, rather than the currently approved paper application form that was used for Phase 1. However, with the cancellation of Phase 2, the system will not be used to collect new applications at this time. Instead, existing data on Phase 1 applications that was collected through the paper form and manually keyed into a PC based Access database will be transferred to the new system. Practices participating in Phase 1 of the demonstration will be requested to use the new system to provide periodic updates to their practice information. The EHR Demonstration system will enable practices to update critical demonstration information online in a secure, web-enabled environment, thereby facilitating timely and more accurate updates and processing of information. Thus, the EHR Demonstration system (EHRDS) does not reflect a request for new or additional data beyond what practices are already providing to CMS and its contractors. Rather it represents an effort to streamline and improve what has been a more 'ad hoc' process for providing the same information. *Form Number:* CMS–10165 (OMB#: 0938–0965); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 400; *Total Annual Responses:* 313; *Total Annual Hours:* 52.3. (For policy questions regarding this collection contact Jody Blatt at 410–786–6921. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medical Coverage (NDMC) and Notice of Denial of Payment (NDP)—42 CFR 422.568; *Use:* Medicare health plans, including Medicare Advantage plans, cost plans, and Health Care Prepayment Plans (HCPPs), are required to issue the NDMC and NDP when a request for either a medical service or payment is denied in whole or in part. Additionally, the notices inform Medicare enrollees of their right to file an appeal. All Medicare health plans are required to use these standardized notices. Medicare health plans provide

an NDMC to enrollees upon denial, in whole or in part, of an enrollee's coverage request. This denial may be subject to a series of administrative review levels, involving defined steps and timeframes. The NDMC was developed to ensure Medicare enrollees have access to information needed to navigate the Medicare beneficiary appeals process. The NDMC meets requirements for both Medicare's standard and expedited appeals processes.

Medicare health plans provide an NDP to enrollees upon denial, in whole or in part, of payment for a service or item that the enrollee received. This denial may be subject to a series of administrative review levels, involving defined steps and timeframes. The NDP was developed to ensure Medicare enrollees have access to information needed to navigate the Medicare beneficiary appeals process. The NDP meets requirements for Medicare's standard appeals process. *Form Number:* CMS–10003 (OMB#: 0938–0829); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 740; *Total Annual Responses:* 1,168,368; *Total Annual Hours:* 194,728. (For policy questions regarding this collection contact Stephanie Simons at 206–615–2420. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Federal Qualification Application (42 CFR 417.140) and Medicare Health Care Prepayment Plan Application (42 CFR 417.800); *Use:* The application is the collection form used to obtain information to determine if an applicant meets the regulatory requirements to enter into a contract with CMS as a Federal Qualified health maintenance organization (HMO) or to provide health benefits to Medicare beneficiaries as a Medicare Health Care Prepayment Plan contractor. *Form Number:* CMS–901A & 901D (OMB#: 0938–0470); *Frequency:* Once; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours:* 800. (For policy questions regarding this collection contact Heidi Arndt at 410–786–1607. 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: July 9, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–17181 Filed 7–15–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Mandatory Guidelines for Federal Workplace Drug Testing Programs (OMB No. 0930–0158)—Revision

SAMHSA's Mandatory Guidelines for Federal Workplace Drug Testing Programs will request OMB approval for the Federal Drug Testing Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (73 FR 71858) dated November 25, 2008, and for the information provided by laboratories for the National Laboratory Certification Program (NLCP).

The Federal Drug Testing Custody and Control Form (Federal CCF) is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. The current Federal CCF approved by OMB has a November 30, 2011 expiration date. SAMHSA has resubmitted the Federal CCF with revisions to the form for OMB approval.

- The first change is to add a new item in Step 1 of Copy 1, which lists the acronyms for the Federal testing authorities under which the specimen is collected. The new Step 1 (d) would read as follows: "D. Specify Testing Authority: HHS, NRC, DOT—Specify DOT Agency: FMCSA, FAA, FRA, FTA, PHMSA, USCG" with a checkbox beside each agency name.
- The second change is to revise the Federal CCF Copy 1 to permit use by Instrumented Initial Test Facility (IITF), in addition to laboratories.
- The third change is to add the new drug analytes required by the revised Guidelines to the Primary Specimen Report section in Step 5(a) on Copy 1. The new drug analytes are methylenedioxymethamphetamine (MDMA), commonly known as "ecstasy"; methyleneamphetamine (MDA), and methylenedioxyethylamphetamine (MDEA). MDA and MDEA are both close chemical analogues of MDMA.
- The fourth change is to revise the Medical Review Officer (MRO) reporting sections on Copy 2 for primary specimens (Step 6) and for split specimens (Step 7) to facilitate reporting in accordance with the Guidelines.

Below is a copy of the revised Federal CCF:

BILLING CODE 4162–20–P

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No.

B. MRO Name, Address, Phone No. and Fax No.

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

OMB No. 0930-0158

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark | Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark | ☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

X _____
Signature of Collector

_____ (PRINT) Collector's Name (First, MI, Last) | ___/___/___ Date (Mo/Day/Yr) | ___ AM PM Time of Collection

SPECIMEN BOTTLE(S) RELEASED TO:

_____ Name of Delivery Service

RECEIVED AT LAB OR IITF:

X _____
Signature of Accessioner

_____ (PRINT) Accessioner's Name (First, MI, Last) | ___/___/___ Date (Mo/Day/Yr)

Primary Specimen Bottle Seal Intact ☐ YES ☐ NO

If NO, Enter remark in Step 5A.

SPECIMEN BOTTLE(S) RELEASED TO:

STEP 5A: PRIMARY SPECIMEN REPORT - COMPLETED BY TEST FACILITY

☐ **NEGATIVE** ☐ **POSITIVE** for: ☐ Marijuana Metabolite (Δ9-THCA) ☐ 6-Acetylmorphine ☐ Methamphetamine ☐ MDMA
☐ DILUTE ☐ Cocaine Metabolite (BZE) ☐ Morphine ☐ Amphetamine ☐ MDA
☐ PCP ☐ Codeine ☐ MDEA

☐ **REJECTED FOR TESTING** ☐ **ADULTERATED** ☐ **SUBSTITUTED** ☐ **INVALID RESULT**

REMARKS: _____

Test Facility (if different from above) : _____

I certify that the specimen identified on this form was examined upon receipt, handled using chain of custody procedures, analyzed, and reported in accordance with applicable Federal requirements.

X _____ Signature of Certifying Technician/Scientist | _____ (PRINT) Certifying Technician/Scientist's Name (First, MI, Last) | ___/___/___ Date (Mo/Day/Yr)

STEP 5b: COMPLETED BY SPLIT TESTING LABORATORY

_____ Laboratory Name

_____ Laboratory Address

☐ **RECONFIRMED** ☐ **FAILED TO RECONFIRM** - REASON _____

I certify that the split specimen identified on this form was examined upon receipt, handled using chain of custody procedures, analyzed, and reported in accordance with applicable Federal requirements.

X _____ Signature of Certifying Scientist | _____ (PRINT) Certifying Scientist's Name (First, MI, Last) | ___/___/___ Date (Mo./Day/Yr.)

PRESS HARD - YOU ARE MAKING MULTIPLE COPIES

0000001 SPECIMEN ID NO. A | PLACE OVER CAP | 0000001 SPECIMEN BOTTLE SEAL | ___/___/___ Date (Mo/Day/Yr) | _____ Donor's Initials

0000001 SPECIMEN ID NO. B (SPLIT) | PLACE OVER CAP | 0000001 SPECIMEN BOTTLE SEAL | ___/___/___ Date (Mo/Day/Yr) | _____ Donor's Initials

COPY 1 - TEST FACILITY COPY

Back of Copy 1 - 4

Public Burden Statement

Public Burden Statement: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930-0158. Public reporting burden for this collection of information is estimated to average 5 minutes/donor, 4 minutes/collector, 3 minutes/test facility, and 3 minutes/Medical Review Officer. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, to SAMHSA Reports Clearance Officer, 1 Choke Cherry Road, Room 7-1044, Rockville, Maryland 20857.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

OMB No. 0930-0158

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark | Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark | ☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

X _____ Signature of Collector

(PRINT) Collector's Name (First, MI, Last) | Date (Mo/Day/Yr) ___/___/___ | Time of Collection AM PM

SPECIMEN BOTTLE(S) RELEASED TO: _____ Name of Delivery Service

STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X _____ Signature of Donor | (PRINT) Donor's Name (First, MI, Last) | Date (Mo/Day/Yr) ___/___/___

Daytime Phone No. (____) _____ Evening Phone No. (____) _____ Date of Birth ___/___/___ (Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ **NEGATIVE** ☐ **POSITIVE** for: _____
☐ DILUTE

☐ **REFUSAL TO TEST** because – check reason(s) below: ☐ **TEST CANCELLED**
☐ ADULTERATED (adulterant/reason): _____
☐ SUBSTITUTED
☐ OTHER: _____

REMARKS: _____

X _____ Signature of Medical Review Officer | (PRINT) Medical Review Officer's Name (First, MI, Last) | Date (Mo/Day/Yr) ___/___/___

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ **RECONFIRMED** for: _____ ☐ **TEST CANCELLED**

☐ **FAILED TO RECONFIRM** for: _____

REMARKS: _____

X _____ Signature of Medical Review Officer | (PRINT) Medical Review Officer's Name (First, MI, Last) | Date (Mo/Day/Yr) ___/___/___

COPY 2 - MEDICAL REVIEW OFFICER COPY

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

OMB No. 0930-0158

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark	Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark	☐ Observed, Enter Remark
REMARKS		

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

X _____ Signature of Collector

(PRINT) Collector's Name (First, MI, Last) _____ Date (Mo/Day/Yr) ___/___/___ Time of Collection ___ AM ___ PM

SPECIMEN BOTTLE(S) RELEASED TO: _____ Name of Delivery Service

STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X _____ Signature of Donor _____ (PRINT) Donor's Name (First, MI, Last) ___/___/___ Date (Mo/Day/Yr)

Daytime Phone No. (____) _____ Evening Phone No. (____) _____ Date of Birth ___/___/___ (Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ **NEGATIVE** ☐ **POSITIVE** for: _____
☐ DILUTE

☐ **REFUSAL TO TEST** because – check reason(s) below: ☐ **TEST CANCELLED**
☐ ADULTERATED (adulterant/reason): _____
☐ SUBSTITUTED
☐ OTHER: _____

REMARKS: _____

X _____ Signature of Medical Review Officer _____ (PRINT) Medical Review Officer's Name (First, MI, Last) ___/___/___ Date (Mo/Day/Yr)

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ **RECONFIRMED** for: _____ ☐ **TEST CANCELLED**

☐ **FAILED TO RECONFIRM** for: _____

REMARKS: _____

X _____ Signature of Medical Review Officer _____ (PRINT) Medical Review Officer's Name (First, MI, Last) ___/___/___ Date (Mo/Day/Yr)

COPY 3 - COLLECTOR COPY

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

OMB No. 3930-0158

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark	Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark	☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

X _____ Signature of Collector

(PRINT) Collector's Name (First, MI, Last) _____ Date (Mo/Day/Yr) ___/___/___ Time of Collection ___ AM ___ PM

SPECIMEN BOTTLE(S) RELEASED TO: _____ Name of Delivery Service

STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X _____ Signature of Donor _____ (PRINT) Donor's Name (First, MI, Last) ___/___/___ Date (Mo/Day/Yr)

Daytime Phone No. (____) _____ Evening Phone No. (____) _____ Date of Birth ___/___/___ (Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ **NEGATIVE** ☐ **POSITIVE** for: _____
☐ DILUTE

☐ **REFUSAL TO TEST** because – check reason(s) below: ☐ **TEST CANCELLED**
☐ ADULTERATED (adulterant/reason): _____
☐ SUBSTITUTED
☐ OTHER: _____

REMARKS: _____

X _____ Signature of Medical Review Officer _____ (PRINT) Medical Review Officer's Name (First, MI, Last) ___/___/___ Date (Mo/Day/Yr)

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ **RECONFIRMED** for: _____ ☐ **TEST CANCELLED**

☐ **FAILED TO RECONFIRM** for: _____

REMARKS: _____

X _____ Signature of Medical Review Officer _____ (PRINT) Medical Review Officer's Name (First, MI, Last) ___/___/___ Date (Mo/Day/Yr)

COPY 4 - EMPLOYER COPY

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000001

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE ACCESSION NO.

A. Employer Name, Address, I.D. No. B. MRO Name, Address, Phone No. and Fax No.

OMB No. 0930-0158

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: ☐ HHS ☐ NRC ☐ DOT – Specify DOT Agency: ☐ FMCSA ☐ FAA ☐ FRA ☐ FTA ☐ PHMSA ☐ USCG

E. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

F. Drug Tests to be Performed: ☐ THC, COC, PCP, OPI, AMP ☐ THC & COC Only ☐ Other (specify) _____

G. Collection Site Address:

Collector Phone No. _____

Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? ☐ Yes ☐ No, Enter Remark	Collection: ☐ Split ☐ Single ☐ None Provided, Enter Remark	☐ Observed, Enter Remark

REMARKS

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

X _____ Signature of Collector

(PRINT) Collector's Name (First, MI, Last) _____ Date (Mo/Day/Yr) ___/___/___ Time of Collection _____ AM PM

SPECIMEN BOTTLE(S) RELEASED TO: _____ Name of Delivery Service

STEP 5: COMPLETED BY DONOR

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

X _____ Signature of Donor (PRINT) Donor's Name (First, MI, Last) _____ Date (Mo/Day/Yr) ___/___/___

Daytime Phone No. (_____) _____ Evening Phone No. (_____) _____ Date of Birth ___/___/___ (Mo/Day/Yr)

After the Medical Review Officer receives the test results for the specimen identified by this form, he/she may contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications for your own records. THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). – DO NOT PROVIDE THIS INFORMATION ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 6: COMPLETED BY MEDICAL REVIEW OFFICER - PRIMARY SPECIMEN

In accordance with applicable Federal requirements, my verification is:

☐ **NEGATIVE** ☐ **POSITIVE** for: _____
☐ DILUTE

☐ **REFUSAL TO TEST** because – check reason(s) below: ☐ **TEST CANCELLED**
☐ ADULTERATED (adulterant/reason): _____
☐ SUBSTITUTED
☐ OTHER: _____

REMARKS: _____

X _____ Signature of Medical Review Officer (PRINT) Medical Review Officer's Name (First, MI, Last) _____ Date (Mo/Day/Yr) ___/___/___

STEP 7: COMPLETED BY MEDICAL REVIEW OFFICER - SPLIT SPECIMEN

In accordance with applicable Federal requirements, my verification for the split specimen (if tested) is:

☐ **RECONFIRMED** for: _____ ☐ **TEST CANCELLED**

☐ **FAILED TO RECONFIRM** for: _____

REMARKS: _____

X _____ Signature of Medical Review Officer (PRINT) Medical Review Officer's Name (First, MI, Last) _____ Date (Mo/Day/Yr) ___/___/___

COPY 5 - DONOR COPY

Back of Copy 5

Instructions for Completing the Federal Drug Testing Custody and Control Form

When making entries use black or blue ink pen and press firmly

Collector ensures that the name and address of the HHS-certified Instrumented Initial Test Facility (IITF) or HHS-certified laboratory are on the top of the Federal CCF and the Specimen identification (I.D.) number on the top of the Federal CCF matches the Specimen I.D. number on the label(s)/seal(s).

STEP 1:

- Collector ensures that the required information is in STEP 1. Collector enters a remark in STEP 2 if Donor refuses to provide his/her SSN or Employee I.D. number.
- Collector gives collection container to Donor and instructs Donor to provide a specimen. Collector notes any unusual behavior or appearance of Donor in the remarks line STEP 2. If the Donor's conduct at any time during the collection process clearly indicates an attempt to tamper with the specimen, Collector notes the conduct in the remarks line in STEP 2 and takes action as required.

STEP 2:

- Collector checks specimen temperature within 4 minutes after receiving the specimen from Donor and marks the appropriate temperature box in STEP 2. If the temperature is outside the acceptable range, Collector enters a remark in STEP 2 and takes action as required.
- Collector inspects the specimen and notes any unusual findings in the remarks line in STEP 2 and takes action as required. Any specimen with unusual physical characteristics (e.g., unusual color, presence of foreign objects or material, unusual odor) cannot be sent to an IITF and must be sent to an HHS-certified laboratory for testing, as required.
- Collector determines the volume of specimen in the collection container. If the volume is acceptable, Collector proceeds with the collection. If the volume is less than required by the Federal Agency, Collector takes action as required and enters remarks in STEP 2. If no specimen is collected by the end of the collection process, Collector checks the *None Provided* box, enters a remark in STEP 2, discards Copy 1, and distributes remaining copies as required.
- Collector checks the Split or Single specimen collection box. If the collection is observed, Collector checks the Observed box and enters a remark in STEP 2.

STEP 3:

- Donor watches Collector pour the specimen from the collection container into the specimen bottle(s), place the cap(s) on the specimen bottle(s), and affix the label(s)/seal(s) on the specimen bottle(s).
- Collector dates the specimen bottle label(s) after placement on the specimen bottle(s).
- Donor initials the specimen bottle label(s) after placement on the specimen bottle(s).
- Collector turns to Copy 2 (Medical Review Officer Copy) and instructs the Donor to read and complete the certification statement in STEP 5 (signature, printed name, date, phone numbers, and date of birth). If Donor refuses to sign the certification statement, Collector enters a remark in STEP 2 on Copy 1.

STEP 4:

- Collector completes STEP 4 on Copy 1 (signature, printed name, date, time of collection, and name of delivery service), places the sealed specimen bottle(s) and Copy 1 in a leak-proof plastic bag, seals the bag, prepares the specimen package for shipment, and distributes the remaining CCF copies as required.

Privacy Act Statement: (For Federal Employees Only)

Submission of the requested information on the attached form is voluntary. However, incomplete submission of the requested information, refusal to provide a urine specimen, or substitution or adulteration of a specimen may result in delay or denial of your application for employment/appointment or may result in removal from the Federal service or other disciplinary action.

The authority for obtaining the urine specimen and identifying information contained herein is Executive Order 12564 ("Drug-Free Federal Workplace"), 5 U.S.C. Sec. 3301 (2), 5 U.S.C. Sec. 7301, and Section 503 of Public Law 100-71, 5 U.S.C. Sec. 7301 note. Under provisions of Executive Order 12564 and 5 U.S.C. 7301, test results may only be disclosed to agency officials on a need-to-know basis. This may include the agency Medical Review Officer, the administrator of the Employee Assistance Program, and a supervisor with authority to take adverse personnel action. This information may also be disclosed to a court where necessary to defend against a challenge to an adverse personnel action.

Submission of your SSN is not required by law and is voluntary. Your refusal to furnish your number will not result in the denial of any right, benefit, or privilege provided by law. Your SSN is solicited, pursuant to Executive Order 9397, for purposes of associating information in agency files relating to you and for purposes of identifying the urine specimen provided for testing for the presence of illegal drugs. If you refuse to indicate your SSN, a substitute number or other

identifier will be assigned, as required, to process the specimen.

Public Burden Statement

Public Burden Statement: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0930-0158. Public reporting burden for this collection of information is estimated to average 5 minutes/donor, 4 minutes/collector, 3 minutes/test facility; and 3 minutes/Medical Review Officer. Send comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, to SAMHSA Reports Clearance Officer, 1 Choke Cherry Road, Room 7-1044, Rockville, Maryland 20857.

BILLING CODE 4162–20–C

Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures. Collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the laboratory's testing procedures before arriving at the laboratory.

The annual total burden estimates for the Federal Drug Testing Custody and Control Form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Burden/ response (hrs.)	Number of responses	Total annual burden (hrs.)
Custody and Control Form:			
Donor	.08	7,096,000	567,680
Collector	.07	7,096,000	496,720
Laboratory	.05	7,096,000	354,800
Medical Review Officer	.05	7,096,000	354,800
Laboratory Application	3.00	3	9
Laboratory Inspection Checklist	3.00	100	300
Laboratory Recordkeeping	250.00	50	12,500
Total			1,786,809

Written comments and recommendations concerning the proposed information collection should be sent by August 16, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: July 12, 2010.

Dennis O. Romero,

Deputy Director, Office of Program Services.

[FR Doc. 2010–17400 Filed 7–15–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Pretesting of Substance Abuse Prevention and Treatment and Mental Health Services Communication Messages—(OMB No. 0930–0196)—Extension

As the Federal agency responsible for developing and disseminating authoritative knowledge about substance abuse prevention, addiction treatment, and mental health services and for mobilizing consumer support and increasing public understanding to overcome the stigma attached to addiction and mental illness, the Substance Abuse and Mental Health Services Administration (SAMHSA) is responsible for development and dissemination of a wide range of education and information materials for

both the general public and the professional communities. This submission is for generic approval and will provide for formative and qualitative evaluation activities to (1) assess audience knowledge, attitudes, behavior and other characteristics for the planning and development of messages, communication strategies and public information programs; and (2) test these messages, strategies and program components in developmental form to assess audience comprehension, reactions and perceptions. Information obtained from testing can then be used to improve materials and strategies while revisions are still affordable and possible. The annual burden associated with these activities is summarized below.

Activity	Nunmber of respondents	Responses/ respondent	Hours per response	Total hours
Individual In-depth Interviews:				
General Public	400	1	.75	300
Service Providers	200	1	.75	150
Focus Group Interviews:				
General Public	3,000	1	1.5	4,500
Service Providers	1,500	1	1.5	2,250
Telephone Interviews:				
General Public	335	1	.08	27
Service Providers	165	1	.08	13
Self-Administered Questionnaires:				
General Public	2,680	1	.25	670
Service Providers	1,320	1	.25	330
Gatekeeper Reviews:				
General Public	1,200	1	.50	600
Service Providers	900	1	.50	450
Total	11,700			9,290

Written comments and recommendations concerning the proposed information collection should be sent by August 16, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: July 9, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–17358 Filed 7–15–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0350]

Draft Guidance for Tobacco Retailers on Tobacco Retailer Training Programs; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for tobacco retailers entitled "Tobacco Retailer Training Programs." The Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) does not require retailers to implement retailer training programs. However, the Tobacco Control Act does provide for lower civil money penalties for violations of access, advertising, and promotion restrictions issued under section 906(d) of the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Tobacco Control Act, for retailers who have implemented a training program that complies with standards developed by FDA for such programs. FDA intends to issue regulations establishing standards for approved retailer training programs. In the interim, this draft guidance document is intended to assist tobacco retailers who wish to implement effective training programs for employees.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance and on the proposed collection of information by September 14, 2010.

ADDRESSES: Submit electronic comments on the draft guidance, including comments regarding the proposed collection of information to *http://www.regulations.gov*. Submit written comments on the draft guidance, including comments regarding the proposed collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

Submit written requests for single copies of the draft guidance document entitled "Tobacco Retailer Training Programs" to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

With regard to the draft guidance: Beth Buckler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850–3229, 1–877–287–1373, *beth.buckler@fda.hhs.gov*.

With regard to the proposed collection of information: JonnaLynn Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50, Rockville, MD 20850, 301–796–3794.

SUPPLEMENTARY INFORMATION:

I. Background

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act grants FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Among its many provisions, section 906(d) of the act, as amended by the Tobacco Control Act, states that "[t]he Secretary may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health."

In accordance with section 102 of the Tobacco Control Act, FDA re-issued its 1996 final regulation restricting the sale and distribution of cigarettes and smokeless tobacco products. The regulation is deemed to be issued under Chapter 9 of the act, as amended by the Tobacco Control Act. The regulation contains: Provisions designed to limit young people's access to cigarettes and smokeless tobacco products, as well as restrictions on advertising and promotion of such products, to curb the appeal of these products to minors (75 FR 13225; March 19, 2010).

Section 103(q) of the Tobacco Control Act directs the agency to issue guidance regarding penalties retailers are subject to for violations of the restrictions issued under section 906(d) of the act, as amended by the Tobacco Control Act. FDA intends to issue a draft guidance document shortly that will describe the penalties that apply to retailers for violations of the requirements of the act, as amended by the Tobacco Control Act, and implementing regulations and establish the policies and procedures for assessing civil money penalties.

Section 103(q)(2) of the Tobacco Control Act includes two schedules for assessing civil money penalties against retailers for violations of restrictions issued under section 906(d) of the act, as amended by the Tobacco Control Act, pertaining to the sale and distribution of a tobacco product, including access, promotion, and advertising restrictions. Under each schedule, violators are subject to increasing penalties for multiple violations within prescribed time periods. For the first three violations in a 24-month period, retailers with an approved training program are subject to lower penalties than retailers without such programs. Section 103(q)(2)(B) defines "approved training program" as a training program that complies with standards developed by FDA for such programs. The act further provides that the amount of the civil money penalty ultimately assessed shall take into account, among other things, the degree of culpability of the violator. (21 U.S.C. 333(f)(5)(B), as amended by the Tobacco Control Act).

FDA intends to issue regulations establishing standards for approved retailer training programs. In the interim, however, FDA is issuing this draft guidance to provide recommendations on elements the agency believes should be included in an effective retailer training program. Until FDA issues these regulations, the agency intends to use the lower maximum civil money penalties schedule for all retailers who violate the regulations restricting the sale and distribution of cigarettes and smokeless tobacco products (75 FR 13225; March 19, 2010), whether or not they have implemented a training program. However, FDA may consider further reducing the civil money penalty for retailers who have implemented a training program.

In the **Federal Register** of December 9, 2009 (74 FR 65129), FDA established a public docket to obtain information on suggested elements for tobacco retailer training programs. The draft guidance incorporates information FDA received in response to the request for comments.

II. Significance of Guidance

FDA is issuing this draft guidance document consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on "Tobacco Retailer Training Programs." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

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

The Tobacco Control Act does not require retailers to implement retailer training programs. However, the statute does provide for lesser civil money penalties for violations of access, advertising, and promotion restrictions of regulations issued under section 906(d) of the act, as amended by the Tobacco Control Act, for retailers who have implemented a training program that complies with standards developed by the FDA for such programs. The FDA intends to issue regulations establishing standards for approved retailer training programs. In the interim, the draft guidance is intended to assist tobacco retailers in implementing effective training programs for employees.

Draft Guidance for Tobacco Retailer Training Programs—(OMB Control Number 0910–NEW)

This draft guidance discusses the elements that should be covered in a training program, such as: (1) Federal

laws restricting the access to, and the advertising and promotion of, cigarettes and smokeless tobacco products; (2) the health and economic effects of tobacco use, especially when the tobacco use begins at a young age; (3) written company policies against sales to minors; (4) identification of the tobacco products sold in the retail establishment that are subject to the Federal laws prohibiting their sale to persons under the age of 18; and (5) age verification methods. The draft guidance recommends that retailers require current and new employees to take a written test prior to selling tobacco products and that refresher training be provided at least annually and more frequently as needed. The draft guidance recommends that retailers maintain certain written records documenting that all individual employees have been trained and that retailers retain these records for 4 years in order to be able to provide evidence of a training program during the 48-month time period covered by the civil money penalty schedules in section 103(q)(2)(A) of the Tobacco Control Act.

The draft guidance also recommends that retailers implement certain hiring and management practices as part of an effective retailer training program. The draft guidance suggests that applicants and current employees be notified both verbally and in writing of the importance of complying with laws prohibiting the sales of tobacco products to persons under the age of 18 and that they should be required to sign an acknowledgement stating that they have read and understand the information. In addition, FDA recommends that retailers implement an internal compliance check program and document the procedures and corrective actions for the program.

FDA's estimate of the number of respondents in tables 1 and 2 of this document is based on data reported to the U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA). According to the fiscal year 2009 Annual Synar Report, there are 372,677 total retail tobacco outlets in the 50 States, District of Columbia, and 8 U.S. territories that are accessible to youth (meaning that there is no State law restricting access to these outlets to individuals older than age 18). Inflating this number by about 10 percent to account for outlets in States that sell tobacco but are, by law, inaccessible to minors results in an estimated total number of tobacco outlets of 410,000. We assume that 75 percent of tobacco retailers already have some sort of training program for age and identification verification. We expect that some of those retailer training programs already meet the elements in the draft guidance, some retailers would update their training program to meet the elements in the draft guidance, and other retailers would develop a training program for the first time. Thus, we estimate that two-thirds of tobacco retailers would develop a training program that meets the elements in the draft guidance (66 percent of 410,000=270,600).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ONE TIME REPORTING BURDEN[1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Develop training program	270,600	1	270,600	16	4,329,600
Develop written policy against sales to minors & employee acknowledgment	270,600	1	270,600	1	270,600
Develop internal compliance check program	270,600	1	270,600	8	2,164,800
Total					6,765,000

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Training program	270,600	4	1,082,400	.25	270,600
Written policy against sales to minors & employee acknowledgment	270,600	4	1,082,400	.10	108,240
Internal compliance check program	270,600	2	541,200	.5	270,600
Total					649,440

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

V. Electronic Access

An electronic version of the guidance document is available on the Internet at *http://www.regulations.gov* and *http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm*.

Dated: July 12, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–17312 Filed 7–15–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Transgenic Model of Human Basal Triple Negative Breast Cancer [C3(l)-tag mice]

Description of Invention: Basal triple-negative breast cancer (TNBC) is a common form of human breast cancer for which there are no specific, targeted therapies, unlike hormone-responsive or Her2+ breast cancers. TNBC has a much worse prognosis than hormone receptor + cancer and is disproportionately high in the African-American population. NIH scientists have created and characterized a transgenic model that is currently an excellent mouse model for TNBC that shares important molecular characteristics of human TNBC, making it highly useful for preclinical testing of drugs and novel therapies. This model may provide a valuable means of identifying new drugs and therapies that could be translated to human clinical trials. The mouse model also develops prostate intraepithelial neoplasia and prostate cancer, therefore has also been used for studies of prostate cancer. The studies using the mouse model may fill important public health service needs.

Inventor: Jeffrey E. Green (NCI).

Patent Status: HHS Reference No. E–191–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for licensing under a Biological Materials License Agreement.

Licensing Contact: Betty Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*.

Collaborative Research Opportunity: The Transgenic Oncogenesis and Genomics Section of the Laboratory of Cancer Biology and Genetics, Center for Cancer Research, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this mouse model of TNBC to study cancer biology and for preclinical testing. Please contact John Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Improved Pepper Spray for Repellency and Incapacitation

Description of Invention: Non-lethal means of temporarily incapacitating a person are greatly needed for law enforcement and for personal protection. A common approach is to use pepper spray. Although current pepper sprays are effective, they cause pain for excessively long periods, and could be life threatening for people who suffer from asthma and have hypersensitive airways. This technology describes a composition for use in an aerosol or spray, that when administered, causes a painful stimulation and incapacitates a person for only a brief period. This technology may improve safety over currently available pepper sprays.

Application: Incapacitating pepper spray with reduced toxicity.

Development Status: Early stage.

Inventors: Peter M. Blumberg and Larry V. Pearce (NCI).

Patent Status: U.S. Provisional Application No. 61/340,063 filed 12 Mar 2010 (HHS Reference No. E–048–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Charlene Sydnor, Ph.D.; 301–435–4689; *sydnorc@mail.nih.gov*.

Dated: July 12, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–17430 Filed 7–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301/496–7057; *fax:* 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Antigen for Use as Vaccine Against Nematode Infection

Description of Invention: This invention describes a new vaccine against *Strongyoides stercoralis*, which establishes a parasitic infection that affects an estimated 100–200 million people worldwide. The potential for fatal disease associated with S. stercoralis infection and the difficulty in treating hyperinfection underscores the need for prophylactic vaccines against the disease. This vaccine uses *S. stercoralis* immunoreactive antigen (SsIR); a novel antigen capable of providing 70–90% protection for mice immunized with the antigen. In addition, sera from immunized mice have also been used to effectively protect naïve mice from infection.

The invention may also have potential use in diminishing allergic responses, as *Strongyoides stercoralis* infection has been shown to reduce the murine response to allergens. Consequently, SsIR may be used to immunize individuals and reduce the allergic response. The antigen may also be used to identify homologous antigens from other parasitic nematodes that may be important for vaccine development.

Applications:

• Vaccines against *S. stercoralis* infection.

• Discovery and use of other anti-parasitic antigens for vaccines.

• Potential for allergy therapy.

Development Status: Early stage.

Market: 100–200 million worldwide.

Inventors: Thomas B. Nutman (NIAID) and David Abraham (Thomas Jefferson University).

Related Publication: Kerepesi LA, Keiser PB, Nolan TJ, Schad GA, Abraham D, Nutman TB. DNA immunization with Na+-K+ ATPase (Sseat-6) induces protective immunity to larval *Strongyloides stercoralis* in mice. Infect Immun. 2005 Apr;73(4):2298–2305. [PubMed: 15784574].

Patent Status: U.S. Provisional Application No. 61/301,426 filed 04 Feb 2010 (HHS Reference No. E–084–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Susan Ano, Ph.D.; 301–435–5515; *anos@mail.nih.gov*; or Eric Odom; 301–435–5009; *odome@mail.nih.gov.*

Collaborative Research Opportunity: The Laboratory of Parasitic Diseases at NIAID is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Thomas Nutman, Ph.D at *tnutman@niaid.nih.gov* or Johanna Schneider, Ph.D at *schneiderjs@niaid.nih.gov* for more information.

Mouse Model of Individual Unresponsive to Interferon

Description of Invention: NIAID has developed a mouse model that produces very high levels of Interferon-alpha-receptor 2 (IFNAR2), both in liver cells and free-floating in serum.

Chronic co-infection of HIV and hepatitis C virus (HCV) is associated with increased overall morbidity and mortality compared to those infected with just one virus. Recent data further suggests that co-infection is also associated with a more rapid progression of liver disease, higher HCV RNA viral levels, decreased cure rate of HCV, and increased toxicities of anti-HCV therapy. Finally, clinical trials have shown that many patients infected with both viruses do not respond to Interferon-based therapy. Research strongly suggests that non-responding patients have an increased level of a free-floating form of IFNAR2, which could block Interferon activity.

Resistance to Interferon therapy also occurs in other diseases, such as autoimmune diseases (e.g., lupus, scleroderma, psoriasis, vasculitis) and certain forms of cancer (e.g., Kaposi's sarcoma, follicular lymphoma). The various means by which resistance arises is currently being researched.

Applications:

• Study of mechanisms of resistance to Interferon therapy in selected diseases, such as HCV/HIV co-infection and certain cancers.

• Study of Interferon-alpha in auto-immune diseases such as lupus, scleroderma, psoriasis, and vasculitis.

• Drug design and screening.

Advantages:

• A model to screen, develop, and test drugs for HCV among HCV/HIV co-infected patients not responding to Interferon.

• A model for basic research, to study the biology and role of IFNAR2 and its function, along with the role of the Interferon receptor in the development of disease resulting from activation of the immune system.

Development Status: Proof-of-principle studies showing that the mice represent HCV/HIV co-infected individuals not responding to Interferon treatment.

Market: HIV/HCV co-infection is documented in one-third of all HIV-infected persons in the United States, an estimated 250,000 people. Moreover, certain cancers (*e.g.*, Kaposi's sarcoma, follicular lymphoma) normally treated with Interferon-alpha either show initial resistance or develop resistance during therapy, but the mechanism of resistance is highly complex; this mouse model will be useful in learning the paths through which resistance develops, and perhaps in designing strategies to overcome resistance. Finally, autoimmune diseases known to be caused (in whole or in part) by Interferon-alpha include lupus, scleroderma, psoriasis, and vasculitis.

Inventors: Shyamasundaran Kottilil (NIAID), Howard Young (NCI), Michael Polis (NIAID), Anthony Suffredini (NIHCC).

Patent Status: HHS Reference No. E–106–2009/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for non-exclusive Biological Materials Licensing.

Licensing Contact: Susan Ano, Ph.D. 301–435–5515; *anos@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Laboratory of Immunoregulation, is interested in collaborative research directed toward molecular strategies for vaccine and antiviral development, and animal models of viral hepatitis C. Please contact William Ronnenberg at 301–451–3522 or *wronnenberg@niaid.nih.gov* for more information.

Microwave-Assisted Freeze Substitution of Biological and Biomedical Samples

Description of Invention: Freeze substitution fixation (FS) of hydrated samples frozen in vitreous ice provides exceptional preservation of structure for light and electron microscopy, and enables immunological detection of thermo-labile antigens that otherwise are damaged/destroyed by processing at ambient or elevated temperatures. Its use as a research tool or in clinical pathology has, however, been limited by the relatively lengthy periods required for passive diffusion of fixatives and organic solvents into the frozen hydrated material.

The invention utilizes controlled microwave (MW) irradiation to accelerate the FS process; and comprises systems, devices and methods for microwave-assisted processing of samples under cryo-conditions. The entire MWFS procedure has been accomplished in less than 4 hours as compared to the approximately 2–5 days required for FS.

Applications:

• Provides superior preservation and rapid turnaround in research and high throughput clinical laboratory settings.

• Applicable to a broad range of biological samples, hydrogels, and other hydrated materials.

• Processing for light and electron microscopy.

• Low-temperature synthetic and analytical chemistry.

Advantages:

• Reduces processing periods from days to hours.

• Improves preservation, approaching native state.

• Enables uncomplicated, programmable operation.

• Provides excellent reproducibility.

Development Status:

• Proof of concept with varied biological samples.

• Adaptation of existing equipment with manual processing.

• Proposed designs for instrumentation and automation.

Inventors: David W. Dorward, Vinod Nair, Elizabeth R. Fischer, Bryan Hansen (NIAID).

Patent Status: Filed PCT, Publication Number WO 2010/028164; Priority Date: 2008–09–05 (HHS Reference No. E–238–2008/2–PCT–01).

Licensing Status: Available for licensing.

Licensing Contact: Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases, Research Technologies Branch, Electron Microscopy Unit, is interested in collaborative research to further develop, evaluate, or commercialize potential applications of this invention, including design and development of instrumentation for conducting MWFS. Please contact Barry U. Buchbinder, Ph.D., NIAID/OTD, at 301–594–1696 or *bbuchbinder@niaid.nih.gov*, for more information.

Treatments for Smith-Lemli-Opitz Syndrome and Other Disorders of Cholesterol Biosynthesis

Description of Invention: This technology provides methods for treating Smith-Lemli-Opitz Syndrome and other disorders of cholesterol biosynthesis.

Smith-Lemli-Opitz Syndrome (SLOS) is an autosomal recessive disorder caused by an inborn error of cholesterol biosynthesis. It affects an estimated one in 20,000 to 60,000 newborns, and is most prevalent in Caucasians of Central European ancestry. It is characterized by distinctive facial features, microcephaly, mental retardation or learning disabilities, and behavioral problems, as well as malformations in many parts of the body, such as the heart, lungs, kidneys, gastrointestinal tract, and genitalia. However, the clinical manifestations of this disease can vary widely, ranging from relatively moderate symptoms to profoundly severe and life-threatening symptoms. At least 95% of SLOS patients present with some degree of mental retardation and learning disability.

Biochemically, SLOS is caused by disruption of the DHCR7 gene, which is responsible for the final step in the production of cholesterol; this results in low cholesterol levels and an accumulation of toxic byproducts of cholesterol biosynthesis in the blood, nervous system, and other tissues. Supplementary dietary cholesterol is provided to SLOS patients, but is often of limited clinical benefit; because levels of byproducts remain high, they may interfere with the uptake of free cholesterol.

Although some of the behavioral and learning problems are due to developmental problems, a portion of these symptoms are likely due to a biochemical disturbance. That biochemical disturbance is potentially treatable.

In their recent work, the inventors have discovered that the accumulation in SLOS cells of the cholesterol precursor 7–DHC causes abnormal sphingolipid storage and transport, resulting in a cellular phenotype similar to that observed in the lysosomal storage disease Niemann-Pick type C (NPC). They have also discovered that treatment with inhibitors of sphingolipid biosynthesis corrects these abnormalities, and thus such inhibitors are of potential therapeutic benefit for the treatment of SLOS, as well as for other diseases exhibiting similar defects in sphingolipid trafficking.

This technology claims compounds that inhibit sphingolipid biosynthesis for use in treating diseases which have a secondary Niemann-Pick type C disease-like cellular phenotype, including SLOS, as well as methods of treatment and pharmaceutical compositions.

Applications: Development of therapeutics for Smith-Lemli-Opitz Syndrome and other diseases which have a secondary Niemann-Pick type C disease-like cellular phenotype, which includes inborn errors of cholesterol biosynthesis, Huntington's disease, cystic fibrosis, and autism.

Development Status: In vitro studies have been performed using a sphingolipid biosynthesis inhibitor.

Inventors: Forbes D. Porter *et al.* (NICHD).

Related Publications:

1. FD Porter. Malformation syndromes due to inborn errors of cholesterol synthesis. J Clin Invest. 2002 Sep 15; 110(6):715–724. [PubMed: 12235098]

2. XS Jiang *et al.* Quantitative proteomic analysis of inborn errors of cholesterol synthesis: Identification of altered metabolic pathways in DHCR7 and SC5D deficiency. Mol Cell Proteomics. 2010 Mar 19; Epub ahead of print. [PubMed: 20305089]

3. XS Jiang *et al.* Activation of Rho GTPases in Smith-Lemli-Opitz syndrome: pathophysiological and clinical implications. Hum Mol Genet. 2010 Apr 1;19(7):1347–1357. [PubMed: 20067919]

4. Tierney *et al.* Analysis of short-term behavioral effects of dietary cholesterol supplementation in Smith-Lemli-Opitz syndrome. Am J Med Genet A. 2010 Jan;152A(1):91–95. [PubMed: 20014133]

Patent Status:

- U.S. Patent Application No. 12/666,279 filed 19 Jan 2010 (HHS Reference No. E–206–2007/0–US–06).
- Related International patent applications.

Licensing Status: Available for licensing.

Licensing Contact: Tara Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov.*

Collaborative Research Opportunity: The National Institute of Child Health and Human Development, Section on Molecular Dysmorphology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Alan Hubbs, Ph.D. at 301–594–4263 or *hubbsa@mail.nih.gov* for more information.

Dated: July 12, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–17428 Filed 7–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2900–FN2]

Medicare and Medicaid Programs; Approval of the Community Health Accreditation Program for Continued Deeming Authority for Hospices

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice of Removal of Conditional Probationary Status.

SUMMARY: Based on our review and observations, we have determined that the standards and processes used by the Community Health Accreditation Program (CHAP) hospice accreditation program meet or exceed our requirements. This final notice announces our decision to approve without condition CHAP's request for continued recognition as a national accreditation program for hospices seeking to participate in the Medicare or Medicaid programs.

DATES: *Effective Date:* This final notice is effective November 20, 2009 through November 20, 2012.

FOR FURTHER INFORMATION CONTACT:

Cindy Melanson, (410) 786–0310.
Patricia Chmielewski (410) 786–6899.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice, provided certain requirements are met. Section 1861(dd)(1) of the Social Security Act (the Act) establishes distinct criteria for entities seeking designation as a hospice

program. Under this authority, the regulations at 42 CFR part 418 specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospice care. Provider agreement regulations are located in 42 CFR part 489 and regulations pertaining to the survey and certification of facilities are located in 42 CFR part 488.

Generally, in order to enter into an agreement, a hospice facility must first be certified by a State survey agency as complying with conditions or requirements set forth in part 418 of our regulations. Then, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accreditation organization (AO) that all applicable Medicare conditions or requirements are met or exceeded, we may deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

A national AO applying for approval of deeming authority under part 488, subpart A, must provide us with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning re-approval of AOs are set forth at § 488.4 and § 488.8(d)(3). The regulations at § 488.8(d)(3) require AOs to reapply for continued approval of deeming authority every 6 years, or sooner as determined by CMS. The regulation at § 488.8(f)(3)(i) provides CMS the authority to grant conditional approval of an AO's deeming authority, with a probationary period of up to 180 days, if the AO has not adopted comparable standards during the reapplication process.

We received a complete application from CHAP for continued recognition as a national AO for hospices on March 27, 2009. In accordance with the requirements at § 488.4 and § 488.8(d)(3), we published a proposed notice on May 22, 2009 (74 FR 24015) and a final notice announcing our decision to conditionally approve CHAP's hospice program subject to probationary conditions on October 23, 2009 (74 FR 54832). This final notice provides CMS' final determination in response to the conditional approval with a 180-day probationary period granted to CHAP on October 23, 2009. This notice is required to be published no later than July 18, 2010.

II. Deeming Applications Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. Within 60 days of receiving a completed application, we must publish a notice in the **Federal Register** that identifies the national accreditation body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** of our approval or denial of the application. In accordance with § 488.8(f)(2), if CMS determines following the deeming authority review that the organization has failed to adopt requirements comparable to CMS requirements, the AO may be given a conditional approval of its deeming authority for a probationary period of up to 180 days to adopt comparable requirements. Within 60 days after the end of this period, we must make a final determination as to whether or not the CHAP accreditation program for hospices is comparable to CMS requirements and issue an appropriate notice that includes our reasons for our determination.

III. Provisions of the October 23, 2009 Final Notice

Our review of CHAP's renewal application for hospice deeming authority revealed that CHAP had on-going, serious, widespread areas of non-compliance. Specifically, CHAP's inability to provide us with accurate, timely data on deemed providers; lack of complete and accurate deemed facility survey files; and, failure to ensure that recertification surveys are conducted on an interval not exceeding 36 months. Due to the significant number of areas of noncompliance identified during the review of CHAP's deeming authority, we conditionally approved CHAP's hospice accreditation program with a 180 day probationary period. Under 1865(a)(2) of the Act and our regulations at § 488.4 and § 488.8, we conducted a comparability review of CHAP's hospice accreditation program to determine compliance with Medicare requirements for hospices at 42 CFR part 418.

IV. Provisions of the Final Notice

A. Differences Between CHAP's Standards and Requirements for Accreditation and Medicare's Conditions and Survey Requirements

During the 180 day probationary period, we conducted a comparison of CHAP's accreditation requirements for hospices to our current Medicare conditions of Participation (CoPs) as outlined in the State Operations Manual (SOM). We also conducted a corporate onsite visit to validate proper application of the requirements. Our review and evaluation of CHAP's deeming application yielded the following:

- CHAP's survey files were complete, accurate, and consistent with the requirements at § 488.6(a).
- CHAP's recertification surveys for hospices are conducted no later than 36 months after the date of the previous standard survey in accordance with the requirements at § 488.20(a).
- CHAP's data submission are accurate, complete and timely in accordance with the requirements at § 488.4(b).
- CHAP met the requirements at section 2728 of the SOM by developing an electronic plan of correction that specifically addressed the "who, what, when, and how" the hospice would correct each deficiency cited and ensure ongoing compliance.
- CHAP met requirements at § 488.28(a) and section 2728 of the SOM as evidenced by review of the survey files.
- CHAP policy regarding establishment of an effective date for new providers is consistent with the requirements at § 488.13.

B. Term of Approval

Based on the review and observations, we have determined that CHAP's hospice accreditation program meets or exceeds our requirements. Therefore, we approve CHAP as a national AO for hospices that request participation in the Medicare program, effective November 20, 2009 through November 20, 2012. Under § 488.8(f)(4), notice was given to CHAP on October 23, 2009 (74 FR 54832).

V. Collection of Information Requirements

This document does not impose 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).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 29, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–17405 Filed 7–15–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: August 10–12, 2010.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Conference Rooms A, B, and C, Research Triangle Park, NC 27709.

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17432 Filed 7–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR) ATSDR–263; Notice of National Conversation on Public Health and Chemical Exposures Leadership Council Meeting

Time and Date: 1 p.m.–5 p.m. EDT, Tuesday, July 27, 2010.

Location: Teleconference.

Status: The public is invited to listen to the meeting by phone; see "contact for additional information" below.

Purpose: This is the fifth meeting of the National Conversation on Public Health and Chemical Exposures Leadership Council, which is convened by RESOLVE, a non-profit independent consensus-building organization. The National Conversation on Public Health and Chemical Exposures is a collaborative initiative supported by NCEH/ATSDR through which many organizations and individuals are helping develop an action agenda for strengthening the nation's approach to protecting the public's health from harmful chemical exposures. The Leadership Council provides overall guidance to the National Conversation project and is responsible for issuing the final action agenda. For additional information on the National Conversation on Public Health and Chemical Exposures, visit this Web site: *http://www.atsdr.cdc.gov/nationalconversation/*.

Meeting Agenda: The meeting will include discussing (1) options for developing a results-oriented action agenda, (2) progress on work group reports, (3) updates on the community conversation process, and (4) Leadership Council operations.

Contact for Additional Information: If you would like to receive additional information on listening to the meeting by phone, please contact: *nationalconversation@cdc.gov* or Ben Gerhardstein at 770–488–3646.

Dated: July 9, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–17357 Filed 7–15–10; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: AIDS/HIV Small Business Innovative Research Applications.

Date: July 29, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Nutrition and Diabetes.

Date: August 2–3, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Reed A. Graves, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Chemistry.

Date: August 3–4, 2010.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mass Spectrometry Shared Instrumentation Study Section.

Date: August 5–6, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: Mass Spectrometers.

Date: August 5–6, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Washington DC Downtown, 1201 K Street, NW., Washington, DC 20005.

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, 301–435–1722, *jollieda@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fogarty Career Development: International Research Scientist Development II.

Date: August 6, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Microbial Diseases.

Date: August 9–10, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuro Aids.

Date: August 10–11, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mary Clare Walker, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, 301–435–1165, *walkermc@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17433 Filed 7–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Review of Lung Function Due to Metal Exposure.

Date: July 29, 2010.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Leroy Worth, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 12, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–17431 Filed 7–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Citizenship and Immigration Service Ombudsman; Agency Information Collection Activities: CIS Ombudsman Case Problem Submission Worksheet, DHS Form 7001 and Virtual Ombudsman System

AGENCY: Office of the Citizenship and Immigration Service Ombudsman, DHS.

ACTION: 30-Day Notice and request for comments; Revision of an existing information collection, 1601–0004.

SUMMARY: The Department of Homeland Security, Office of the Citizenship and Immigration Service Ombudsman, DHS will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this information collection request (ICR) in the **Federal Register** on April 29, 2010, 75 FR 22609 for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until August 16, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806. The Office of Management and Budget is particularly interested in comments which:

1. 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;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), Office of the Citizenship and Immigration Services Ombudsman, DHS, Attn.: Director of Communications, Mail Stop 1225, Washington, DC 20528–1225. Comments may also be submitted to DHA via facsimile to 202–272–8352, 202–357–0042 or via e-mail at *rfs.regs@dhs.gov* or *cisombudsman@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Department of Homeland Security would like to revise the currently approved collection of information to provide an electronic means of collecting and submitting the CIS Ombudsman Case Problem Submission Worksheet, DHS Form 7001. The CIS Ombudsman is an independent office that reports directly to the Deputy Secretary of Homeland Security. The system will collect and maintain records of correspondence received from individuals, employers, and designated representatives. In accordance with the Privacy Act of 1974, DHS is issuing a system of records notice for the CISOMB Virtual Ombudsman records. This record system will allow CISOMB to collect information to receive and process correspondence received from individuals, employers, and their designated representatives to: (1) Assist individuals and employers in resolving problems with U.S. Citizenship and Immigration Services (USCIS); (2) identify areas in which individuals and employers have problems in dealing with USCIS; and (3) to the extent possible, propose changes to mitigate problems as mandated by 6 U.S.C. 272. This new system will be included in the Department's inventory of record systems. CISOMB receives cases through: (1) CISOMB's paper form 7001, Case Problem Submission Worksheet and Supporting Statement Case Problem Submission Form, which is posted on the DHS CISOMB Internet Web site at *http://www.dhs.gov* as a fillable PDF form; or (2) CISOMB's online form 7001 (same title) that is transmitted electronically with any relevant documentation to CISOMB for further processing. CISOMB reviews all information for completeness and scans all documentation into the CISOMB account within the Internet Quorum/Enterprise Correspondence Tracking (IQ/ECT) system as a case record and forwards electronically, as appropriate, along with any attachments, to USCIS for further action. Currently, CISOMB converts every case problem submission to Adobe.pdf format for resolution.

Analysis:

Agency: Office of the Citizenship and Immigration Services Ombudsman, DHS.

Title: CIS Ombudsman Case Problem Submission Worksheet.

OMB Number: 1601–0004.

Frequency: One Time Response.

Affected Public: Individuals or households.

Number of Respondents: 2,600.

Estimated Time Per Respondent: 1 hour.

Total Burden Hours: 2,600 annual hours.

Richard A. Spires,

Chief Information Officer.

[FR Doc. 2010–17332 Filed 7–15–10; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1899–DR; Docket ID FEMA–2010–0002]

New York; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–1899–DR), dated April 16, 2010, and related determinations.

DATES: *Effective Date:* July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now March 13, 2010, through and including March 31, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–17401 Filed 7–15–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1911–DR; Docket ID FEMA–2010–0002]

California; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of California (FEMA–1911–DR), dated May 7, 2010, and related determinations.

DATES: *Effective Date:* July 4, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 4, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–17374 Filed 7–15–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1899–DR; Docket ID FEMA–2010–0002]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New York (FEMA–1899–DR), dated April 16, 2010, and related determinations.

DATES: *Effective Date:* July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 16, 2010.

Otsego, Schoharie, and Warren Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–17377 Filed 7–15–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1918–DR; Docket ID FEMA–2010–0002]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1918–DR), dated June 24, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 29, 2010.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–17376 Filed 7–15–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1917–DR; Docket ID FEMA–2010–0002]

Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1917–DR), dated May 24, 2010, and related determinations.

DATES: *Effective Date:* July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 24, 2010.

Garvin County for Public Assistance (already designated for Individual Assistance).

Love and Okmulgee Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–17415 Filed 7–15–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1905–DR; Docket ID FEMA–2010–0002]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1905–DR), dated April 27, 2010, and related determinations.

DATES: *Effective Date:* July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 27, 2010.

Page County for Public Assistance. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–17414 Filed 7–15–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1918–DR; Docket ID FEMA–2010–0002]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1918–DR), dated June 24, 2010, and related determinations.

DATES: *Effective Date:* July 8, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 24, 2010.

Lewis County for Individual Assistance. The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–17375 Filed 7–15–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–13]

Notice of Proposed Information Collection for Public Comment; LOCCS Voice Response System Payment Vouchers for Public and Indian Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 14, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.5564, (this is not a toll-free number) or e-mail Mr. McKinney at *Leroy.McKinneyJr@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) 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; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: LOCCS Voice Response System Payment Vouchers for Public and Indian Housing Programs.

OMB Control Number: 2577–0166.

Agency form number, if applicable: HUD–50080 series.

Members of affected public: PHAs, state or local government. Tribes and tribally designated housing entities.

Description of the need for the information and proposed use: Grant recipients use the applicable payment information to request funds from HUD through the LOCCS/VRS voice activated system. The information collected on the payment voucher will also be used as an internal control measure to ensure the lawful and appropriate disbursement of Federal funds as well as provide a service to program recipients.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 4,746 annually with one response per respondent. The average number for each response is .033 hours, for a total reporting burden of 98,536 hours.

Status: Request for revision of an existing information collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 12, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. 2010–17441 Filed 7–15–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–27]

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 16, 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: July 8, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–17059 Filed 7–15–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5431–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration (FHA) under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning July 1, 2010, is 3⅜ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2010, is 4⅛ percent. However, as a result of an amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: Yong Sun, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5148, Washington, DC 20410–8000; telephone number 202–402–4778 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service telephone number at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate

determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 2010, is 4⅛ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 4⅛ percent for the 6-month period beginning July 1, 2010. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the latter 6 months of 2010.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980
9⅞	July 1, 1980	Jan. 1, 1981
11¾	Jan. 1, 1981	July 1, 1981
12⅞	July 1, 1981	Jan. 1, 1982
12¾	Jan. 1, 1982	Jan. 1, 1983
10¼	Jan. 1, 1983	July 1, 1983
10⅜	July 1, 1983	Jan. 1, 1984
11½	Jan. 1, 1984	July 1, 1984
13⅜	July 1, 1984	Jan. 1, 1985
11⅝	Jan. 1, 1985	July 1, 1985
11⅛	July 1, 1985	Jan. 1, 1986
10¼	Jan. 1, 1986	July 1, 1986
8¼	July 1, 1986	Jan. 1. 1987
8	Jan. 1, 1987	July 1, 1987
9	July 1, 1987	Jan. 1, 1988
9⅛	Jan. 1, 1988	July 1, 1988
9⅜	July 1, 1988	Jan. 1, 1989
9¼	Jan. 1, 1989	July 1, 1989
9	July 1, 1989	Jan. 1, 1990
8⅛	Jan. 1, 1990	July 1, 1990
9	July 1, 1990	Jan. 1, 1991
8¾	Jan. 1, 1991	July 1, 1991
8½	July 1, 1991	Jan. 1, 1992
8	Jan. 1, 1992	July 1, 1992
8	July 1, 1992	Jan. 1, 1993
7¾	Jan. 1, 1993	July 1, 1993
7	July 1, 1993	Jan. 1, 1994
6⅝	Jan. 1, 1994	July 1, 1994
7¾	July 1, 1994	Jan. 1, 1995
8⅜	Jan. 1, 1995	July 1, 1995
7¼	July 1, 1995	Jan. 1, 1996
6½	Jan. 1, 1996	July 1, 1996
7¼	July 1, 1996	Jan. 1, 1997
6¾	Jan. 1, 1997	July 1, 1997
7⅛	July 1, 1997	Jan. 1, 1998
6⅜	Jan. 1, 1998	July 1, 1998
6⅛	July 1, 1998	Jan. 1, 1999
5½	Jan. 1, 1999	July 1, 1999
6⅛	July 1, 1999	Jan. 1, 2000
6½	Jan. 1, 2000	July 1, 2000
6½	July 1, 2000	Jan. 1, 2001
6	Jan. 1, 2001	July 1, 2001
5⅞	July 1, 2001	Jan. 1, 2002
5¼	Jan. 1, 2002	July 1, 2002
5¾	July 1, 2002	Jan. 1, 2003
5	Jan. 1, 2003	July 1, 2003
4½	July 1, 2003	Jan. 1, 2004
5⅛	Jan. 1, 2004	July 1, 2004
5½	July 1, 2004	Jan. 1, 2005
4⅞	Jan. 1, 2005	July 1, 2005
4½	July 1, 2005	Jan. 1, 2006
4⅞	Jan. 1, 2006	July 1, 2006
5⅜	July 1, 2006	Jan. 1, 2007
4¾	Jan. 1, 2007	July 1, 2007
5	July 1, 2007	Jan. 1, 2008
4½	Jan. 1, 2008	July 1, 2008
4⅝	July 1, 2008	Jan. 1, 2009
4⅛	Jan. 1, 2009	July 1, 2009
4⅛	July 1, 2009	Jan. 1, 2010
4¼	Jan. 1, 2010	July 1, 2010
4⅛	July 1, 2010	Jan. 1, 2011

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate" is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning July 1, 2010, is 3⅜ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

Dated: July 13, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–17440 Filed 7–15–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–35320–1; 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 Cook Inlet Region, Inc., pursuant to the Alaska Native Claims Settlement Act and the Act of January 2, 1976. The lands are in the vicinity of Healy, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 10 S., R. 9 W.,

Sec. 5, protracted E½NE¼.

Containing approximately 80 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 16, 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. 2010–17238 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ General Management Plan; Ross Lake National Recreation Area, Skagit and Whatcom Counties, WA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service (NPS), Department of the Interior, has prepared a draft environmental impact statement for the proposed General Management Plan (GMP) for Ross Lake National Recreation Area (Ross Lake NRA) in Washington State. Ross Lake NRA is one of three units comprising the North Cascades National Park Service Complex. The draft GMP describes three "action" alternatives that respond to both NPS planning requirements and to the public's concerns and issues, identified during the scoping and public involvement process. Each alternative presents management strategies for resource protection and preservation, education and interpretation, visitor use and facilities, land protection and boundaries, and long-term operations and management of Ross Lake NRA.

The potential environmental consequences of all the alternatives, and mitigation strategies, are identified and analyzed in the DEIS. In addition to the "action" alternatives, a "no action" baseline alternative is considered, and the "environmentally preferred" course of action is identified. This GMP will replace portions of the 1988 North Cascades NPS Complex GMP that provided early guidance for managing Ross Lake NRA.

Background: A Notice of Intent formally announcing preparation of the GMP and draft environmental impact statement (DEIS) was published in the **Federal Register** on October 30, 2006. The NPS also publicized the public scoping period and invited public comment through newsletters, press releases, correspondence, public workshops, informal meetings, and Web site announcements. Preliminary public outreach began in late September 2006 with release of an initial newsletter announcing onset of the planning process and soliciting feedback on issues to be addressed in the plan; the newsletter was mailed to approximately 350 individuals and entities on the mailing list.

An extensive public outreach effort was undertaken to elicit early public comment regarding issues and concerns, the nature and extent of potential environmental impacts, and possible alternatives that should be addressed in drafting the GMP. Agencies, organizations, governmental representatives, and tribal governments were sent letters of invitation to attend the public workshops or individual meetings. Press releases were distributed to local and regional news media. In addition, the conservation planning effort was launched on the *http://parkplanning.nps.gov/rola* and the *http://www.nps.gov/rola* Web sites to provide ready access to information about Ross Lake NRA and the GMP process. News articles featuring the public workshops were published in the local Courier Times and East Skagit Community News and announced on private and public radio stations. The public was invited to submit comments by regular mail, e-mail, fax, online, and at public workshops and individual meetings.

Seven public workshops were hosted in western Washington and southern British Columbia during October 2006; meetings began with a presentation of Ross Lake NRA and the GMP planning process, then transitioned into a facilitated group discussion format. Meetings were held in Washington State in Concrete, Marblemount, Sedro-Woolley, Seattle and Bellingham, and in Surrey and Chilliwack, British Columbia. A total of 63 people attended the meetings overall.

During the initial scoping period, correspondence was received from over 80 individuals and organizations that yielded over 750 specific comments. All comments received were carefully reviewed by the NPS interdisciplinary planning team in preparing the DEIS/GMP, and are preserved in the project administrative record.

The NPS conducted an additional round of public involvement at the draft alternatives phase to ensure full public awareness of the proposed range of alternatives. The primary purpose of this planning step was to understand the public's concerns and preferences with regard to the range of draft alternatives and to assist the planning team in refining the draft alternatives and selecting a preferred alternative. This effort was initiated in February 2008 when the NPS produced and mailed the Draft Alternatives Newsletter to approximately 450 contacts on Ross Lake NRA's mailing list (it was also announced on the project Web sites). The Newsletter fully outlined concepts and actions in the draft alternatives and proposed management zones, and contained a business reply questionnaire providing an option for the public to comment on the four draft alternatives. Press releases were prepared and mailed to local media in advance of the public meetings. A total of 32 written responses concerning the draft alternatives were received in the form of letters, e-mails, newsletter questionnaires, and internet comments. The NPS also hosted four public workshops in Concrete, Sedro-Woolley, Bellingham, and Seattle in February and March 2008. Seventy people participated in the public workshops and provided oral comments. In total 539 individual comments were received on the draft alternatives and covered a broad range of topics, issues, and recommendations for Ross Lake NRA.

Proposed Plan and Alternatives: Alternative A is the "no action" alternative and assumes that existing programming, facilities, staffing, and funding would generally continue at their current levels. This alternative serves as a baseline for comparison in evaluating the changes and impacts of the three "action" alternatives. This alternative emphasizes continued protection of the values of Ross Lake NRA without substantially increasing staff, programs, funding support, or facilities. Resource preservation and protection would continue to be high priority, and park staff would continue to work with neighboring agencies for collaborative ecosystem management. Management of visitor use and facilities would generally continue through existing levels and types of service and regulation. Additional visitor facilities, such as new buildings, structures, roads, parking areas, camping areas, and trails, would not be constructed. The park would react to catastrophic events and

any ensuing destruction of visitor facilities on a case-by-case basis, which could result in a net loss of visitor facilities.

Alternative B (agency-preferred) focuses on managing Ross Lake NRA as a gateway to millions of acres of wild lands, providing enhanced visitor opportunities along the North Cascades Highway and making better use of facilities along that corridor, while ensuring the long term stewardship of natural resources, cultural resources, and Wilderness. The North Cascades Highway corridor would be managed to provide a variety of day-use and overnight recreational opportunities for visitors with a range of abilities and interests. Management of Wilderness and backcountry areas would focus on ecosystem preservation and compatible recreational activities. Interpretation and education would be a key component of this alternative, emphasizing "hands-on" experiential learning and stewardship programs delivered by both the NPS and its partners.

Recreation in Ross Lake NRA would be enhanced along the North Cascades Highway corridor through the addition of limited new facilities, including dayhiking trails, reconfigured parking areas, a new Wilderness Information Center, and the modest expansion of overnight facilities and concessions. Recreation in the Wilderness and backcountry areas of Ross Lake NRA, including Ross Lake, would focus on providing visitors with opportunities for solitude and connections with the natural world. Self-propelled and non-mechanized recreation would be encouraged throughout Ross Lake NRA. Regulations for motorized water recreation would work to maintain the ambient character and experience on the lakes and the Skagit River, while also moving towards cleaner technologies. An online reservation and permit system would allow visitors the opportunity for advance trip planning. If a catastrophic event led to destruction of visitor facilities, the NPS would strive to offer similar visitor facilities in the vicinity while ensuring no net loss of visitor opportunities. *Alternative B* is also considered to be "environmentally preferred."

Alternative C emphasizes the role of Ross Lake NRA in preserving the greater North Cascades ecosystem, which includes two additional units of the National Park System, two national forests, as well as provincial parks and protected areas across the Canadian border. Park management and education efforts would focus on broader ecosystem preservation and enhancement through coordinated regional and international environmental stewardship. The focus of visitor experiences would be linked to solitude, tranquility, natural soundscapes, and scenery through traditional outdoor activities. The NPS would actively strive to reduce habitat fragmentation throughout Ross Lake NRA by consolidating development, eliminating certain trails, and limiting construction of new facilities in undeveloped areas. Structured educational and interpretive opportunities would take precedence, and the NPS would increasingly rely on partners to deliver educational and interpretive programs both on-site and off-site.

Alternative C would provide visitor recreational opportunities along the North Cascades Highway. However, there would be no net increase in miles of trail in Ross Lake NRA. In the backcountry and Wilderness, *Alternative C* would focus on resource preservation and enhancement and limiting and/or restricting some recreational uses. Seaplanes would not be allowed to land on lakes, and the NPS would recommend restricting commercial scenic air tours within Ross Lake NRA to protect and enhance soundscapes and wilderness character, experience, and values. Should a catastrophic weather event result in destruction of visitor facilities, natural geomorphological processes would be allowed to occur unimpeded wherever possible and affected facilities, including Colonial and Goodell Campgrounds, would be closed and restored to natural conditions.

Alternative D focuses on improving connections between visitors and the outdoors through a variety of enhanced recreation and learning opportunities. The emphasis of park management would be to diversify Ross Lake NRA's visitor base and build stewardship through more "hands-on" experiential recreation and education opportunities. Interpretive and educational programs would be offered by both the NPS and partners with expanded offerings in the backcountry and limited areas in Wilderness. Park management would continue to protect resources and minimize impacts from visitor use.

Overnight accommodations, several new trails, and additional visitor amenities would expand visitor opportunities in Ross Lake NRA primarily along the North Cascades Highway corridor. The public functions of the Wilderness Information Center would be moved to an easily accessible location on Highway 20. A wide variety of recreational activities would be allowed throughout Ross Lake NRA, and there would be fewer restrictions on recreational activities than under the other alternatives. An online reservation and permit system would allow visitors the opportunity for advance trip planning. In the event of a catastrophic event and destruction of any visitor facilities, the NPS would close affected facilities and build new facilities on other locations to ensure no net loss of visitor opportunities.

Elements Common to All Action Alternatives: Several proposed actions are common to all action alternatives. Among those actions, the NPS would work with Seattle City Light to exchange lands at Diablo Townsite and plan for future management and use of the Hollywood site. Thunder Creek Potential Wilderness Area would be converted to Wilderness and included in the Stephen Mather Wilderness. Climate change impacts and Ross Lake NRA's carbon footprint would be addressed through a variety of strategies and actions including the reduction of emissions, use of green energy, adaptive management, and support for scientific research and educational programs.

Public Review and Comment: The Draft GMP/EIS is now available for public review. All comments must be postmarked or otherwise provided not later than September 30, 2010. Comments may be submitted using any one of several methods. Your response may be transmitted via the project Web site at *http://parkplanning.nps.gov/rola.* A postage-paid comment response form included in the Draft General Management Plan Alternatives Newsletter may be used. Letters may also be mailed to the Superintendent, North Cascades NPS Complex, 810 State Route 20, Sedro-Woolley, Washington 98284. Finally, comments may be made in person or hand delivered at one of the upcoming public workshops that the park expects to conduct in late July 2010. Confirmed details on dates, times, and locations for workshops will be announced in local newspapers, in the Draft General Management Plan Alternatives Newsletter, and on the project Web sites; current information may also be obtained via telephone at (360) 854–7200.

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.

Decision Process: Following the opportunity to review the DEIS/GMP, all comments received will be carefully considered in preparing the final document. This document is anticipated to be completed during the fall and winter of 2010 and its availability will be similarly announced in the **Federal Register** and via local and regional press media. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region; subsequently the official responsible for implementation of the approved GMP would be the Superintendent, North Cascades NPS Complex.

Dated: May 28, 2010.

George J. Turnbull,

Acting Regional Director, Pacific West Region.

[FR Doc. 2010–17327 Filed 7–15–10; 8:45 am]

BILLING CODE 4312–GX–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–65891, LLORB00000–L51010000–ER0000–LVRWH09H0560; HAG–10–0189]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed North Steens Transmission Line Project in Harney County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the North Steens Transmission Line Project and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the North Steens Transmission Line Project by any of the following methods:

- *E-mail: OR_Burns_NS_Transmission_Line_EIS@blm.gov.*
- *Mail:* North Steens Transmission Line Project Lead, BLM Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738.
- *Fax:* (541) 573–4411, Attention North Steens Transmission Line Project Lead.
- Written comments may also be hand-delivered to the BLM Burns District Office at the address shown above.

Copies of the Draft EIS are available at the Burns District Office at the address listed above and electronically at the following Web site: *http://www.blm.gov/or/districts/burns/plans/index.php.*

FOR FURTHER INFORMATION CONTACT: For further information contact Robert Renchler, North Steens Transmission Line Project Lead, telephone (541) 573–4400; address 28910 Highway 20 West, Hines, Oregon 97738; or e-mail: *OR_Burns_NS_Transmission_Line_EIS@blm.gov.*

SUPPLEMENTARY INFORMATION: The applicant, Echanis, LLC, has filed applications for rights-of-way with the BLM and the U.S. Fish and Wildlife Service (FWS) for construction, operation, maintenance, and termination of a 29-mile long 230-kilovolt (kV) transmission line that would connect the proposed Echanis Wind Energy Project, located on private land on the north end of Steens Mountain, with Harney Electric Cooperative's existing transmission system near Diamond Junction, Oregon. The proposed line (Proposed Action, West Route-Alternative B) would cross approximately 19 miles of private land, 9 miles of BLM-administered public land, and 1.3 miles of land on the Malheur National Wildlife Refuge that is managed by the FWS, including a span over the Blitzen Valley. The Draft EIS analyzes impacts of six alternatives: the Proposed Action, two deviations of the proposed route, a north route alternative, a 115-kV construction option, and the No Action Alternative. The Draft EIS also identifies and analyzes measures to mitigate adverse impacts for each alternative. The private wind energy facilities and associated features are also analyzed in the Draft EIS. Major issues brought forward during the public scoping process and addressed in the Draft EIS include:

(1) Vegetation;
(2) Wildlife;
(3) Visual and aesthetic values;
(4) Lands with special designations;
(5) Cultural and tribal resources;
(6) Public services and transportation;
(7) Recreation and tourism;
(8) Social and economic effects; and
(9) Public safety.

A Notice of Intent to Prepare an EIS for the North Steens Transmission Line Project was published in the **Federal Register** on July 27, 2009 (74 FR 37052). Public participation was solicited through the media, mailings, and the BLM Web site. Public meetings were held in Burns, Bend, Frenchglen, and Diamond, Oregon.

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: 40 CFR 1506.6 and 1506.10.

Kenny McDaniel,

Burns District Manager.

[FR Doc. 2010–17239 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTG01100–09–L13100000–EJ0000]

Notice of Availability of a Draft Environmental Impact Statement for the Greater Natural Buttes Area Gas Development Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and associated regulations, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) that evaluates, analyzes, and discloses to the public direct, indirect, and cumulative environmental impacts of a proposal to develop natural gas in Uintah County, Utah. This notice announces a 45-day public comment period to meet the requirements of the NEPA and Section 106 of the National Historic Preservation Act.

DATES: The Draft EIS will be available for public review for 45 calendar days following the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM can best use comments and resource information submitted within this 45-day review period. A public meeting will be held during the 45-day public comment period in Vernal, Utah. The date, time,

and place will be announced at least 15 days prior to the meeting date through local news media and the BLM Web site *http://www.blm.gov/ut/st/en/info/newsroom.2.html.*

ADDRESSES: Comments on the Draft EIS may be submitted by any of the following methods:

- *Mail:* Bureau of Land Management, Attn: Stephanie Howard, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078.
- *E-mail: UT_Vernal_Comments@blm.gov.*
- *Fax:* (435) 781–4410.

Please reference the Greater Natural Buttes EIS when submitting your comments. Comments and information submitted on the Draft EIS for the Greater Natural Buttes project, including names, e-mail addresses, and street addresses of respondents will be available for public review at the Vernal Field Office. The BLM will not accept anonymous comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Stephanie Howard, Project Manager, BLM Vernal Field Office, 170 South 500 East, Vernal, Utah, 84078; telephone, 435–781–4400.

SUPPLEMENTARY INFORMATION: The Draft EIS is located online at *http://www.blm.gov/ut/st/en/fo/vernal/planning/nepa_.html.* In response to a proposal submitted by Kerr-McGee Oil & Gas Onshore LP (KMG), a wholly-owned subsidiary of Anadarko Petroleum Corporation, the BLM published in the October 5, 2007 **Federal Register**, a Notice of Intent (NOI) to prepare an EIS. The Greater Natural Buttes Project Area (GNBPA) encompasses approximately 162,911 acres in an existing gas producing area located in Township 8 South, Ranges 20 through 23 East; Township 9 South, Ranges 20 through 24 East; Township 10 South, Ranges 20 through 23 East; and Township 11 South, Ranges 21 and 22 East (Salt Lake Meridian) in Uintah County, Utah. The Draft EIS analyzes a proposal by KMG to develop Federal natural gas resources on their leases. The Proposed Action includes drilling up to 3,675 new gas wells and constructing associated ancillary transportation, transmission, and water disposal facilities within the GNBPA over a 10-year period. Of the 162,911 acres within the GNBPA, approximately 54 percent is on Federal lands administered by the BLM; 24 percent is on lands held in trust for the Ute Tribe; 20 percent is owned by the State of Utah and administered by the Utah State School and Institutional Trust Lands Administration; and 2 percent is privately owned. The productive life of each well is estimated to be approximately 30 to 50 years, with most drilling and development activities to occur within the first 10 years following approval of the BLM's Record of Decision.

The new gas wells would be drilled as infill to productive formations, including but not limited to, the Green River Formation, Wasatch Formation, Mesaverde Group (including the Blackhawk Formation), Mancos Shale, and Dakota Sandstone. Target depths would range from approximately 2,000 to 16,000 feet. Infill drilling would be performed on 40-acre and 20-acre surface spacing throughout the GNBPA, which is equivalent to a density of 16 to 32 surface well pads per section (or square mile). The Proposed Action and alternatives incorporate best management practices for oil and gas development and other measures necessary to address impacts to transportation, public safety, cultural resources, recreational opportunities, wildlife, threatened and endangered species, visual resources, air quality, wilderness characteristics, and other relevant issues.

The Draft EIS describes and analyzes the impacts of KMG's Proposed Action and three alternatives, including the No Action Alternative. Additional alternatives were considered but eliminated from detailed analysis. The following is a summary of the alternatives:

1. *No Action Alternative*—Drilling and completion of development wells and infrastructure would continue as described in previously approved NEPA decision documents and the proposed natural gas development on BLM lands as described in the Proposed Action would not be implemented. Activity under this alternative includes facilities disclosed through other NEPA decision documents or approved by other agencies but not yet constructed as of October 2007. Based on the foregoing documents and a review of information from Utah Division of Oil Gas and Mining, the BLM has estimated that, as of October 2007, 1,102 wells remain to be drilled in addition to the 1,562 existing wells, producing or shut in, awaiting pipeline connection in the GNBPA. In all, this would account for approximately 4,702 acres of new disturbance, or 2.9 percent of the total GNBPA, including consideration for construction of roads, pipelines, and additional support facilities.

2. *Proposed Action*—Up to 3,675 new gas wells would be drilled over a period of 10 years. Additionally, approximately 760 miles of new roads, 820 miles of buried pipelines, 587 miles of surface pipelines, 7 miles of electrical power lines, 2 mancamps, 2 compressor stations, and water disposal facilities would be constructed to support this proposed development. Total new surface disturbance under the Proposed Action would be approximately 12,658 acres, or 7.8 percent of the total GNBPA.

3. *Resource Protection Alternative (Agency Preferred Alternative*)—Like the Proposed Action, this alternative would include up to 3,675 new wellbores in addition to the existing producing wells and approved/permitted wells yet to be drilled in the GNBPA. However, this alternative places a limit on the maximum number of new well pad locations to 1 pad per 40 acres (maximum of 16 well pads per section) by using directional drilling technology to drill multiple wells from a single pad where technologically and economically feasible. The drilling rate would be the same as described for the Proposed Action. Approximately 594 miles of new roads, 654 miles of buried pipelines, and 458 miles of surface pipelines would be constructed to support this alternative. Disturbance associated with the construction of other support facilities would be the same as those described for the Proposed Action. The reduced number of well pads, miles of roads, and miles of pipelines proposed under this alternative would limit impacts associated with surface disturbance, particularly in sensitive areas, including non-WSA lands with wilderness characteristics and areas identified as potential habitat for threatened and endangered species. Total new surface disturbance under the Resource Protection Alternative would be approximately 8,147 acres, or 5.0 percent of the total GNBPA.

4. *Optimal Recovery Alternative*—This alternative is designed to maximize recovery of the gas resources by increasing the number of wellbores to achieve 10-acre surface and downhole spacing throughout the GNBPA. Up to 13,446 new wellbores would be drilled in addition to the existing producing wells and approved/permitted wells yet to be drilled in the GNBPA. Additional wells would be drilled at an average rate

of approximately 672 wells per year using 28 drilling rigs and would be drilled over a period of approximately 20 years or until the resource base is fully developed. The construction of additional new roads, pipelines, and other support facilities would be similar to those described in the Proposed Action, but in some cases more facilities would be needed because of the higher number of wells and increased gas volumes produced. Total new surface disturbance under the Optimal Recovery Alternative would be approximately 42,620 acres, or 26 percent of the total GNBPA.

5. *Alternatives Considered, but Eliminated from Further Analysis*—The BLM considered two alternatives to the proposed project that were not carried forward for detailed analysis. These include a No Further Development Alternative under which no further development would take place in the GNBPA, and a Phased Development Alternative, which was intended to rotate concentrated disturbance activities through smaller, pre-defined areas (subareas), while the remainder of the GNBPA would be less impacted than under the Proposed Action. Under this alternative, oil and gas development activities would be restricted to one of several subareas within the GNBPA boundary. One subarea at a time would be opened to oil and gas construction and development activities for a limited time period, after which construction and development activities would cease. An indicator, such as successful interim reclamation within a subarea, would be required prior to developing a new subarea. Oil and gas extraction and processing would continue (*i.e.,* operational activities) in the subarea, while construction and development activities would move to another subarea. An additional intent is to encourage concurrent and efficient reclamation of surface disturbance. The No Further Development Alternative was eliminated from detailed analysis because ongoing oil and gas development continues on valid leases within the GNBPA as disclosed under existing NEPA decision documents, which are not being revisited under this EIS. The Phased Development Alternative was eliminated from further analysis because: (a) Phased development could not be imposed by the BLM on state, tribal, or private lands within the GNBPA; (b) the BLM would still be required to process reasonable access ROW applications for development of private and state leases within the subareas not currently being developed (BLM Manual, Part 2800.06 "Policy" [D]), allowing owners to develop for the reasonable use and enjoyment non-Federal lands surrounded by public lands managed under FLPMA; (c) phased development could delay benefits to surface owners within the GNBPA (*e.g.,* payments to the Ute Tribe for surface disturbance activities); (d) phased development would concentrate traffic and drilling activities to the active subarea, but production and maintenance activities in the existing field would continue regardless of subarea; (e) under phased development, operators would be unable to return to subareas where construction and development activity has ceased, which would prevent redevelopment of a subarea in the event of a change in commodity price or an improvement in drilling technology; and, (f) concentrated development under a Phased Development Alternative would focus surface disturbance impacts in individual grazing allotments, which could result in rapid reduction in forage and a corresponding reduction in animal unit months (AUMs).

The public is encouraged to comment on any of these alternatives. The BLM asks that those submitting comments make them as specific as possible with reference to chapters, page numbers, and paragraphs in the Draft EIS document. Comments that contain only opinions or preferences will not receive a formal response; however, they will be considered, and included, as part of the BLM decision-making process. The most useful comments will contain new technical or scientific information, identify data gaps in the impact analysis, or provide technical or scientific rationale for opinions or preferences.

Selma Sierra,

State Director.

[FR Doc. 2010–17268 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000 L71220000.EX0000 LVTFF0986020 241A.00; MO#4500011839; 10–08807; TAS: 14X8069]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for the Cortez Hills Expansion Project, Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM), Battle Mountain District, Mount Lewis Field Office, Battle Mountain, Nevada, intends to prepare a Supplemental Environmental Impact Statement (EIS) for the Cortez Hills Expansion Project in Lander County, Nevada.

DATES: This notice initiates the NEPA process for the Supplemental EIS. We will provide opportunities for public participation upon publication of the Draft Supplemental EIS.

ADDRESSES: Background information, print and electronic copies of the 2008 Final EIS for the Cortez Hills Expansion Project are available at the BLM Battle Mountain District Office, 50 Bastian Road, Battle Mountain, Nevada, during regular business hours of 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Copies of the 2008 Final EIS are also available at the following Web site: *http://www.blm.gov/nv/battlemountain.*

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Christopher Worthington, (775) 635–4000, or *e-mail: Christopher_Worthington@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM signed a Record of Decision on November 12, 2008, for the Cortez Gold Mines (CGM) Cortez Hills Expansion Project, which is an expansion of existing open-pit gold mining and processing operations in northeastern Nevada. The project entails new surface disturbance of approximately 6,633 acres, including 6,412 acres of public land administered by the BLM Battle Mountain District and 221 acres of private land owned by CGM. The Notice of Availability of the Final Cortez Hills Expansion Project Environmental Impact Statement, Nevada was published in the **Federal Register** on Oct. 3, 2008.

On December 3, 2009, the United States Court of Appeals for the Ninth Circuit partially reversed the lower court's denial of preliminary injunctive relief with respect to BLM's environmental analysis of air quality and water resource issues. The BLM subsequently elected to prepare a Supplemental EIS to refine the analysis of potential air quality effects and the dewatering mitigation effectiveness for the Cortez Hills Expansion Project.

Authority: 40 CFR 1501.7.

Gerald M. Smith,

District Manager, Battle Mountain.

[FR Doc. 2010–17420 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF02000 L71220000.EA0000 LVTFC09C6050]

Notice of Availability of the Draft Environmental Impact Statement for the Proposed Over The River™ Art Project, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Proposed *Over The River*™ Art Project (*Over The River*™ Draft EIS) and by this notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the *Over The River*™ Draft EIS on or before August 30, 2010. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the *Over The River*™ Draft EIS by any of the following methods:

- *Web site: http://www.blm.gov/co/st/en/fo/rgfo/planning/otr.html.*
- *E-mail: co_otr_comments@blm.gov.*
- *Fax:* (719) 269–8599.
- *Mail:* BLM Royal Gorge Field Office, Over the River Comments, 3028 E. Main St., Cañon City, Colorado 81212.

Please write "OTR Comments" in the subject line of comments that are e-mailed or faxed. Copies of the *Over The River*™ Draft EIS are available in the BLM Royal Gorge Field Office at the above address, and on the project Web site listed above. A review copy of the *Over The River*™ Draft EIS is available at the Cañon City Public Library, 516 Macon Ave., Cañon City, Colorado; Salida Regional Library, 405 "E" Street, Salida, Colorado; Arkansas Headwaters Recreation Area (AHRA) office, 307 West Sackett Ave., Salida, Colorado; and the Denver Public Library, 10 W. Fourteenth Ave. Parkway, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Vincent Hooper, *Over The River*™ Project Manager, at the Royal Gorge Field Office (*see* **ADDRESSES** above); telephone (719) 269–8555; or *e-mail: co_otr_comments@blm.gov.*

SUPPLEMENTARY INFORMATION: The OTR Corporation (OTR Corp.), formed by the artists Christo and Jeanne-Claude, proposes to install a work of art, known as *Over The River*™, on Federal, State, and private lands adjacent to the Arkansas River between the cities of Salida and Cañon City in Colorado. It has filed with the BLM an application for a land use authorization under Section 302 of the Federal Land Policy and Management Act, 43 U.S.C. 1732, and its implementing regulations, 43 CFR Part 2920. Following an estimated 2-year construction period, the exhibit is proposed for a 2-week display and viewing period in early August 2013. The proposed art exhibit is a no-fee visitor event. At the end of the 2-week exhibition period, the system of cables and anchors and other above-ground materials would be removed over an estimated 3-month period. The artists would be responsible for restoring the river corridor according to the standards defined by permitting and approval authorities.

The proposed art exhibit involves the installation of 925 porous, semi-transparent fabric panels, weighing an average of 140 lbs/panel. These panels would be suspended 8 to 25 feet above the water for a total of 5.9 miles in eight locations dispersed along a 42-mile stretch of the Arkansas River. A support structure of an estimated 9,100 steel anchors would be drilled along and into the banks of the Arkansas River to support 2,275 steel anchor transition frames for an estimated 1,275 steel cables that would support the fabric panels. OTR Corp. also proposes to construct two equipment laydown areas totaling approximately 56 acres (acreage includes visitor facilities) and a 4,000-square-foot warehouse/office building. Upon project completion, the warehouse would be donated to a public agency or deconstructed and removed from the site.

The earliest that the project would be exhibited is in 2013. An estimated 344,000 visitors (which includes 100,000 baseline visitors to the area) are expected to visit the Arkansas River canyon during the 2-week exhibition period. An additional 36,000 visitors are expected to view both the installation and the removal of the art. The resulting traffic in the area is estimated to be 118,620 cars during the overall exhibition period, and 12,862 cars during installation and removal. It is assumed there would be an average of 2.9 visitors per vehicle.

The footprint of the proposed project would encompass approximately 310 acres. The project would be located primarily on Federal lands administered by the BLM Royal Gorge Field Office, but would also be located on lands owned or managed by the Colorado State Land Board (SLB), Union Pacific Railroad, and private landowners; lands leased by the Colorado Division of Wildlife (CDOW); and lands owned or cooperatively managed by Colorado State Parks in the AHRA. The Colorado Department of Transportation (CDOT) and Colorado State Patrol (CSP) have jurisdiction for activities along U.S. Highway 50. The majority of the project area is within Fremont County. However, a small portion at the western end of the project is within Chaffee County. Approximately 80 percent of the area in the proposed project would be located in the Arkansas Canyonlands Area of Critical Environmental Concern (ACEC), a BLM-specific designation that recognizes the need for recreation use as well as protection of outstandingly remarkable values.

The BLM Royal Gorge Field Office is the lead Federal agency responsible for preparing the EIS and complying with the requirements of NEPA and other applicable laws and regulations. Multiple cooperating agencies and permitting authorities have participated and provided input in the development of the Draft EIS including the Colorado Department of Natural Resources (DNR)—which consists of CDOW, Colorado State Parks, and SLB—as well as CDOT, CSP, and Chaffee and Fremont counties.

Considerations for decisions to be made through the BLM's EIS process include:

- Whether to authorize, and under what terms and conditions, the artists' request for use of public lands;
- Which combination of project elements may be authorized if the proposed project is determined to result in unacceptable impacts and the artists' proposed action is not authorized in its entirety;
- Whether some or all mitigation measures identified in the EIS may be adopted or if additional measures may be required;
- Whether the project and its potential effects are in conformance with the Resource Management Plan (RMP), including the Arkansas Canyonlands ACEC; and
- Whether an amendment to the Royal Gorge Resource Area RMP is

necessary to allow for the use of public lands for the Proposed Action.

Over The River™ was informally proposed by the artists Christo and Jeanne-Claude in 1996. Based on OTR Corp.'s verbal proposal, the BLM started conducting an Environmental Assessment (EA) and held public meetings between 1997 and 2000. The BLM initiated an informal scoping period through eight public meetings held in communities within the proposed project area from April 1997 to October 2000. OTR Corp. re-approached the BLM about the proposed project in August 2005. Additional EA-level scoping occurred in January and February 2006. The BLM also hosted interagency meetings with CDOT, DNR, Fremont County, Chaffee County, and CSP on May 24, 2006, to discuss and understand the public comments and questions. The scoping comments led to a Notice Of Intent (NOI) published in the **Federal Register** on June 19, 2006 (71 FR 35289), announcing the intent to prepare an EIS based on several factors, including a specific request from the applicants; the increasing complexity of the project; the level of controversy related to the project; and the level of involvement during the scoping process. The NOI was also advertised in local newspapers. The OTR Corp. and the BLM developed and signed a Memorandum of Understanding for EIS preparation in May 2007. OTR Corp. delivered a *Design and Planning Report* in 2007 that included a preliminary set of alternatives. However, the 2007 report did not include some of the details previously requested by the BLM and cooperating agencies that were necessary to move forward with the EIS. In April 2008, the BLM received a *Detailed Design Proposal* including additional project information with the level of detail necessary to move forward with the EIS. This led to the process of filing an upper-level-agency review of a Notice of Realty Action, published in the **Federal Register** on October 31, 2008 (73 FR 64982).

This Draft EIS analyzes seven separate alternatives, including the No Action Alternative. The action alternatives were developed to consider and compare configurations of public lands that could be made available for artistic panel placement as well as construction, logistics, traffic planning, and visitor management. The process of developing a range of alternatives began with a review of the artists' proposal and public and agency scoping comments, as well as a series of cooperating agency meetings. The following four project components, each of which could be altered in various ways to respond to known issues and concerns, formed the basis of the alternatives development process: panel placement, transportation, visitor management, and temporal considerations.

The primary issues that were identified as key general concerns of the public, project team staff, and cooperators that are further analyzed in this Draft EIS include: emergency response; project engineering; natural and cultural resources (including soils, geology, noxious weeds, and wildland fire); pollution and sanitation; public safety; recreation; socioeconomics; transportation; and wildlife.

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: 40 CFR 1506.6, 40 CFR 1506.10.

John Mehlhoff,

Associate State Director.

[FR Doc. 2010–17245 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Match-E-Be-Nash-She-Wish (Gun Lake) Tribe Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Secretary's certification of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake) Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale, and consumption of liquor within the tribal lands. The tribal lands are located in Indian Country and this Ordinance allows for possession and sale of alcoholic beverages within their boundaries. This Ordinance regulates the possession, sale and consumption of alcoholic beverages on tribal trust land in conformity with applicable tribal, Federal and state laws.

DATES: *Effective Date:* This Ordinance is effective July 16, 2010.

FOR FURTHER INFORMATION CONTACT: David Christensen, Tribal Operations Officer, Midwest Regional Office, One Federal Drive, Room 550, Ft. Snelling, MN 55111, Telephone (612) 725–4554; or Elizabeth Colliflower, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Tribal Council of the Gun Lake Tribe Liquor Control Ordinance adopted this Liquor Ordinance on March 9, 2010. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within Gun Lake's tribal land.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake) was duly adopted by its Tribal Council by Resolution No. 10–582 on March 9, 2010.

Dated: July 8, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

The Liquor Ordinance of the Gun Lake Tribe Liquor Control Ordinance reads as follows:

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Liquor Control Ordinance

Chapter 1

General Provisions

Section 1 This Ordinance may be cited as the "Gun Lake Tribe Liquor Control Ordinance."

Section 2 The purpose of this Ordinance is to regulate the possession, sale and consumption of Alcoholic Beverages on Tribal Trust Land in conformity with applicable Tribal, federal, and state law.

Section 3 The possession, transportation, storage, sale and consumption of Alcoholic Beverages shall be lawful on Tribal Trust Land, provided that such activities comply with the provisions of this Ordinance, and with the applicable provisions of the laws of the State of Michigan.

Chapter 2

Definitions

For purposes of this Ordinance the following definitions apply:

(a) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, commonly produced by the fermentation or distillation of grain, starch, grapes, molasses or other substances,

including all dilutions and mixtures of this substance.

(b) "Alcoholic Beverage" means any liquid or mixture intended for human consumption that contains more than 0.5% of Alcohol by volume.

(c) "Intoxicated Person" means a person whose mental or physical functioning is impaired as a result of the use of alcohol.

(d) "Licensee" means one who holds a valid license from the Tribe to sell Alcoholic Beverages on the Tribal Trust Land, and includes employees or agents of the Licensee.

(e) "Minor" means a person less than twenty-one (21) years of age.

(f) "Ordinance" means this Ordinance to regulate the possession, transportation, storage, sale and consumption of Alcoholic Beverages, adopted pursuant to 18 U.S.C. 1161.

(g) "Tribal Council" means the governing body of the Tribe as established by Article VI of the Tribe's Constitution.

(h) "Tribal Court" means the Court established pursuant to Article VII, Section 1(s) of the Tribe's Constitution.

(i) "Tribal Trust Land" means those lands held in trust by the United States of America for the benefit of the Tribe.

(j) "Tribe" means the Match-E–Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan, also known as the Gun Lake Tribe.

Chapter 3

Tribal Liquor License

Section 1 No person or entity shall engage in the sale of Alcoholic Beverages on Tribal Trust Land, unless licensed to do so by the Tribal Council in accordance with the terms of this Ordinance and in compliance with the Tribal-State Class III Gaming Compact between the Tribe and the State of Michigan.

Section 2 The authority to issue, suspend and revoke a Tribal Liquor License is vested in the Tribal Council, under Article VII, Section 1 (q) of the Tribe's Constitution. No License shall be issued under this Ordinance except upon a sworn application filed with the Tribal Council containing, at a minimum, the following:

(a) A description of the area or premises to be licensed and the hours that Alcoholic Beverages will be served.

(b) An agreement by the applicant to observe and abide by all conditions of the Tribal Liquor License, all applicable state liquor laws, and federal law.

(c) A statement that the applicant has never been convicted of a felony.

(d) An application fee in an amount set by the Tribal Council.

Section 3 Notice of the Tribal Liquor License application shall be posted on the premises and distributed to Tribal Citizens in a manner that provides an opportunity to comment or file a protest regarding the application.

Section 4 Every Tribal Liquor License application shall be considered by the Tribal Council in a meeting at which the applicant and Tribal Citizens shall have the right to be present, to observe the proceedings, and to offer sworn oral or written testimony or other evidence relevant to the application. After the meeting, the Tribal Council shall determine whether to grant or deny the License, based on whether the Tribal Council, in its sole discretion, determines that granting the License is in the best interest of the Tribe.

Section 5 Any Tribal Liquor License shall be subject to such conditions as the Tribal Council shall impose, including, but not limited to the following:

(a) The License shall be for a term of one year, shall identify the specific areas and hours permitted for the sale of Alcoholic Beverages, and shall be subject to annual renewal.

(b) The Licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises.

(c) The licensed premises shall be open to inspection by duly authorized Tribal officials at all times during regular business hours.

(d) No Alcoholic Beverages shall be sold, served, disposed of, delivered, or given to any person, or consumed on the licensed premises, except during the hours and days that would be permitted by the applicable laws of the State of Michigan, unless the hours of service are further limited by the Tribal Council.

(e) Any spirits resold for consumption on the Tribal Trust Land shall be purchased from the Michigan Liquor Control Commission, and beer and wine shall be purchased from distributors licensed by the Michigan Liquor Control Commission.

(f) All acts and transactions performed under authority of the Tribal Liquor License shall be in conformity with the applicable laws of the State of Michigan, the provisions of this Ordinance, and any rules or policies promulgated under this Ordinance.

(g) No person under the age of twenty-one (21) shall be sold, served, delivered, given or allowed to consume Alcoholic Beverages at any location on the Tribal Trust Land, and no person under the age of eighteen (18) years shall be employed to sell or serve any Alcoholic Beverages.

(h) Alcoholic Beverages shall not be comped, given away, or furnished without charge in any facility licensed under this Ordinance.

(i) No person licensed under this Ordinance shall sell, deliver, give, or furnish any Alcoholic Beverage to any Intoxicated Person.

Section 6 Notwithstanding any other provision of this Ordinance, a Tribal Liquor License is a permit for a fixed time period. A Tribal Liquor License shall not be deemed a property right or vested right of any kind. The granting of a Tribal Liquor License shall not create any entitlement to any renewal of such license.

Section 7 No Tribal Liquor License issued under this Ordinance may be assigned, pledged, transferred, leased, licensed or sold. Any attempt to do so is grounds for the immediate revocation of the License.

Section 8 Any Tribal Liquor License issued hereunder may be suspended or revoked by the Tribal Council for the breach of any provision of this Ordinance, or any condition of the Tribal Liquor License, upon fifteen (15) days written notice to the Licensee, unless a shorter notice period is necessary to preserve public health and safety on the Tribal Trust Land. The Licensee may request a hearing before the Tribal Council. The decision of the Tribal Council shall be final.

Chapter 4

Incorporation of Michigan Laws by Reference

Section 1 In accordance with 18 U.S.C. 1161, the Tribe hereby adopts and applies as tribal law those Michigan laws, as now or hereafter amended, relating to the sale and regulation of Alcoholic Beverages encompassing the following areas: Sale to a Minor; sale to a visibly intoxicated individual; sale of adulterated or misbranded liquor; and hours of operation.

The following laws from the Michigan Liquor Control Code of 1998 are hereby adopted and applied as Tribal law:

436.1233 Uniform prices for sale of alcoholic liquor; gross profit; discount for certain sales of alcoholic liquor.

436.1701 Selling or furnishing alcoholic liquor to person less than 21 years of age; failure to make diligent inquiry; misdemeanor; signs; consumption of alcoholic liquor as cause of death or injury; felony; enforcement against licensee; defense in action for violation; report; definitions.

436.1703 Purchase, consumption, or possession of alcoholic liquor by minor; attempt; violation; fines; sanctions; furnishing fraudulent identification to minor; screening and assessment; chemical breath analysis; construction of section; exceptions; "any bodily alcohol content" defined.

436.1707 Selling, serving, or furnishing alcohol; prohibitions.

436.1801 Granting or renewing license; selling, furnishing or giving alcoholic liquor to minor or person visibly intoxicated; right of action for damage or personal injury; actual damages; institution of action; notice; survival of action; separate actions by parents; commencement of action against retail licensee; indemnification; defenses available to licensee; rebuttable presumption; prohibited causes of action; section as exclusive remedy for money damages against licensee; civil action subject to revised judicature act.

436.1815 Adherence to responsible business practices as defense; compensation of employee on commission basis.

436.1901 Compliance required, prohibited acts.

436.1905 Selling or furnishing alcoholic liquor to minor; enforcement actions prohibited; conditions; exception.

436.2005 Adulterated, misbranded, or refilled liquor.

436.2025 Giving away alcoholic liquor; samplings or tastings of alcoholic liquor; sales to intoxicated persons prohibited.

The laws referenced in this section shall apply in the same manner and to the same extent as such laws apply elsewhere in Michigan, unless otherwise agreed by the Tribe and State.

Section 2 Whenever such Michigan laws are incorporated by reference, amendments to those laws shall also be deemed to be incorporated upon their effective date in the State of Michigan, without the need for further action by the Tribal Council.

Section 3 Nothing in this Ordinance shall be construed as consent by the Tribe to the jurisdiction of the State of Michigan or any of its courts or subordinate political subdivisions over any activity arising under this Ordinance, nor shall anything in this Ordinance constitute an express or implied waiver of the sovereign immunity of the Tribe.

Chapter 5

General Penalties

Section 1 Any violation of this Ordinance, including any regulation under this Ordinance, shall be subject to a civil fine of not more than Five Hundred Dollars ($500.00) for each such violation. The Tribal Council may adopt by Resolution a schedule of fines for each violation, taking into account the severity of the offense and threat the violation may pose to the general health and welfare. Such schedule may also provide for the imposition of increased monetary penalties for repeated violations. The civil penalties provided for in this section shall be in addition to any criminal penalties that may be imposed under applicable law.

Section 2 The Tribal Council is authorized to adopt such regulations as may be necessary to implement the provisions of this Ordinance.

Section 3 This Ordinance shall take effect immediately upon its adoption by the Tribal Council.

[FR Doc. 2010–17363 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9 a.m., on Friday, August 13, 2010, at the Brunswick City Hall, 1 West Potomac Street, Brunswick, Maryland 21716.

DATES: Friday, August 13, 2010.

ADDRESSES: Brunswick City Hall, 1 West Potomac Street, Brunswick, Maryland 21716.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, is available to provide further information and to receive comments prior to the meeting, at 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201. 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.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson
Mr. Charles J. Weir
Mr. Barry A. Passett
Mr. James G. McCleaf II
Mr. John A. Ziegler
Mrs. Mary E. Woodward
Mrs. Donna Printz
Mrs. Ferial S. Bishop
Ms. Nancy C. Long
Mrs. Jo Reynolds
Dr. James H. Gilford
Brother James Kirkpatrick
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath
Ms. Patricia Schooley
Mr. Jack Reeder
Ms. Merrily Pierce

Topics that will be presented during the meeting include:

1. Update on park operations;
2. Update on major construction development projects;
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: June 7, 2010.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. 2010–17325 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–6V–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM920000 L13100000 FI0000; NMLC 066147]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease NMLC 066147, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the Class II provisions of the Federal Oil and Gas Royalty Management Act of 1982, the Bureau of Land Management received a petition for reinstatement of oil and gas lease NMLC 066147 from the lessee(s), Estate of C.W. Trainer, Zia Royalty LLC, Grady Thompson, Collin S. Smith, R.G. Barton Jr., Trust, E.F. Howe, HOG Partnership LP, Phillip G. Herkenhuff, Gordon E. Herkenhuff, Edna Gay H. Dwyre, Devon Energy Production Company LP, College of Southwest, George W. Baker, for lands in Lea County, New Mexico. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 or at (505) 954–2146.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affects the lands. The lessees agree to new lease terms for rentals and royalties of $10 per acre or a fraction thereof, per year, and 18 ⅔ percent, respectively. The lessees paid the required $500 administrative fee for the reinstatement of the lease and the $166 cost for publishing this Notice in the **Federal Register**. The lessees met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate lease NMLC 066147, effective the date of termination, December 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 2010–17421 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164386]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from CKT Energy LLC for competitive oil and gas lease WYW164386 for land in Campbell County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department 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 Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW164386 effective January 1, 2010, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2010–17418 Filed 7–15–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,226]

Delphi Corporation, Automotive Holding Group, Instrument Cluster Plant, Currently Known as General Motors Corporation, Including On-Site Leased Workers From Securitas, EDS, Bartech, Mays Chemicals, Interim Physicians, LLC and HSS Material Management, Flint, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 15, 2007, applicable to workers of Delphi Corporation, Automotive Holding Group, Instrument Cluster Plant, including on-site leased workers from Securitas, EDS, Bartech and Mays Chemicals, Flint, Michigan. The Department's Notice of determination was published in the **Federal Register** on May 30, 2007 (72 FR 30033). The certification was amended on February 17, 2009 to reflect that the workers' wages are reported under the Unemployment Insurance (UI) tax account for General Motors Corporation. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9286–9287).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Workers produced instrumentation displays.

The company reports that workers leased from Interim Physicians, LLC and HSS Material Management were employed on-site at the Flint, Michigan location of Delphi Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered as leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Interim Physicians, LLC and HSS Material Management working on-site at Delphi Corporation, Automotive Holding Group, Instrument Cluster Plant, currently known as General Motors Corporation, Flint, Michigan.

The amended notice applicable to TA–W–61,226 is hereby issued as follows:

All workers of Delphi Corporation, Automotive Holding Group, Instrument Cluster Plant, currently known as General Motors Corporation, including on-site leased workers from Securitas, EDS, Bartech, Mays Chemicals, Interim Physicians, LLC and HSS Material Management, Flint, Michigan, who became totally or partially separated from employment on or after March 30, 2006 through May 15, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of July 2010.

Del-Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17384 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,069; TA–W–62,069A]

Delphi Corporation, Automotive Holding Group, Plant 6, Currently Known as General Motors Corporation Including On-Site Leased Workers From Securitas, EDS, Bartech, Mays Chemicals, Interim Physicians, LLC and HSS Material Management, Flint, MI; Delphi Corporation, Automotive Holding Group, Plant 2, Currently Known as General Motors Corporation Including On-Site Leased Workers From Securitas, EDS, Bartech, Mays Chemicals, Interim Physicians, LLC and HSS Material Management, Flint, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 1, 2007, applicable to workers of Delphi Corporation, Automotive Holding Group, Plant 6, including on-site leased workers from Securitas, EDS, Bartech and Mays Chemicals, Flint, Michigan and Delphi Corporation, Automotive Holding Group, Plant 2, including on-site leased workers from Securitas, EDS, Bartech and Mays Chemicals, Flint,

Michigan. The Department's Notice of determination was published in the **Federal Register** on October 17, 2007 (72 FR 58899). The certification was amended on February 17, 2009 to reflect that the workers' wages are reported under the Unemployment Insurance (UI) tax account for General Motors Corporation. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9287).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Workers at Plant 6 produced automotive air induction products and workers at Plant 2 produced automotive modular reservoir assemblies and sub components.

The company reports that workers leased from Interim Physicians, LLC and HSS Material Management were employed on-site at Plant 6 and Plant 2 of Delphi Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered as leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Interim Physicians, LLC and HSS Material Management working on-site at Delphi Corporation, Automotive Holding Group, Plant 6, currently known as General Motors Corporation and Delphi Corporation, Automotive Holding Group, Plant 2, currently known as General Motors Corporation.

The amended notice applicable to TA–W–62,069 and TA–W–62,069A is hereby issued as follows:

All workers of Delphi Corporation, Automotive Holding Group, Plant 6, currently known as General Motors Corporation, including on-site leased workers from Securitas, EDS, Bartech, Mays Chemicals, Interim Physicians, LLC and HSS Material Management, Flint, Michigan (TA–W–62,069) and Delphi Corporation, Automotive Holding Group, Plant 2, currently known as General Motors Corporation, including on-site leased workers from Securitas, EDS, Bartech, Mays Chemicals, Interim Physicians, LLC and HSS Material Management, Flint, Michigan (TA–W–62,069A), who became totally or partially separated from employment on or after August 27, 2006 through October 1, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of July 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17385 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,846]

Hewlett Packard, Technical Support Call Center, Including On-Site Leased Workers From Manpower, Volt, Adecco, Radiant Systems, and Kelly Services, Boise, ID; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on February 1, 2010, applicable to workers of Hewlett Packard, Technical Support Call Center, including on-site leased workers from Manpower, Volt, and Adecco, Boise, Idaho. The notice was published in the **Federal Register** March 12, 2010 (75 FR 11924).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to technical support services.

The company reports that workers leased from Radiant Systems and Kelly Services were employed on-site at the Boise, Idaho location of Hewlett Packard, Technical Support Call Center. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Radiant Systems and Kelly Services working on-site at the Boise, Idaho location of Hewlett Packard, Technical Support Call Center.

The amended notice applicable to TA–W–72,846 is hereby issued as follows:

All workers of Hewlett Packard, Technical Support Call Center, including on-site leased workers from Manpower, Volt, Adecco, Radiant Systems, and Kelly Services, Boise, Idaho, who became totally or partially separated from employment on or after October 29, 2008, through February 1, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 8th day of July, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17388 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,810]

Novell, Inc., Including On-Site Leased Workers From Affiliated Computer Services, Inc., (ACS), Provo, UT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 6, 2009, applicable to workers of Novell, Inc., Provo, Utah. The notice was published in the **Federal Register** on December 11, 2009 (74 FR 6599).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to research, design and technical support for the production of computer software.

The company reports that workers leased from Affiliated Computer Services, Inc., (ACS) were employed on-site at the Provo, Utah location of Novell, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Affiliated Computer Services, Inc., (ACS) working on-site at the Provo, Utah location of Novell, Inc.

The amended notice applicable to TA–W–71,810 issued as follows:

All workers of Novell, Inc., including on-site leased workers from Affiliated Computer Services, Inc., (ACS), Provo, Utah, who became totally or partially separated from employment on or after July 24, 2008, through October 6, 2011, and all workers in the group threatened with total or partial separation from employment on the date of

certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 8th day of July 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17387 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,106; TA–W–71,106A]

Paris Accessories, Inc., Including On-Site Leased Workers From Job Connections, New Smithville, PA; Paris Accessories, Inc., Allentown, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Notice of Revised Determination on Reconsideration applicable to workers of Paris Accessories, Inc., including on-site leased workers from Job Connections, New Smithville, Pennsylvania. The Notice of revised determination was issued on May 27, 2010. The Notice was published in the **Federal Register** on June 16, 2010 (75 FR 34180). The workers of the subject firm are engaged in employment related to the assembly and packaging of accessories.

The company official reports that workers from the New Smithville, Pennsylvania facility also worked at the Allentown, Pennsylvania facility. Further, the workers moved interchangeably between the two facilities.

Based on these findings, the Department is amending this certification to include workers of Paris Accessories, Inc., Allentown, Pennsylvania.

The amended notice applicable to TA–W–71,106 is hereby issued as follows:

All workers of Paris Accessories, Inc., New Smithville, Pennsylvania (TA–W–71,106) and all workers of Paris Accessories, Inc., Allentown, Pennsylvania (TA–W–71,106A) who became totally or partially separated from employment on or after May 27, 2008 through May 27, 2012, and all workers in the group threatened with total or partial separation from employment on or after May 27, 2010 through May 27, 2012, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 8th day of July, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17386 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,988]

Delphi Corporation, a Subsidiary of Delphi Holdings, LLC, Including On-Site Leased Workers From Securitas, Interim Physicians LLC, EDS, Bartech Group, Mays Chemical Company, Greater Flint Janitorial Services, HSS Material Management Solutions and Consumer Energy; Flint, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 5, 2010, applicable to workers of Delphi Corporation, a subsidiary of Delphi Holdings, LLC, including on-site leased workers from Securitas, Interim Physicians LLC, EDS, Bartech Group, Mays Chemical Company, Greater Flint Janitorial Services and HSS Material Management Solutions, Flint, Michigan. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21361).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of fuel modules, instrument clusters, and air meters.

The review shows that on May 15, 2007, a certification of eligibility to apply for adjustment assistance was issued for all workers of Delphi Corporation Automotive Holding Group, Flint, Michigan, engaged in the production of instrument clusters, separated from employment on or after March 30, 2006 through May 15, 2009. The notice was published in the **Federal Register** on May 30, 2007 (72 FR 30033).

The review also shows that on October 1, 2007, a certification of eligibility to apply for adjustment assistance was issued for all workers of Delphi Corporation Automotive Holding Group, Flint, Michigan, engaged in the production of fuel modules and air meters, separated from employment on or after August 27, 2006 through October 1, 2009. The notice was published in the **Federal Register** on October 17, 2007 (72 FR 58899).

In order to avoid overlaps in worker group coverage, the Department is amending the June 4, 2008 impact date established for TA–W–70,988 to read May 16, 2009 for workers producing instrument clusters and October 2, 2009 for workers producing fuel modules and air meters.

Furthermore, the company reports that workers leased from Consumer Energy were employed on-site at the subject firm. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Consumer Energy working on-site at the subject firm.

The amended notice applicable to TA–W–70,988 is hereby issued as follows:

All workers of Delphi Corporation, a subsidiary of Delphi Holdings, LLC, including on-site leased workers from Securitas, EDS, Bartech Group, Mays Chemicals Company, Interim Physicians, LLC and HSS Material Management Solutions, Flint, Michigan, engaged in the production of instrument clusters, who became totally or partially separated from employment on or after May 16, 2009, AND all workers of Delphi Corporation, a subsidiary of Delphi Holdings, LLC, including on-site leased workers of Securitas, EDS, Bartech Group, Mays Chemicals Company, Interim Physicians, LLC, HSS Material Management Solutions, Flint, Michigan, engaged in the production of fuel modules and air meters who became totally or partially separated from employment on or after October 2, 2009, AND all leased workers from Interim Physicians LLC, Greater Flint Janitorial Services, HSS Material Management Solutions and Consumer Energy, working on-site at Delphi Corporation, a subsidiary of Delphi Holdings, LLC, Flint, Michigan, who became totally or partially separated from employment on or after June 4, 2008 through March 5, 2012, and all workers in the group threatened with total or partial separation from employment on March 5, 2010 through March 5, 2012, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 1st day of July, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17380 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,269]

Horton Manufacturing Company, LLC, Tallmadge, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 2010, applicable to workers of Horton Archery, LLC, formerly known as Wildcomm-Horton Partners, LLC, Tallmadge, Ohio. The Department's notice of determination was published in the **Federal Register** April 23, 2010 (75 FR 21355).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of archery equipment.

Information shows that Horton Manufacturing Company, LLC went into receivership in 2009 and subsequently sold its assets to Wildcomm-Horton Partners, LLC. Later, Wildcomm-Horton Partners, LLC changed its name to Horton Archery, LLC.

Based on these findings, the Department determines that the separated workers were employees of Horton Manufacturing Company, LLC and were not employees of either Wildcomm-Horton Partners, LLC or Horton Archery, LLC.

The intent of the Department's certification is to include all workers of Horton Manufacturing Company, LLC, Tallmadge, Ohio, who were adversely affected by increased imports of archery equipment, and to exclude all other workers.

The amended notice applicable to TA–W–71,269 is hereby issued as follows:

All workers of Horton Manufacturing Company, LLC, Tallmadge, Ohio, who became totally or partially separated from employment on or after June 16, 2008 through March 11, 2012, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 30th day of June, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17381 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,198; TA–W–64,198A]

Cranston Print Works Company, Webster Division, Webster, MA; Cranston Print Works Company, Corporate Offices, Cranston, RI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 6, 2009, applicable to workers of Cranston Print Works Company, Webster Division, Webster, Massachusetts. The Department's Notice of determination was published in the **Federal Register** on March 3, 2009 (74 FR 9282). The workers are engaged in activities related to the production of printed cotton and cotton blend fabrics.

At the request of the company official, the Department reviewed the certification for workers of the subject firm. The company official states that the Cranston, Rhode Island facility operated in conjunction with the Webster, Massachusetts facility and that the worker separations at the Cranston, Rhode Island facility is due to the reduced production of printed cotton and cotton blend fabrics at the Webster, Massachusetts facility.

Based on these findings, the Department is amending this certification to include workers from Cranston Print Works Company, Corporate Offices, Cranston, Rhode Island.

Workers at Cranston Print Works Company, Webster Division, Webster, Massachusetts, were under a certification that expired on August 22, 2008 (TA–W–59,774). Workers at Cranston Print Works Company, Corporate Offices, Cranston, Rhode Island were not covered by the certification. Because the date of the petition is October 9, 2008, the earliest possible impact date of the amended certification applicable to workers of Cranston Print Works Company, Corporate Offices, Cranston, Rhode Island is October 9, 2007.

Workers at Cranston Print Works Company, Corporate Offices, Cranston, Rhode Island, who are separated from employment between March 10, 2009 and June 1, 2012 are eligible to apply for Trade Adjustment Assistance (TAA) under TA–W–73,788. Because workers cannot be covered by two certifications at the same time, the period of the amended certification ends on March 9, 2009.

The amended notice applicable to TA–W–64,198 is hereby issued as follows:

All workers of Cranston Print Works Company, Webster Division, Webster, Massachusetts (TA–W–64,198), who became totally or partially separated from employment on or after August 23, 2008, through February 6, 2011, and all workers of Cranston Print Workers Company, Corporate Offices, Cranston, Rhode Island (TA–W–64,198A), who became totally or partially separated from employment on or after October 9, 2007, through March 9, 2009, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended, and are also eligible to apply for alternative trade adjustment assistance.

Signed at Washington, DC, this 8th day of July 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17379 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of June 28, 2010 through July 2, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles

produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Under Section 222(a)(2)(B), all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,046	QualityLogic, Incorporated	Boise, ID	December 3, 2008.
73,904	ConAgra Foods Lamb Weston, Inc., Leased Workers Manpower and Barrett Business Services.	Prosser, WA	April 9, 2009.
73,960	668 Fashion, Inc.	New York, NY	April 16, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,025	Harkham Industries, Inc., d/b/a/Jonathan Martin	Los Angeles, CA	December 2, 2008.
73,075	ABB, Inc., Robotics Division North America, Beeline Corporation	Auburn Hills, MI	December 4, 2008.
73,078	HSBC, Consumer Lending Records Department	Elmhurst, IL	November 23, 2008.
73,288	Eastman Kodak Company, Organic Light Emitting Diode Display Business Division.	Rochester, NY	January 13, 2009.
73,443	Sungard Availability Services, LP, Including leased workers of Insight Global, Harvey Nash and Intellisource.	Thornton, CO	January 27, 2009.
73,466	Chart Energy and Chemicals, LA Crosse Division, Chart Industries, Inc., Express Employ., etc.	La Crosse, WI	January 29, 2009.
73,542	Sanofi-Aventis, LLC, Industrial Affairs Division, Pro-Unlimited@Sanofi-Aventis.	Kansas City, MO	February 10, 2009.
73,595	British Telecom America, A Subsidiary of BT PLC, including workers from Manpower and Tech.	El Segundo, CA	March 1, 2009.
73,757	Pricewaterhousecoopers, LLP, Internal Firm Services Division, Client Account Administrators.	Los Angeles, CA	March 12, 2009.
73,860	Metalsa Structural Products, Product Validaton Group, Leased Workers from Yoh Services.	Pottstown, PA	April 1, 2009.
73,912	Amdocs, Inc., Order and Wholesale Solutions Group of AT&T Managed Services.	New Haven, CT	April 9, 2009.
73,941	Applied Materials, Inc., Leased Workers from Adecco USA	Salt Lake City, UT	April 12, 2009.
73,987	Ford Motor Credit Company, LLC, Colorado Springs Business Center, Leased Workers MSX International.	Colorado Springs, CO	April 22, 2009.
73,995	Datamatics Global Services, Inc., Data Entry Group, Datamatics Global Services, Ltd.	Burlington, MA	April 16, 2009.
73,996	General Electric Motors Plant, Energy (Motors) Division	Owensboro, KY	April 23, 2009.
74,019	Choicepoint, A LexisNexis Company, Leased Workers Global Contract Services (GCS) etc.	Brea, CA	April 26, 2009.
74,064	Aviat U.S., Inc., Including Greene Resources, Inc	San Antonio, TX	May 7, 2009.
74,088	ABB, Inc.	Mount Pleasant, PA	May 10, 2009.
74,110	Microsemi Corporation—Scottsdale, Microsemi Corporation, Leased workers Superior Staffing.	Scottsdale, AZ	May 17, 2009.
74,117	Mark Machine, Division of Paragon Medical	Fairfield, NJ	May 18, 2009.
74,126	Broadview Networks Holdings, Inc	King of Prussia, PA	May 7, 2009.
74,149	Hartford Financial Services Group, Inc., Claims Department/Auto Commercial Liability.	Indianapolis, IN	April 29, 2009.
74,149A	Hartford Financial Services Group, Inc., Claims Department/Auto Commercial Liability.	Tampa, FL	April 29, 2009.
74,217	Honeywell International, Inc., Aerospace Division, Inbound Logistics Group.	Phoenix, AZ	June 7, 2009.
74,250	Charming Shoppes of Delaware, Inc., Accounts Payable, Rent and Merchandise Disbursement, Shared Service Center.	Bensalem, PA	June 15, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,977	Henniges Automotive, a Subsidiary of Wynnchurch Capital.	New Haven, MO	November 2, 2008.
73,072	Android Industries Belvidere, LLC, Leased Workers from QPs Employment Group and Spherion Corporation.	Belvidere, IL	December 9, 2008.
73,345	Inteva Products, LLC, Leased Workers from Accretive Solutions, Acro Services Corporation.	Vandalia, OH	December 16, 2008.
73,389	Allagash Enterprise, Inc	Allagash, ME	January 3, 2009.
73,767	Toyoda Gosei North American Corporation, Including leased workers of Aerotek, Brooksource, LLC, etc.	Troy, MI	March 12, 2009.
74,137	SPS Technologies, LLC, North America Fasteners Division, Leased Workers of Area Temps.	Cleveland, OH	May 24, 2009.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
72,722	ArcelorMittal Tubular Products, ArcelorMittal	Shelby, OH	October 22, 2008.

TA–W No.	Subject firm	Location	Impact date
73,460	Milacron Plastics Technologies Group LLC, Leased Workers from Viox Servcies.	Batavia, OH	February 4, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
73,948	Central Oregon Workensport	Bend, OR	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
72,088	Active USA, LLC, A Division of JHT Holdings, Inc	Springfield, OH	
72,335	Husky Injection Molding Systems, Inc., A Subsidiary of Husky Injection Molding Systems, LTD.	Milton, VT	
72,812	Ford Motor Company, Wayne Assembly Plant	Wayne, MI	
73,048	Mohawk Flush Doors, Masonite International	South Bend, IN	
73,093	Ruan Transport, Ruan Transport Management Systems	Marshalltown, IA	
73,240	Union Oil of California, Chevron North America, Exploration and Production.	Anchorage, AK	
73,607	Armstrong World Industries, Inc., Hardwood Strip Flooring Mill	Oneida, TN	
73,853	Science Applications International Corporation, Commercial Business Services BU, Working on Contract for BP Corporation.	Naperville, IL	
74,049	Trans States Airlines LLC, Passenger Service Agents, Lambert-St. Louis International Airport.	St. Louis, MO	
74,139	KDH Defense Systems, Inc.	Johnstown, PA	
74,221	Tri-Tube Inc.	Abingdon, VA	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
72,968	WC Wood Corporation, Inc.	Ottawa, OH.	
73,602	Apria Healthcare	Jackson, TN.	
74,114	Hagemeyer North America	Hagerstown, MD.	
74,251	Almatis, Inc.	Bauxite, AR.	
74,308	Progress Software Corporation	Bedford, MA.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
74,186	General Motors, Warren Technical Center	Warren, MI.	
74,261	Kenco Logistic Services, LLC	Evansville, IN.	

I hereby certify that the aforementioned determinations were issued during the period of June 28, 2010 through July 2, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: July 8, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17383 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 26, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 26, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 8th of July 2010.

Michael Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

TAA PETITIONS INSTITUTED BETWEEN 6/28/10 AND 7/2/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
74305	Hanes Brands, Inc. (Workers)	Winston Salem, NC	06/28/10	06/18/10
74306	HAVI Logistics (Workers)	Livonia, MI	06/28/10	06/25/10
74307	Brockway Mould, Inc. (Union)	Brockport, PA	06/28/10	06/04/10
74308	Progress Software Corporation (Company)	Bedford, MA	06/28/10	06/25/10
74309	National Precast Structural, Inc. (Company)	Shelby Township, MI	06/28/10	06/22/10
74310	Eli Lilly and Company (Workers)	Indianapolis, IN	06/28/10	05/18/10
74311	National Precast, Inc. (Company)	Roseville, MI	06/28/10	06/22/10
74312	Maine Tire (State/One-Stop)	Gorham, ME	06/29/10	06/24/10
74313	BD Medical, Med-Safe Systems (Company)	Oceanside, CA	06/29/10	06/08/10
74314	Goodyear Tire and Rubber Company (State/One-Stop)	Tyler, TX	06/29/10	06/25/10
74315	Rich Products Corporation (Workers)	Buffalo, NY	06/29/10	06/15/10
74316	IBM Headquarters (Workers)	Armonk, NY	06/29/10	06/10/10
74317	Irving Forest Products (Workers)	Fort Kent, ME	06/29/10	06/17/10
74318	Connectivity Solutions Manufacturing, Incorporated (Union)	Omaha, NE	06/30/10	06/29/10
74319	RR Donnelley (Company)	Pontiac, IL	06/30/10	06/29/10
74320	United Steelworkers Local 746L (Union)	Tyler, TX	06/30/10	06/25/10
74321	Beloit Health System (Workers)	Beloit, WI	06/30/10	06/24/10
74322	PerTronix (Company)	Rancho Dominguez, CA	06/30/10	06/25/10
74323	Verizon Business (State/One-Stop)	Miami, FL	06/30/10	06/29/10
74324	Kinetic Enterprise (Company)	Mebane, NC	06/30/10	06/22/10
74325	ExxonMobil Chemical Films Division (Workers)	Macedon, NY	06/30/10	06/25/10
74326	Pitney Bowes (Workers)	Shelton, CT	06/30/10	06/23/10
74327	Wellpoint (Workers)	Green Bay, WI	06/30/10	06/28/10
74328	Como Textile (Union)	Paterson, NJ	06/30/10	06/23/10
74329	Portage Electric (Workers)	North Canton, OH	06/30/10	06/23/10
74330	San Francisco Chronicle (Workers)	Union City, CA	07/01/10	06/18/10
74331	Madison County Employment and Training (Union)	Wood River, IL	07/01/10	06/22/10
74332	Andrew Wireless Solution (Workers)	Newton, NC	07/01/10	06/29/10
74333	Quantumplus Worldwide Ltd. (State/One-Stop)	Irving, TX	07/01/10	06/10/10
74334	Buehler Motor, Inc. (Company)	Morrisville, NC	07/02/10	06/30/10
74335	Accel Plastics (State/One-Stop)	Auburn, WA	07/02/10	06/30/10
74336	Westaff (Company)	Balsam Lake, WI	07/02/10	06/28/10
74337	Fidelity National Information Services (Workers)	West Valley City, UT	07/02/10	06/30/10

[FR Doc. 2010–17389 Filed 7–15–10; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,261]

Stimson Lumber Company, Clatskanie, OR; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 11, 2010, the President of Woodworkers, Local Lodge W536, of the International Association of Machinists and Woodworkers requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The determination was issued on February 19, 2010, and the Department's Notice of determination was published in the **Federal Register** on March 12, 2010 (75 FR 11925).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative determination was based on the finding that there had been no increase in imports by the company or by the company's customers of the articles produced by the subject firm; that there was no shift of production or acquisition abroad of the articles produced by the subject firm; that aggregate imports of articles like and directly competitive with those produced by the subject firm had declined absolutely and also relative to domestic consumption of those products; and that the separations at the subject facility were not the result of loss of business by the subject firm as either a supplier of components to, or a downstream finisher of articles produced by, a customer that employed a worker group that is currently eligible to apply for TAA.

In the request for reconsideration, the petitioner stated that the workers of the subject firm should be eligible for TAA because the subject firm is "in direct competition to major timber firms in Canada [and] a portion of that timber finds its way across the border and into the U.S. market." The petitioner also alleged that "During the pertinent time period Stimson lumber has also marketed Hampton lumber under the Stimson label" and that Hampton Lumber (certification issued on September 17, 2009; TA–W–72,129) therefore "is an upstream supplier of Stimson Lumber."

During the initial investigation, the Department received an attestation from a company official that the subject firm did not shift to a foreign country or acquire from a foreign country softwood dimensional lumber (or like or directly competitive articles) and did not increase its imports of softwood dimensional lumber (or like or directly competitive articles).

During the initial investigation, the Department conducted a customer survey (which accounted for over 65% of the subject firm's declining sales and/or production) that showed that the surveyed customers did not increase their imports of softwood dimensional lumber (or like or directly competitive articles).

During the initial investigation, the Department obtained data from the U.S. Census Bureau, the U.S. Department of Commerce, and the U.S. International Trade Commission that showed that aggregate imports of softwood dimensional lumber declined both absolutely and relative to domestic consumption.

To be eligible for a secondary certification, the subject firm must provide a component part for, or be downstream finisher for, an article produced by the firm that employed a worker group that is currently eligible to apply for TAA.

The petitioner's assertion that the subject firm markets some of the products of Hampton Lumber cannot be a basis for secondary certification because the lumber at issue is not a component part of lumber that was the basis of the certification of TA–W–72,129 and because the marketing of the Hampton Lumber does not constitute downstream production.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 8th day of July, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17390 Filed 7–15–10; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before August 16, 2010.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail:* Standards-*Petitions@dol.gov.*
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2010–029–C.

Petitioner: Left Fork Mining Company, Inc., P.O. Box 405, Arjay, Kentucky 40902.

Mine: Straight Creek No. 1 Mine, MSHA I.D. No. 15–12564, located in Bell County, Kentucky.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements). *Modification Request:* The petitioner requests a modification of the existing standard to permit an increase in the maximum length of trailing cables supplying power to permissible pumps at the mine. The petitioner states that: (1) This petition will apply only to trailing cables supplying three-phase, 480-volt power for permissible pumps; (2) the maximum length of the 480-volt power for permissible pumps will be 2800 feet; (3) the 480-volt power for permissible pump trailing cables will not be smaller than #10 American Wire Gauge (AWG); (4) all circuit breakers used to protect trailing cables exceeding the pump approval length or Table 9 of 30 CFR Part 18 will have an instantaneous trip unit calibrated to trip at 70 percent of phase-to-phase short-circuit current. The trip setting of these circuit breakers will be sealed or locked, and these circuit breakers will have permanent, legible labels. Each label will identify the circuit breaker as being suitable for protecting the trailing cables. This label will be maintained legible. In instances where a 70 percent instantaneous set point will not allow a pump to start, due to motor inrush, a thermal magnetic breaker will be furnished. The thermal rating of the circuit breaker will be no greater than 70 percent of the available short-circuit current and the instantaneous setting will be adjusted to one setting above the motor inrush trip point. This setting will also be sealed or locked; (4) replacement of instantaneous trip units, used to protect pump trailing cables exceeding required lengths of cables, will be calibrated to trip at 70 percent of the available phase-to-phase short-circuit current and this setting will be sealed or locked; (5) permanent warning labels will be installed and maintained on the covers of the power center to identify the location of each sealed or locked short-circuit protection device. These labels will warn miners not to change or alter these short-circuit settings; (6) all future pump installations with excessive cable lengths will have a short-circuit survey conducted and items 1–6 will be implemented. A copy of each pumps short-circuit survey will be available at the mine site for inspection. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection to all miners than is provided by the existing standard.

Docket Number: M–2010–030–C.

Petitioner: Rosebud Mining Company, 301 Market Street, Kittanning, Pennsylvania 16201.

Mine: Beaver Valley Mine, MSHA I.D. No. 36–08725, located in Beaver County, Pennsylvania, and Cherry Tree Mine, MSHA I.D. No. 36–09224, located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit blow-off dust covers to be removed from the full cone, corrosion resistant open nozzles used on the deluge-type water spray systems. The petitioner states that: (1) Once every 7 days, a person trained in the testing procedures specific to the water deluge-type fire suppression systems utilized at each belt drive will: (a) Conduct a visual examination of each of the water deluge-type fire suppression systems; (b) conduct a function test of the water deluge-type fire suppression systems by actuating the system and observing its performance; and (c) record the results of the examination and functional test, and record any malfunction or clogged nozzle detected in a book maintained on the surface for that purpose. The record will be made available to the authorized representative of the Secretary and retained at the mine for one year; (2) any malfunction or clogged nozzle detected as a result of the weekly examination or functional test will be corrected immediately; (3) the procedure used to perform the functional test will be posted at or near each belt drive that utilizes a water deluge-type fire suppression system; and (4) within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR Part 48 training plan to the District Manager. These proposed revisions will specify the procedure used to conduct the weekly functional test and initial and refresher training regarding the conditions specified by the Proposed Decision and Order. The petitioner further states that the procedures specified in 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply. The petitioner asserts that the proposed alternative method will guarantee the miners no less than the same measure of protection afforded the miners by such standard with no diminution of safety.

Dated: July 12, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–17323 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; correction.

SUMMARY: The Mine Safety and Health Administration (MSHA) published a document in the **Federal Register** of June 17, 2010, concerning petitions for modification of existing safety standards. The document contains an

under II. Petitions for Modification, *Modification Request,* paragraph #2.

Docket Numbers: M–2010–024–C, M–2010–025–C, M–2010–026–C, M–2010–027–C, and M–2010–028–C.

Petitioners: Panther Mining, LLC, Mine #1, MSHA I.D. No. 15–18198, located in Harlan County, Kentucky (Docket No. M–2010–024–C); North Fork Coal Corp., Mine #5, MSHA I.D. No. 15–18732 (Docket No. M–2010–025–C) and Mine #4, MSHA I.D. No. 15–18340 (Docket No. M–2010–026–C), located in Letcher County, Kentucky; and Stillhouse Mining, LLC, Mine #1, MSHA I.D. No. 15–17165 (Docket No. M–2010–027–C) and Mine #2, MSHA I.D. No. 15–18869 (Docket No. M–2010–028–C), located in Harlan County, Kentucky.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

FOR FURTHER INFORMATION CONTACT: Barbara Barron, 202–693–9447 or Roslyn Fontaine, 202–693–9475.

Correction:

In the **Federal Register** of June 17, 2010, on page 34486, under *Modification Request,* paragraph #2 should read: (2) the maximum length of the 480-volt power for permissible pumps will be 4000 feet.

Dated: July 12, 2010.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2010–17322 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,488]

Hewlett Packard (HP) Global Product Development, Working On-Site at General Motors Corporation, Milford, MI; Notice of Revised Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on February 18, 2010 on behalf of workers of the subject firm.

On June 8, 2010, the Department issued a Notice of Termination of Investigation, stating that the petitioning group is part of the worker group covered by an on-going investigation (TA–W–72,851). On June 23, 2010, the Department issued a certification under TA–W–72,851 that did not include the worker group covered by TA–W–73,488.

To protect the interests of the petitioning group, the Department is revising the Notice of Termination and will conduct an investigation to determine whether workers of the subject firm are eligible to apply for Trade Adjustment Assistance.

Signed at Washington, DC, this 30th day of June, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–17382 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Brookwood-Sago Mine Safety Grants

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Solicitation for Grant Applications.

Announcement Type: New.

Funding Opportunity Number: SGA 10–3BS.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.603.

SUMMARY: The U.S. Department of Labor, Mine Safety and Health Administration (MSHA), is making $500,000 available in grant funds for educational and training programs to help identify, avoid, and prevent unsafe working conditions in and around mines. The focus of these grants for the fiscal year (FY) 2010 will be on training and training materials for mine emergency preparedness and mine emergency prevention for all underground mines. Applicants for the grants may be States and nonprofit (private or public) entities. MSHA could award as many as 10 separate grants with a 12-month period of performance. The amount of each individual grant will be at least $50,000.00. This notice contains all of the necessary information needed to apply for grant funding.

DATES: The closing date for applications will be August 18, 2010 (no later than 11:59 p.m. EDT). MSHA will award grants on or before September 30, 2010.

ADDRESSES: Applications for grants submitted under this competition must be submitted electronically using the Government-wide site at *http://www.grants.gov.* If applying online poses a hardship to any applicant, the MSHA Directorate of Educational Policy and Development will provide assistance to help applicants submit online. MSHA's Web page at *http://www.msha.gov* is a valuable source of background for this initiative.

FOR FURTHER INFORMATION CONTACT: Any questions regarding this solicitation for grant applications (SGA 10–3BS) should be directed to Robert Glatter at *glatter.robert@dol.gov* or at 202–693–9570 (this is not a toll-free number) or the Grant Officer, Darrell A. Cooper at *cooper.darrell@dol.gov* or at 202–693–9831 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This solicitation provides background information and the critical elements required of projects funded under the solicitation. It also describes the application submission requirements, the process that eligible applicants must use to apply for funds covered by this solicitation, and how grantees will be selected. Further information regarding submitting the grant application electronically is listed in Section IV.C., Submission Date, Times, and Addresses. This solicitation consists of eight parts:

- Part I provides background information on the Brookwood-Sago grants.
- Part II describes the size and nature of the anticipated awards.
- Part III describes the qualifications of an eligible applicant.
- Part IV provides information on the application and submission process.
- Part V explains the review process and rating criteria that will be used to evaluate applications.
- Part VI provides award administration information.
- Part VII contains MSHA contact information.
- Part VIII addresses Office of Management and Budget information collection requirements.

I. Funding Opportunity Description

A. Overview of the Brookwood-Sago Mine Safety Grant Program

Responding to several coal mine disasters, Congress enacted the Mine Improvement and New Emergency Response Act of 2006 (MINER Act). Section 14 of the MINER Act requires the Secretary of Labor (Secretary) to establish a discretionary competitive grant program called the Brookwood-Sago Mine Safety Grants (Brookwood-Sago grants). This program provides funding to educate and train miners to better identify, avoid, and prevent unsafe working conditions in and around mines. This program will use grant funds to establish and implement education and training programs or to create training materials and programs. The MINER Act requires the Secretary to give priority to mine safety demonstrations and pilot projects with broad applicability. It also mandates that the Secretary emphasize programs

and materials that target miners in smaller mines, to include training on new MSHA standards, high-risk activities, and other identified health and safety priorities.

B. Educational and Training Program Priorities

MSHA priorities for the FY 2010 funding of the Brookwood-Sago grants will focus on training and training materials for mine emergency preparedness and mine emergency prevention for all underground mines. MSHA expects Brookwood-Sago grantees to develop training materials or to develop and provide mine safety and health training and/or educational programs, recruit miners and mine operators for the training, and conduct and evaluate the training on one of the MSHA-selected priorities. Grantees are also expected to conduct follow-up evaluations with people trained by their program. The evaluation will focus on determining how effective their training was in either reducing hazards or improving skills for the selected training topics and in improving the conditions in mines. Grantees must also cooperate fully with MSHA evaluations of the program. If the Brookwood-Sago applicant is not the entity operating the MSHA-approved State training grant, MSHA expects the applicant to contact the State grantee and coordinate any proposed training or educational program with the applicable State in order not to duplicate any training or educational program offered. An applicant's proposed area for the grant may cover more than one State.

II. Award Information

A. Award Amount for FY 2010

MSHA is providing $500,000 total for the FY 2010 Brookwood-Sago grant program, which could be divided into as many as 10 separate grants. The amount of each individual grant will be at least $50,000.00. Applicants requesting less than $50,000 or more than $500,000 will not be considered for funding.

B. Period of Performance

The period of performance will be 12 months from the date of execution of the grant documents. This performance period must include all necessary implementation and start-up activities as well as follow-up for performance outcomes. A timeline clearly detailing these required grant activities and their expected completion dates must be included in the grant application. MSHA may approve a request for a no-cost extension to grantees for an additional period of time based on the success of the project and other relevant factors.

III. Eligibility Information

A. Eligible Applicants

Applicants for the grants may be States and nonprofit (private or public) entities. Eligible entities may apply for funding independently or in partnership with other eligible organizations. For partnerships, a lead organization must be identified.

Applicants other than States and State-supported or local government-supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service. A nonprofit entity as described in 26 U.S.C. 501(c)(4), which engages in lobbying activities, is not eligible for a grant award. *See* 2 U.S.C. 1611.

B. Cost-Sharing or Matching

Cost-sharing or matching of funds is not required for eligibility. The leveraging of public and/or private resources to achieve project sustainability, however, is highly encouraged and may be awarded up to 10 application evaluation points.

C. Other Eligibility Requirements

1. Dun and Bradstreet Number (DUNS)

Since October 1, 2003, every applicant for a Federal grant funding opportunity is required to include a DUNS number with its application. An applicant's DUNS number is to be entered into Block 8 of Standard Form (SF) 424. The DUNS number is a nine-digit identification number that identifies business entities uniquely. There is no charge for obtaining a DUNS number. To obtain a DUNS number, call 1–866–705–5711 or access the following Web site: *http://fedgov.dnb.com/webform/displayhomepage.do*.

After receiving a DUNS number, all grant applicants must also register as a vendor with the Central Contractor Registration (CCR) through the Web site *http://www.ccr.gov.* Grant applicants must create a user account and then complete and submit the online registration. The CCR site advises that this process takes about 1 hour to complete. Once you have completed the registration, it will take 3 to 5 business days to process. The applicant will receive an e-mail notice that the registration is active.

2. Legal Rules Pertaining to Inherently Religious Activities by Organizations That Receive Federal Financial Assistance

The government generally is prohibited from providing direct Federal financial assistance for inherently religious activities. *See* 29 CFR part 2, subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of contractors and subcontractors.

3. Non-Compliant Applications

Applications that are lacking any of the required elements or do not follow the format prescribed in IV.B will not be reviewed.

4. Late Applications

Applications received after the deadline will not be reviewed unless it is determined to be in the best interest of the Government.

IV. Application and Submission Information

A. Application Forms

This announcement includes all information and links needed to apply for this funding opportunity. The full application is available through the Grants.gov Web site, *http://www.grants.gov/*, under "Apply for Grants". The Catalog of Federal Domestic Assistance (CFDA) number needed to locate the appropriate application for this opportunity is 17.603. If an applicant has problems downloading the application package from Grants.gov SM, contact Grants.gov Contact Center at 1–800–518–4726 or by e-mail at *support@grants.gov.*

B. Content and Form of the Application

Each grant application must address mine emergency preparedness or mine emergency prevention for underground mines. Applicants must submit a separate application for each topic. The application must consist of three separate and distinct sections. The three required sections are:

- Section 1—Project Financial Plan and Forms (No page limit).
- Section 2—Project Summary (Not to exceed 2 pages).
- Section 3—Technical Proposal (Not to exceed 10 pages). Illustrative material can be submitted as an attachment.

The following are mandatory requirements for each section.

1. Project Financial Plan and Forms

This section contains the forms and budget section of the application. The Project Financial Plan will not count against the application page limits. A person with authority to bind the applicant must sign the application and forms. Applications submitted electronically through Grants.gov do not need to be signed manually; the form will automatically affix an electronic signature for the authorized person identified.

(a) Completed SF 424, "Application for Federal Assistance." This form is part of the application package on Grants.gov and also is available at *http://www.msha.gov.* The SF 424 must identify the applicant clearly and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the representative of the applicant.

(b) Completed SF 424A, "Budget Information—Non-Construction Programs." This form is part of the application package on Grants.gov and also is available at *http://www.msha.gov.* The project budget should demonstrate clearly that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the applicant in its proposal, and must comply with the Federal cost principles and the administrative requirements set forth in this solicitation for grant applications (SGA). (Copies of all regulations that are referenced in this SGA are available online at *http://www.msha.gov.* Select "Education & Training," click on "Courses and Programs," then select "Brookwood-Sago Mine Safety Grants.")

(c) Budget Narrative. The applicant must provide a concise narrative explaining the request for funds. The budget narrative should separately attribute the Federal funds and leveraged resources to each of the activities specified in the technical proposal and it should discuss precisely how any administrative costs support the project goals. Indirect cost charges, which are considered administrative costs, must be supported with a copy of an approved Indirect Cost Rate Agreement. Indirect Costs are those costs that are not readily identifiable with a particular cost objective but nevertheless are necessary to the general operation of an organization, *e.g.,* personnel working in Accounting. Administrative costs may not exceed 15% of the total grant budget.

If applicable, the applicant must provide a statement about its program income. Program income is gross income earned by the grantee directly generated by a supported activity, or earned as a result of the award.

Any leveraged resources should not be listed on the SF 424 or SF 424A Budget Information Form, but must be described in the budget narrative and in the technical proposal of the application (as described in Part IV.B.3(d) of this SGA). The amount of Federal funding requested for the entire period of performance must be shown on the SF 424 and SF 424A Budget Information Form. Note: Grantees will be responsible for obtaining any beverage resources proposed in their applications. Failure to do so may result in the disallowance and required return of funds in the amount of the proposed beverage.

(d) Completed SF 424B, "Assurances, Non-Construction Programs." Each applicant for these grants must certify compliance with a list of assurances. This form is part of the application package on www.Grants.gov and also is available at *http://www.msha.gov.*

(e) Supplemental Certification Regarding Lobbying Activities Form. If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of a grant or cooperative agreement, the applicant shall complete and submit SF–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. This form is part of the application package on *http://www.Grants.gov* and also is available at www.msha.gov. Select "Education & Training," click on "Courses and Programs," then select "Brookwood-Sago Mine Safety Grants."

(f) Non-profit status. Applicants must provide evidence of non-profit status, preferably from the Internal Revenue Service (IRS), if applicable. (This requirement does not apply to State and local government-supported institutions of higher education.)

(g) Accounting System Certification. An organization that receives less than $1 million annually in Federal grants must attach a certification stating that the organization (directly or through a designated qualified entity) has a functioning accounting system that meets the criteria below. The certification should attest that the organization's accounting system provides for the following:

(1) Accurate, current and complete disclosure of the financial results of each federally sponsored project.

(2) Records that identify adequately the source and application of funds for federally sponsored activities.

(3) Effective control over and accountability for all funds, property and other assets.

(4) Comparison of outlays with budget amounts.

(5) Written procedures to minimize the time elapsing between transfers of funds.

(6) Written procedures for determining the reasonableness, allocability, and allowability of cost.

(7) Accounting records, including cost accounting records that are supported by source documentation.

(h) Attachments. The application may include attachments such as resumes of key personnel or position descriptions, exhibits, information on prior government grants, and signed letters of commitment to the project.

2. Project Summary

The project summary is a short one-to-two page abstract that succinctly summarizes the proposed project and provides information about the applicant organization. The project summary must include the following information:

(a) Applicant. Provide the organization's full legal name and address.

(b) Project Director. The project director is the person who will be responsible for the day-to-day operation and administration of the program. Provide the name, title, street address and mailing address (if it is different from the organization's street address), telephone and fax numbers, and e-mail address of the project director.

(c) Certifying Representative. The certifying representative is the official in the organization who is authorized to enter into grant agreements. Provide the name, title, street address and mailing address if it is different from the organization's street address, telephone and fax numbers, and e-mail address of the certifying representative.

(d) Funding requested. List how much Federal funding is being requested. If the organization is contributing non-Federal resources, also list the amount of non-Federal resources and the source of the funds.

(e) Grant Topic. List the grant topic and the location and number of miners that the organization has selected to train or describe the training materials to be created with these funds.

(f) Summary of the Proposed Project. Write a brief program summary of the

proposed project. This summary must identify the key points of the proposal including an introduction describing the project activities and the expected outcomes.

(g) Applicant Background. Describe the applicant, including its mission, and a description of its membership, if any. Provide an organizational chart (the chart may be included as a separate page which will not count toward the page limit).

3. Technical Proposal

The technical proposal must demonstrate the applicant's capabilities to plan and implement a project or create educational materials to meet the objectives of this solicitation. MSHA's focus for this SGA is on training miners and developing training materials for mine emergency preparedness and mine emergency prevention for underground mines. MSHA has two program goals that will be considered indicators of the success of the program as a whole. The following table explains the types of data grantees must provide and their relationship with the Agency's program goals and performance measures for the Brookwood-Sago grants.

Program goals	Performance measures	Data grantee provides
1. Agency creates more effective training and improves safety.	Increase overall number of trainers trained.	Number of training events during the period.
	Increase overall number of miners trained.	Number of trainers trained.
	Provide quality training with clearly stated goals and objectives for improving safety.	Number of miners trained during the current reporting period.
		Conduct and report pre-test and post-test results of trainees.
		Course evaluations of trainer and training materials.
		The extent to which others replicate (*i.e.,* adopt or adapt) or institutionalize and continue the projects after grant funding ends.
2. Agency creates training materials and improves safety.	Increase number of quality educational materials developed.	Conduct and report pre-test and post-test results of the training materials.
	Provide quality training materials with clearly stated goals and objectives for improving safety.	Evaluation of training materials to include the target audience, statement of goals and objectives,learning level, instructions for using, additional material requirements, secondary purposes, adult learning principles and usability in the mine training environment.
	Develop training materials that are reproducible.	The extent to which others replicate (*i.e.,* adopt or adapt) the funded projects.

The technical proposal narrative is not to exceed 10 single-sided pages, double spaced, 12-point font, and must contain the following sections: Program Design, Overall Qualifications of the Applicant, Impact or Outcomes and Evaluation, and Leveraging of Funds. Any pages over the 10-page limit will not be reviewed. Major sections and sub-sections of the proposal should be divided and clearly identified. MSHA will review and rate the technical proposal in accordance with the selection criteria specified in Part V.

(a) Program Design.

(1) *Problem Statement/Need for Funds.* Applicants must provide a clear and specific need for proposed activities. They must identify whether they are providing a training program or creating training materials or both. Applicants also must identify the number of individuals that will benefit from their training and education program; this should include identifying the type of underground mines, the geographic locations, and the number of miners and employers. Applicants must also identify other Federal funds they receive for similar activities.

(2) *Quality of the Project Design.* MSHA requires that each applicant include a 12-month workplan that correlates with the grant project period that will begin September 30, 2010, and end September 29, 2011. An outline of specific items required in the workplan follows.

(i) *Plan Overview.* Describe the plan for grant activities and the anticipated outcomes. The overall plan will describe such things as the development of training materials, the training content, recruiting of trainees, where or how training will take place, and the anticipated benefits to miners and employers receiving the training.

(ii) *Activities.* Break the overall plan down into activities or tasks. For each activity, explain what will be done, who will do it, when it will be done, and anticipated results of the activity. For training, discuss the subjects to be taught, the length of the training sessions, and training locations (classroom/worksites). Describe how the applicant will recruit miners and/or employers for the training.

Note: Any commercially-developed training materials the applicant proposes to use in its training must undergo an MSHA review before being used.

(iii) *Quarterly Projections.* For training and other quantifiable activities, estimate the quantities involved. For example, estimate how many classes will be conducted and miners and employers will be trained each quarter of the grant (grant quarters match calendar quarters, *i.e.,* January to March, April to June) and also provide the training number totals for the full year. Quarterly projections are used to measure the actual performance against the plan. Applicants planning to conduct a train-the-trainer program should estimate the number of individuals to be trained during the grant period by those who received the train-the-trainer training. These second tier training numbers should be included only if the organization is planning to follow up with the trainers to obtain this data during the grant period.

(iv) *Materials.* Describe each educational material to be produced under the grant. Provide a timetable for developing and producing the material. The timetable must include provisions for an MSHA review of draft and camera-ready products. MSHA must review and approve training materials for technical accuracy and suitability of content before materials may be used in the grant program. Whether or not an applicant's project is to develop training materials only, the applicant should

provide an overall plan that includes time for MSHA to review any materials produced.

(b) Overall Qualifications of the Applicant.

(1) *Administrative and Program Capability.* Briefly describe the organization's functions and activities, *i.e.,* the applicant's management and internal controls. Relate this description of functions to the organizational chart. If the applicant has received within the last five years any other government (Federal, State or local) grant funding, the application must have, as an attachment (which will not count towards the page limit), information regarding these previous grants. This information must include the organization for which the work was done and the dollar value of the grant. If the applicant does not have previous grant experience, it may partner with an organization that has grant experience to manage the grant. If the organization uses this approach, the management organization must be identified and its grant program experience discussed.

Lack of past experience with Federal grants is not a determining factor, but an applicant should show a successful experience relevant to the opportunity offered in the application. Such experience could include staff members' experience with other organizations.

(2) *Program Experience.* Describe the organization's experience conducting the proposed mine training program or the type of program. Include program specifics such as program title, numbers trained, and duration of training. If creating training materials, include the title of other materials developed. Nonprofit organizations, including community-based and faith-based organizations that do not have prior experience in mine safety and health may partner with an established mine safety and health organization to acquire safety and health expertise.

(3) *Staff Experience.* Describe the qualifications of the professional staff you will assign to the program. Include resumes of staff already employed as an attachment (which will not count towards the page limit). If some positions are vacant, include position descriptions and minimum hiring qualifications instead of resumes. Staff should have, at a minimum, mine safety and health experience, training experience, or experience working with the mining community.

(c) Impact or Outcomes and Evaluations.

There are three types of evaluations that must be conducted. First, describe plans to evaluate the training sessions and/or training materials. Second, describe plans to evaluate the applicant's progress in accomplishing the grant work activities listed in the application. This includes comparing planned and actual accomplishments. Discuss who is responsible for taking corrective action if plans are not being met. Third, describe plans to assess the effectiveness of the training the applicant is conducting or the training materials. This will involve following up with an evaluation, or on-site review, if feasible, of people who attended the training to find out what changes were made to abate hazards and improve workplace conditions, or to incorporate the training in the workplace. For training materials, an evaluation of individuals on the clarity of the presentation, organization, and the information on the subject matter and whether they would use training materials is required. Include timetables for follow-up and for submitting a summary of the assessment results to MSHA.

(d) Leveraging of Funds.

Leveraged resources are cash or in-kind contributions obtained from sources other than the Federal government devoted to advancing the strategies described in the applicant's proposal. Applicants must include a description of any non-Federal contribution or commitments, including the source of funds and the estimated amount.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is August 18, 2010 (no later than 11:59 p.m. EDT). Grant applications must be submitted electronically through the Grants.gov Web site. The Grants.gov site provides all the information about submitting an application electronically through the site as well as the hours of operation. Interested parties can locate the downloadable application package by the CFDA number 17.603.

Applications received by Grants.gov are electronically date and time stamped. An application must be fully uploaded and submitted (and must be date and time stamped by the Grants.gov system) before the application deadline date. Once an interested party has submitted an application, Grants.gov will notify the interested party with an automatic notification of receipt that contains a Grants.gov tracking number. This notification indicates receipt by Grants.gov only, not receipt by MSHA. MSHA then will retrieve the application from Grants.gov and send a second notification to the interested party by e-mail.

D. Intergovernmental Review

The Brookwood-Sago grants are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." MSHA, however, reminds applicants that if they are not operating MSHA-approved State training grants, contact the State grantees and coordinate any training or educational program in order not to duplicate any training or educational program offered. Information about each state grant and the entity operating the state grant is provided online at: *http://www.msha.gov/PROGRAMS/EPD4.HTM.*

E. Funding Restrictions

MSHA will determine whether costs are allowable under the applicable Federal cost principles and other conditions contained in the grant award.

1. Allowable Costs

Grant funds may be spent on conducting training, conducting outreach and recruiting activities to increase the number of miners and employers participating in the program, developing educational materials, and on necessary expenses to support these activities. Allowable costs are determined by the applicable federal costs principles identified in Part VI.B. Program income earned during the award period shall be retained by the recipient, added to funds committed to the award, and used for the purposes and under the conditions applicable to the use of the grant funds.

2. Unallowable Costs

Grant funds may not be used for the following activities under this grant program:

(a) Any activity inconsistent with the goals and objectives of this SGA.

(b) Training on topics that are not targeted under this SGA;

(c) Duplicating training or services offered by MSHA or any MSHA State grant under section 503 of the Federal Mine Safety and Health Act of 1977;

(d) Purchasing any equipment unless pre-approved and in writing by the MSHA grant officer;

(e) Administrative costs that exceed 15% of the total grant budget; and

(f) Any pre-award costs.

Unallowable costs also include any cost determined by MSHA as not allowed according to the applicable cost principles or other conditions in the grant.

V. Application Review Information

A. Evaluation Criteria

MSHA will screen all applications to determine whether all required proposal elements are present and clearly identifiable. Those that do not comply with mandatory requirements will not be evaluated. The technical panels will review grant applications against the criteria listed below on the basis of 100 maximum points. Up to 10 additional points may be given for leveraging non-Federal resources.

1. Program Design—40 Points Total

(a) Problem Statement/Need for Funds. (3 points)

The proposed training and education program or training materials must address the recognition and prevention of safety and health hazards for mine emergency preparedness and safety for mines.

(b) Quality of the Project Design. (25 points)

(1) The proposal to train miners and/or employers clearly estimates the number to be trained and clearly identifies the types of miners and employers to be trained.

(2) If the proposal contains a train-the-trainer program, the following information must be provided:

- What ongoing support the grantee will provide to new trainers;
- The number of individuals to be trained as trainers;
- The estimated number of courses to be conducted by the new trainers;
- The estimated number of students to be trained by these new trainers and a description of how the grantee will obtain data from the new trainers documenting their classes and student numbers if conducted during the grant period.

(3) The work plan activities and training are described.

- The planned activities and training are tailored to the needs and levels of the miners and employers to be trained. Any special constituency to be served through the grant program is described, e.g., smaller mines, limited English proficiency miners. Organizations proposing to develop materials in languages other than English also will be required to provide an English version of the materials.
- If the proposal includes developing training materials, the work plan must include time during development for MSHA to review the educational materials for technical accuracy and suitability of content. If commercially-developed training products will be used for a training program, applicants also should plan for MSHA to review the materials before using the products in their grant programs.
- The utility of the educational materials is described.
- The outreach or process to find miners or trainees to receive the training is described.

(c) Replication. The extent a project will be replicated and the potential for the project to serve a variety of miners or mine sites. (4 points)

(d) Innovativeness. The originality and uniqueness of the approach used. (3 points)

(e) MSHA's Performance Goals. The extent the proposed project will contribute to MSHA's performance goals. (5 points)

2. Budget—20 Points Total

(a) The budget presentation is clear and detailed. (15 points)

- The budgeted costs are reasonable.
- No more than 15% of the total budget is for administrative cost.
- The budget complies with Federal cost principles (which can be found in the applicable Office of Management and Budget (OMB) Circulars and with MSHA budget requirements contained in the grant application instructions).

(b) The application demonstrates that the applicant has strong financial management and internal control systems. (5 points)

3. Overall Qualifications of the Applicant—25 Points Total

(a) The applicant has administered, or will work with an organization that has administered, a number of different Federal and/or State grants in the past five years. The applicant may demonstrate this experience by having project staff that has experience administering Federal and/or State grants in the past five years. (6 points)

(b) The applicant applying for the grant demonstrates experience with mine safety and health teaching or providing mine safety and health educational programs.

Applicants that do not have prior experience in providing mine safety and health training to miners or employers may partner with an established mine safety and health organization to acquire mine safety and health expertise. (13 points)

- Project staff has experience in mine safety and health, the specific topic chosen, and/or in training miners.
- Project staff has experience in recruiting, training and working with the population the organization proposes to serve.
- Applicant has experience in designing and developing training materials for a mining program.
- Applicant has experience in managing educational programs.

(c) Applicant demonstrates internal control and management oversight of the project. (6 points)

4. Impacts/Outcomes and Evaluations—15 Points Total

The proposal should include provisions for evaluating the organization's progress in accomplishing the grant work activities and accomplishments, evaluating training sessions, and evaluating the program's effectiveness and impact to determine if the safety and health training and services provided resulted in workplace change and improved workplace conditions. The proposal should include a plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing miner injuries and illnesses.

5. Leveraged Resources—10 Points Total

MSHA will award up to 10 additional rating points to applications that include non-Federal resources that expand the size and scope of project-related activities. To be eligible for the additional points, the applicant must list the resources, the nature of programmatic activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, etc., including the monetary value of such contributions.

B. Review and Selection Process

A technical panel will rate each complete application against the criteria described in this SGA. One or more applicants may be selected as grantees on the basis of the initial application submission, or a minimally acceptable number of points may be established. MSHA may request final revisions to the applications, and then evaluate the revised applications. MSHA may consider any information that comes to its attention in evaluating the applications.

The panel recommendations are advisory in nature. The Deputy Assistant Secretary of Labor for Mine Safety and Health (Deputy Assistant Secretary) will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants or the areas to be served, Agency priorities, and the best value to the government, cost and other factors. The Deputy Assistant Secretary's determination for award under this SGA is final.

C. Anticipated Announcement and Award Dates

Announcement of these awards is expected to occur by September 17, 2010. The grant agreement will be signed no later than September 30, 2010.

VI. Award Administration Information

A. Award Process

Organizations selected as potential grant recipients will be notified by a representative of the Deputy Assistant Secretary, usually the Grant Officer or his staff. An applicant whose proposal is not selected will be notified in writing. The fact that an organization has been selected as a potential grant recipient does not necessarily constitute approval of the grant application as submitted (revisions may be required).

Before the actual grant award, MSHA may enter into negotiations with the potential grant recipient concerning such matters as program components, staffing and funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiations and decline to fund the proposal.

B. Administrative and National Policy Requirements

All grantees will be subject to applicable Federal laws and regulations (including provisions of appropriations law) and applicable OMB Circulars. The grants awarded under this competitive grant program will be subject to the following administrative standards and provisions, if applicable:

- 29 CFR part 2, subpart D, Equal Treatment for Religious Organizations.
- 29 CFR parts 31, 32, 35 and 36, Nondiscrimination.
- 29 CFR part 93, Restrictions on Lobbying.
- 29 CFR part 94, Drug-free Workplace.
- 29 CFR part 95, Uniform Grant Requirements for Nonprofit Organizations.
- 29 CFR parts 96 and 99, Audits.
- 29 CFR part 97, Uniform Grant Requirements for States.
- 29 CFR part 98, Debarment and Suspension.
- 2 CFR part 175, Award Term for Trafficking in Persons.
- 2 CFR part 220, Cost Principles for Educational Institutions.
- 2 CFR part 225, Cost Principles for State and Local Governments.
- 2 CFR part 230, Cost Principles for Other Nonprofit Organizations.
- Federal Acquisition Regulation (FAR) Subpart 31.2, Cost Principles for Commercial Organizations. (Codified at 48 CFR 31.2).

Administrative costs for these grants may not exceed 15%. Except as specifically provided, MSHA's acceptance of a proposal or MSHA's award of Federal funds to sponsor any programs does not constitute a waiver of any grant requirement or procedure. For example, if an application identifies a specific sub-contractor to provide certain services, the MSHA award does not provide a basis to sole-source the procurement (to avoid competition).

C. Special Program Requirements

1. MSHA Review of Educational Materials

MSHA will review all grantee-produced educational and training materials for technical accuracy and suitability of content during development and before final publication. MSHA also will review training curricula and purchased training materials for technical accuracy and suitability of content before the materials are used. Grantees developing training materials must follow all copyright laws and provide written certification that their materials are free from copyright infringements.

When grantees produce training materials, they must provide copies of completed materials to MSHA before the end of the grant period. Completed materials should be submitted to MSHA in hard copy and in digital format (CD–ROM/DVD) for publication on the MSHA Web site. Two copies of the materials must be provided to MSHA. Acceptable formats for training materials include Microsoft XP Word, PDF, PowerPoint, and any other format agreed upon by MSHA.

2. License

As listed in 29 CFR 95.36, the Department of Labor reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes any work produced under a grant, and to authorize others to do so. Grantees must agree to provide the Department of Labor a paid-up, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed, or for which ownership was purchased, under an award. Such products include, but are not limited to, curricula, training models, technical assistance products, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronic, or otherwise.

3. Acknowledgement on Printed Materials

All approved grant-funded materials developed by a grantee shall contain the following disclaimer: "This material was produced under grant number XXXXX from the Mine Safety and Health Administration, U.S. Department of Labor. It does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

When issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

(a) The percentage of the total costs of the program or project that will be financed with Federal money;

(b) The dollar amount of federal financial assistance for the project or program; and

(c) The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

4. Use of U.S. Department of Labor (USDOL) and MSHA Logos

The USDOL or the MSHA logo may be applied to the grant-funded material including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications. The grantees must consult with MSHA on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL or the MSHA logo be placed on any item until MSHA has given the grantee written permission to use either logo on the item.

5. Reporting

Grantees are required by Departmental regulations to submit financial and project reports, as described below, each calendar quarter. All reports are due no later than 30 days after the end of the calendar quarter and shall be submitted to MSHA. Grantees also are required to submit final reports 90 days after the end of the grant period.

(a) Financial Reports. The grantee shall submit financial reports on a quarterly basis.

(b) Technical Project Reports. After signing the agreement, the grantee shall submit technical project reports to MSHA at the end of each calendar quarter. Technical project reports provide both quantitative and

qualitative information and a narrative assessment of performance for the preceding three-month period.

Between reporting dates, the grantee shall immediately inform MSHA of significant developments and/or problems affecting the organization's ability to accomplish work.

(c) Final Reports. At the end of the grant period, each grantee must provide a final financial report, a summary of its technical project reports, and an evaluation report.

H. Freedom of Information

Any information submitted in response to this SGA will be subject to the provisions of the Freedom of Information Act, as appropriate.

VII. Agency Contacts

Any questions regarding this solicitation for grant applications (SGA 10–3BS) should be directed to Robert Glatter at *glatter.robert@dol.gov* or at 202–693–9570 (this is not a toll-free number) or the Grant Officer, Darrell A. Cooper at *cooper.darrell@dol.gov* or at 202–693–9831 (this is not a toll-free number). MSHA's Web page at *http://www.msha.gov* is a valuable source of background for this initiative.

VIII. Office of Management and Budget Information Collection Requirements

This SGA requests information from applicants. This collection of information is approved under OMB Control No. 1225–0086 (expires September 30, 2010).

In accordance with the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for the grant application is estimated to average 20 hours per response, for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Each recipient who receives a grant award notice will be required to submit nine progress reports to MSHA. Each report will take approximately five hours to prepare.

Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the OMB Desk Officer for MSHA, Office of Management and Budget Room 10235, Washington DC 20503 and MSHA, electronically to Robert Glatter at *glatter.robert@dol.gov* or the Grant Officer, Darrell A. Cooper at *cooper.darrell@dol.gov* or by mail to Robert Glatter, Room 2102, 1100 Wilson Boulevard, Arlington, Virginia 22209.

This information is being collected for the purpose of awarding a grant. The information collected through this "Solicitation for Grant Applications" will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Authority: 30 U.S.C. 965.

Robert L. Phillips,

Acting Deputy Assistant Secretary for Operations, Mine Safety and Health.

[FR Doc. 2010–17395 Filed 7–15–10; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors ("Board") of the Legal Services Corporation will meet *telephonically* on July 21, 2010. The meeting will begin at 11 a.m., Eastern Daylight Time, and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

PUBLIC OBSERVATION: For all meetings and portions thereof open to public observation, members of the public that wish to listen to the proceedings may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the Chairman may solicit comments from the public.

Call-in Directions for Open Session(s)

- Call toll-free number: 1–(866) 451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please "*MUTE*" your telephone immediately.

STATUS OF MEETING: Closed. A portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board so the Board can consider and perhaps act on the recommendation of the Search Committee for LSC President ("Search Committee") regarding selection of an executive search recruiter. This closure will be authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(4) and (6)] and LSC's implementing regulation 45 CFR 1622.5(c)[1] and (e).[2]

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(4) and (6)] and LSC's implementing regulation 45 CFR 1622.5(c) and (e), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED: Open Session

1. Approval of the agenda.
2. Consider and act on *Resolution 2010–009* which authorizes the Board Chairman to establish a Fiscal Oversight Taskforce.
3. Public comment.

Closed Session

4. Consider and act on recommendation of the Search Committee for LSC President regarding selection of an executive search recruiter.

Open Session

5. Consider and act on other business.
6. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Kathleen Connors, Executive Assistant to the President, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Kathleen Connors at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: July 14, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–17543 Filed 7–14–10; 4:15 pm]

BILLING CODE 7050–01–P

[1] 45 CFR 1622.5(c)—Protects information the disclosure of which would disclose trade secrets and commercial or financial information which is confidential.

[2] 45 CFR 1622.5(e)—Protects information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 9 a.m., Wednesday, July 21, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Consideration of Supervisory Activities. Closed pursuant to the following exemptions: (8), (9)(A)(ii) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–17578 Filed 7–14–10; 4:15 pm]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Privacy Act Systems of Records Notice

AGENCY: National Credit Union Administration.

ACTION: Notice; amendment of systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is given that the National Credit Union Administration (NCUA) is revising its Privacy Act Systems of Records (SOR) Notice. As part of its periodic review of agency systems of records, NCUA proposes to update and revise its SOR Notice. The review identified several changes requiring revision to the SOR Notice including: Changes in recordkeeping practices, agency organizational changes, a system name change, and minor changes to routine uses. No new exemptions from provisions of the Privacy Act of 1974 were required. The revisions reflect the changes, clarify, and update the SOR Notice.

DATES: *Effective Date:* The revised system notices will be effective without further notice on August 16, 2010 unless comments received before that date cause a contrary decision. Based on NCUA's review of comments received, if any, NCUA will publish a new final notice if it determines to make changes to the system notices.

FOR FURTHER INFORMATION CONTACT: Sheila A. Albin, Associate General Counsel for Operations & Senior Agency Official for Privacy, or Linda Dent, Staff Attorney, Division of Operations, Office of General Counsel at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 requires, *inter alia,* that all federal agencies publish a notice of the existence and character of any system of records maintained about individuals. NCUA last published a revised notice in 2006. 71 FR 77807 (December 27, 2006). The Privacy Act, as well as guidance from the Office of Management and Budget, provides for periodic review and updating of an agency's SOR Notice, and NCUA's privacy regulation also requires review and revision as necessary to its SOR Notice. 12 CFR part 792, subpart E.

NCUA is making a few changes to existing systems to better describe, correct, and update information. For example, system of records NCUA–3 includes additional description of the system's purpose and routine uses. System of records NCUA–14 is renamed to reflect a change in the system vendor, Appendix B is revised to reflect changes in the states for which each regional office has jurisdiction.

With these changes, NCUA's revised SOR Notice, along with the appendices, are published in their entirety below.

National Credit Union Administration

Systems of Records Notice

List of Systems

1. Employee Suitability and Security Investigations Containing Adverse Information.
2. Grievance Records.
3. Payroll Records System.
4. Travel Advance and Voucher Information System.
5. Unofficial Personnel and Employee Development/Correspondence Records.
6. Emergency Information (Employee) File.
7. Employee Injury File.
8. Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union.
9. Freedom of Information Act and Privacy Act Requests and Invoices.
10. Liquidating Credit Union Records.
11. Office of Inspector General (OIG) Investigative Records.
12. Consumer Complaints Against Federal Credit Unions.
13. Litigation Case Files.
14. J.P.Morgan Chase PaymentNet.
15. Contract Employee Pay and Leave Records.
16. Leave Transfer Files.
17. Personal Identity Verification Files.

Appendix A—Standard Routine Uses Applicable to NCUA Systems of Records
Appendix B—List of Regional Offices With Addresses and States Covered by Each Region

NCUA–1

SYSTEM NAME:

Employee Suitability and Security Investigations Containing Adverse Information.

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

NCUA employees on whom a routine Office of Personnel Management (OPM) background investigation has been conducted, the results of which contain adverse information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Arrest records and/or information on moral character, integrity, or loyalty to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Records maintained pursuant to OPM requirements. A separate notice is published because these records are maintained separately to provide extraordinary safeguards against unwarranted access and disclosures.

PURPOSE:

The information in this system of records is used to assist in the determination of the suitability of the effected individual for initial or continued NCUA employment, or other necessary action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are reviewed by the NCUA Security Officer (the Director of Human Resources). If the records are determined to be of a substantive nature, they are referred to the appropriate Associate Regional Director or Office Director for whatever action, if any, is deemed necessary. (2) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in a locked file cabinet accessible only to the Security Officer and his/her designated assistant.

RETENTION AND DISPOSAL:

If the investigation is favorable to the employee, the record is destroyed. If the investigation uncovers adverse information, the record is held for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURE:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction, along with supporting justification showing why the record is not accurate, timely, or complete.

RECORD SOURCE CATEGORIES:

OPM Security Investigations Index, FBI headquarters investigative files, fingerprint index of arrest records, Defense Central Index of Investigations, employers within the last five years, listed references, and personal associates, school registrars and responsive law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In addition to any exemption to which this system is subject by Notices published by or regulations promulgated by the OPM, the system is subject to a specific exemption pursuant to 5 U.S.C. 552a(k)(5) to the extent that disclosures would reveal a source who furnished information under an express promise of confidentiality, or prior to September 27, 1975, under an express or implied promise of confidentiality.

NCUA–2

SYSTEM NAME:

Grievance Records.

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former Federal employees who have submitted grievances with NCUA in accordance with part 771 of the OPM's regulations. These case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiners' findings and recommendations, a copy of the original and final decision with related correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 10987; 3 CFR 1959–1963 Comp., p. 519.

PURPOSE:

The information in this system is used in the Agency's formal grievance process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used by the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations. (2) Information is used by any source from which additional information is requested in the course of processing a grievance to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested. (3) Information is used by a Federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. (4) Information is used by the congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual. (5) Information is used by another Federal agency or by a court when the government is party to a judicial proceeding before the court. (6) Information is used by the National Archives and Records Administration (General Services Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. (7) Information is used by NCUA in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference. (8) Information is used by officials of the Office of Personnel Management, the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties. (9) Information (that is relevant to the subject matter involved in a pending judicial or administrative proceeding) is used to respond to a request for discovery or for appearance of a witness. (10) Information is used by officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions. (11) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrievable by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

Records are disposed of three (3) years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record

pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Request to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; testimony of witness; agency officials; related correspondence from organization or persons.

NCUA–3

SYSTEM NAME:

Payroll Records System.

SYSTEM LOCATION:

Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. NCUA also has an interagency agreement with the General Services Administration, Region VI, Kansas City, Missouri to provide and maintain payroll and related services and systems involving NCUA employees. For administrative purposes, supporting documents in hard copy form may exist within NCUA at the duty station of each employee.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of NCUA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Salary and related payroll data, including time and attendance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 703; 44 U.S.C. 3301.

PURPOSE:

This system documents time and attendance and ensures that employees receive proper compensation and that NCUA's financial reports properly reflect employee salary and benefit payments. It is also used to allow the agency to budget employee pay and benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used to ensure proper compensation to all NCUA employees and to formulate financial reports and plans used within the agency, or is sent to the General Services Administration (GSA). (2) Information is used to document time worked and provide a record of attendance to support payment of salaries and use of annual, sick, and nonpaid leave. (3) Users of the time and attendance information include the employee's supervisor, the office's timekeeper, the payroll officer, staff involved in the budget process, accountants responsible for the proper recording of payroll results, and the GSA National Payroll Center in Kansas City, Missouri. (4) Further information in this system is used to make reports to state and local taxing authorities. (5) The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establish or modify orders of child support, identify sources of income and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193). (6) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic media or in paper format.

RETRIEVABILITY:

Records are retrieved by name or social security number.

SAFEGUARDS:

Records are maintained in secured offices, accessible by written authorization only.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with GSA policy.

SYSTEM MANAGER(S) AND ADDRESS:

PRIMARY:

Payroll Officer, Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

SECONDARY:

Office Timekeepers, National Credit Union Administration, Central Office (1775 Duke Street, Alexandria, Virginia 22314–3428) and Regional Offices (see appendix B for Regional Offices' addresses).

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Information is primarily obtained from the individual whom the record concerns, the Office of Personnel Management, and the GSA. Also, time and attendance information is prepared and submitted by the timekeeper in a given employee's office.

NCUA–4

SYSTEM NAME:

Travel Advance and Voucher Information System.

SYSTEM LOCATION:

Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NCUA employees who have traveled or relocated in the course of performing their duty and who have been reimbursed for the expense of such travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information from the following forms: Travel Vouchers (NCUA 1012), Relocation Travel Order (NCUA 1617) Application for Travel Advance (NCUA 1371), and Travel Voucher Cover Sheet (NCUA 1364), Agreement to Remain in Federal Service (NCUA 1030), Statement of Difference (NCUA 1310), Repayment of Travel Advance (NCUA 1372), Direct Deposit Form (SF–1199A).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–5752; Executive Order 11609 (July 22, 1971); Executive Order 11012 (March 27, 1962); 5 U.S.C. 4101–4118; Federal Travel Regulations, FPMR 101–7, Chapter 2, Section 6.3.

PURPOSE:

The purpose of this system is to allow for the management and storage of employee-related master data, properly account for employee-related reimbursements and provide documentary support for reimbursements to employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records are used to provide documentary support for reimbursements to employees for on-the-job and relocation travel expenses. (2) Users of the information include first and second line supervisors, NCUA accounting staff, and budgeting staff. (3) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper hard copy form and in a computer system.

RETRIEVABILITY:

Records are retrievable by social security number and name.

SAFEGUARDS:

The paper hard copy records are maintained in secured offices. The computer disc and accounting system is located in a secured office and its access is limited to only those employees who need the information to process travel-related transactions.

RETENTION AND DISPOSAL:

Records are maintained in the Division of Financial Control until the annual financial audit is completed. After the audit, the paper records are stored in a Federal Records Center for a minimum of three years and the computer disc is purged. The accounting system is archived as necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Financial Control, Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Records are prepared by the individual whom the record concerns.

NCUA–5

SYSTEM NAME:

Unofficial Personnel and Employee Development and Correspondence Records.

SYSTEM LOCATION:

For employees of an NCUA regional office, the system is located at the regional office where the employee is assigned (See appendix B for addresses of Regional Offices). For employees of the central office, the system is located at the assigned office, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information on NCUA employees assigned to the particular regional or central office related to some or all of the following areas: name; address; telephone number; birthdate; ethnicity and gender codes; cu grade; employee identification number; work performance appraisals; district management; chartering efforts; reactions from credit union officials; individual development plans; supply and equipment information; for new examiners, bi-weekly training reports, training progress reports and training evaluations; work product samples; suggestions; awards; data on time and attendance, leave and pay; memos or notations and evaluations by superiors or others; benefit elections and designations of beneficiaries; and copies of personnel, travel and grievance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3301.

PURPOSE:

Information is used for recording time, attendance and leave, controlling equipment inventories, contacting employees; evaluating and training staff, evaluating work progress; and for general administrative matters. Information may also be used to determine eligibility for retention or promotion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in this system may be disclosed to the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the General Services Administration or an arbitrator or agent, to the extent the disclosure is needed to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdictions, or to obtain information. (2) The information in this system may be disclosed to federal, state, local or professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of a licensed individual or an individual seeking to be licensed. (3) This information is used to generate a telephone directory for all NCUA employees. (4) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper hard copy as well as electronically on computer systems or other database applications.

RETRIEVABILITY:

Records are indexed alphabetically by name or Social Security number.

SAFEGUARDS:

Physical security consists of maintaining records in locked metal file cabinets within secured offices and password protected computer systems.

RETENTION AND DISPOSAL:

Current and relevant information is maintained generally for a period of two years. Obsolete material is maintained in the same file cabinets and is periodically purged and destroyed after two years or upon employees' separation.

SYSTEM MANAGER(S) AND ADDRESS:

For employees assigned to a regional office the system manager is the Director of Management Services, Regional Office, National Credit Union Administration. (See appendix B for addresses of Regional Offices). For employees assigned to an office within the central office, the system manager is

the Office Director, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the Regional Director where the system is located. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the Regional Director or Office Director will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the Regional Director or Office Director.

RECORD SOURCE CATEGORIES:

Sources may include the individual whom the record concerns, supervisors of the individual, fellow employees, credit union officials, administrative officer or office assistant, and other persons whom the individual may encounter in the course of work performance. For payroll- and personnel-related information, the sources may include the General Service Administration and Office of Human Resources.

NCUA–6

SYSTEM NAME:

Emergency Information (Employee) File.

SYSTEM LOCATION:

For employees of a regional office, the system is located at the regional office where the employee is assigned, National Credit Union Administration, (*See* appendix B for addresses of Regional Offices). For employees of the central office, the system is located at the assigned office, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees; individuals designated by employees as emergency contacts; family members of employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains personal information about NCUA employees, such as height, weight, hair color, eye color, current address, and telephone number, and in some locations may also have a personal cell telephone number and personal email address. Also, this system identifies the individual to contact in case of an emergency involving the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE:

The information in this system is used to maintain employee identification information in case of emergency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information on the individual to contact in cases of emergency may be disclosed in case of emergency to any federal, state or local authority responding to the emergency. (2) In the event of an emergency, the information may be disclosed to the individual listed as a contact in case of emergency, or other person identified as a family member of the employee. This list is updated as necessary. The listed information is used to contact the employee if there is a national emergency. (3) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper hard copy and may also be stored electronically.

RETRIEVABILITY:

Records are indexed alphabetically by name and, where stored electronically as part of a computer system, are subject to electronic safeguards.

SAFEGUARDS:

Records are maintained in locked file drawers or stored electronically as part of a computer database.

RETENTION AND DISPOSAL:

Records are disposed of after an employee is separated from the agency.

SYSTEM MANAGER(S) AND ADDRESS:

(1) For employees of an NCUA regional office, the system manager is the regional director of the regional office where the employee is assigned (See appendix B for addresses of Regional Offices). For employees of the central office, the system manager is the Office Director of the assigned office, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the appropriate system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the appropriate system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

NCUA–7

SYSTEM NAME:

Employee Injury File.

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee who has sustained a job-related injury or disease.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of reports submitted by an individual who has sustained a job-related injury or disease. Copies of any further claims made regarding the same injury or disease or any other material required for documenting and adjudicating the claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act of 1970, 29 CFR part 1960.

PURPOSE:

This information is maintained to provide data to the Department of Labor, when needed, for adjudication of a claim, and to prepare reports as required by the Department of Labor.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is disclosed to the Department of Labor. (2) Standard routine use as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper in file cabinets.

RETRIEVABILITY:

Records are retrieved by date of injury and employee name.

SAFEGUARDS:

Records are maintained in a locked file drawer.

RETENTION AND DISPOSAL:

Records are disposed five years after the year to which they relate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained; superiors of individual; individual's physician; hospital attending individual; Department of Labor.

NCUA–8

SYSTEM NAME:

Investigative Reports Involving Any Crime, Suspected Crime or Suspicious Activity Against a Credit Union.

SYSTEM LOCATION:

Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Computerized records of Suspicious Activity Reports (SAR), with status updates, are managed by the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury, pursuant to a contractual agreement, and are stored in Detroit, Michigan. Authorized personnel at NCUA's Central Office and regional offices have on-line access to the computerized database managed by FinCEN through individual work stations linked to the database central computer.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Directors, officers, committee members, employees, agents, and persons participating in the conduct of the affairs of federally insured credit unions who are reported to be involved in suspected criminal activity or suspicious financial transactions and are referred to law enforcement officials; and other individuals who have been involved in irregularities, violations of law, or unsafe or unsound practices referenced in documents received by the NCUA in the course of exercising its supervisory functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inter- and intra-agency correspondence, memoranda, and reports. The SAR contains information identifying the credit union involved, the suspected person, the type of suspicious activity involved, and any witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1786 and 1789.

PURPOSE(S):

The overall system serves as an NCUA repository for investigatory or enforcement information related to its responsibility to examine and supervise federally insured credit unions. The system maintained by FinCEN serves as the database for the cooperative storage, retrieval, analysis, and use of information relating to Suspicious Activity Reports made to or by the NCUA Board, the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, (collectively, the Federal financial regulatory agencies), and FinCEN to various law enforcement agencies for possible criminal, civil, or administrative proceedings based on known or suspected violations affecting or involving persons, financial institutions, or other entities under the supervision or jurisdiction of such Federal financial regulatory agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Information in these records may be used to: (1) Determine if any further agency action should be taken. (2) Provide the federal financial regulatory agencies and FinCEN with information relevant to their operations; (3) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (4) With regard to formal or informal enforcement actions; release information pursuant to 12 U.S.C. 1786(s), which requires the NCUA Board to publish and make available to the public final orders and written agreements, and modifications thereto; and (5) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records will be maintained in electronic data processing systems and paper files.

RETRIEVABILITY:

Computer output and file folders are retrievable by indexes of data fields, including name of the credit union, NCUA Region, and individuals' names.

SAFEGUARDS:

Paper records and word processing discs are stored at the NCUA in lockable metal file cabinets. The database maintained by FinCEN complies with applicable security requirements of the Department of the Treasury. On-line access to the information in the database is limited to authorized individuals who have been designated by each federal financial regulatory agency and FinCEN, and each such individual has been issued a nontransferable identifier or password.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

Inquiries should be sent to the System Manager as noted above.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" above.

CONTESTING RECORDS PROCEDURES:

Same as "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Information received by the NCUA Board from various sources, including, but not limited to law enforcement and other agency personnel involved in sending inquiries to the NCUA Board, NCUA examiners, credit union officials, employees, and members. The information maintained by FinCEN is compiled from SAR and related historical and updating forms compiled by financial institutions, the NCUA Board, and the other federal financial regulatory agencies for law enforcement purposes.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

NCUA–9

SYSTEM NAME:

Freedom of Information and Privacy Act Requests and Invoices.

SYSTEM LOCATION:

(1) Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. (2) Office of Inspector General National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. (3) For requests prior to 2006 processed by a regional office, the system is located at the regional office (see appendix B for a list of addresses of the regional offices). (4) For requests prior to 2006 processed by the Asset Management and Assistance Center, the system is located at AMAC, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759–8490.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records includes information pertaining to any Freedom of Information Act (FOIA) or Privacy Act requester.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain the requester's name, company name or organization, address, date of request, invoice number, amount due, phone number, social security or tax identification number, description of information requested and documents located or result of search for documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1789, 5 U.S.C. 552, 5 U.S.C. 552a.

PURPOSE:

Records in this system are used to process requests received. These records may be used by the NCUA for collection of the amount due, as well as to identify subsequent requests made by the same individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information may be disclosed to a consumer reporting agency. The information disclosed to a consumer reporting agency is limited to: (a) Information necessary to establish the identity of the individual, including name, address, and social security or taxpayer identification number; (b) the amount, status, and history of the claim; and (c) the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Records in this system are retrievable by requester's name, company name or organization, date of request, category of requester, request number, invoice number, or key words.

SAFEGUARDS:

Physical security consists of storing records on a password protected computer database and a hard copy secured in a metal file cabinet which is accessible only to those individuals responsible for processing requests and collecting outstanding payments.

RETENTION AND DISPOSAL:

Records are retained for various periods depending on the determination made on the request, but normally no greater than six years following the year in which the request was processed.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Freedom of Information Act Officer, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. (2) For requests processed by the Office of Inspector General, Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

The sources of records for this system of records are the FOIA and Privacy Act request files.

NCUA–10

SYSTEM NAME:

Liquidating Credit Union Records System.

SYSTEM LOCATION:

Information within this system of records is located at the Asset and Management Assistance Center (AMAC) 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members, employees and creditors of liquidating federally-insured credit unions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Share and account records; personal data regarding income and debts; payment or employment history; accounts payable records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1787.

PURPOSE:

The information in this system is used to determine insurance, collect loan amounts due and for all purposes necessary to close out the affairs of the liquidated credit union.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information is used for payment of insurance claims to shareholders in liquidating federally-insured credit unions. (2) Information is used in the collection of outstanding loans, which may include referral of information to third party service providers or potential purchasers of the loans. (3) Information is used for all purposes necessary to close out the affairs of the liquidated credit union and carry out all appropriate liquidation-related functions of NCUA. (4) Information may be disclosed to address locators or a surety company in pursuit of a fidelity bond claim. (5) Information on unclaimed insured shares is included in a database on the NCUA Web site after other efforts to locate account holders have failed. (6) Information may be disclosed to the appropriate federal, state or local government agency, such as the Internal Revenue Service, if required by law or regulation or upon appropriate request. (7) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

This information is maintained on computer databases and hard copy. Copies of share and loan documents, incoming payments, and loan portfolios may also be maintained on microfilm copy.

RETRIEVABILITY:

Information is indexed by name of individual and by name of closed insured credit union.

SAFEGUARDS:

Information is maintained in secured offices and in password protected computer databases.

RETENTION AND DISPOSAL:

Information is maintained for six years following the appointment of the NCUA Board as liquidating agent of an insured credit union unless the NCUA's Record Management Policy requires a different time period or does not require the information to be maintained. After the retention period is completed, the system manager may destroy any records that the system manager determines are unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency or prohibited by law.

SYSTEM MANAGER(S) AND ADDRESS:

President, AMAC, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759–8490.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains information pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no information on the individual, the individual will be so advised. Written inquiries should include name of inquirer, name of closed insured credit union of which inquirer was a member, and share and loan account numbers, if known.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available information.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Information is obtained from outside address locators; share and loan account files of the liquidating credit union of which the individual was a member; third party service providers; and credit bureaus.

NCUA–11

SYSTEM NAME:

Office of Inspector General (OIG) Investigative Records.

SYSTEM LOCATION:

Office of Inspector General, NCUA, 1775 Duke Street, Alexandria, VA 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of investigation, complainants, and witnesses referred to in complaints or actual investigative cases, reports, accompanying documents, and correspondence prepared by, compiled by, or referred to the OIG.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system is comprised of paper files of all OIG and some predecessor Office of Internal Auditor reports, correspondence, cases, matters, cross-indices, memoranda, materials, legal papers, evidence, exhibits, data, and workpapers pertaining to all closed and pending investigations and inspections.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Inspector General Act of 1978, as amended, 5 U.S.C. App.3; 12 U.S.C. 1766.

PURPOSE:

Records in this system document the investigative work of the Office of Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The National Credit Union Administration Office of Inspector General (OIG) may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected, under the following routine uses. (1) The OIG may disclose information from this system of records as a routine use to any public or private source, including a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, but only to the extent necessary for the OIG to obtain information from those sources relevant to an OIG investigation, audit, inspection, or other inquiry. (2) The OIG may disclose information from this system of records as a routine use to the Department of Justice to the extent necessary to obtain its legal advice on any matter relevant to an OIG investigation, audit, inspection, or other inquiry related to the responsibilities of the OIG. (3) The OIG may disclose information to other federal entities, such as other Offices of Inspector General, to the General Accounting Office, or to a private party with which the OIG or the NCUA has contracted or with which it contemplates contracting, for the purpose of auditing or reviewing the performance or internal management of the OIG's investigative program, or for performing any other functions or analyses that facilitate or are relevant to an OIG investigation, audit, inspection or other inquiry. Such contractor or private firm shall be required to maintain Privacy Act safeguards with respect to such information. (4) The OIG may disclose information from this system of records to any Federal, State, local, or foreign agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an OIG decision concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit. (5) The OIG may disclose information in this system to federal, state, local or professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications of a licensed individual or an individual seeking to be licensed. (6) The OIG may disclose information from this system of records for the purposes set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information contained in this system is stored manually in files.

RETRIEVABILITY:

Information is retrieved in files by case number, general subject matter, or name of the subject of investigation.

SAFEGUARDS:

Case reports and workpapers are maintained in approved security containers and locked filing cabinets in a locked room. Associated paper records are stored in locked metal filing cabinets, safes, or similar secure facilities.

RETENTION AND DISPOSAL:

Investigative Case Files 1. Case files are normally destroyed when they are 5

years old. 2. Significant cases (those that result in national media attention, congressional investigation, or substantive changes in agency policy or procedures)—To be determined by the National Archives and Records Administration on a case-by-case basis.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

This System of Records is generally exempt from the notice, access, and amendment requirements of the Privacy Act. However, the NCUA will entertain written requests to the systems manager on a case-by-case basis for notification regarding whether this system of records contains information about an individual. Requests should be marked "Privacy Act request," and should state the name and address of the requester, and provide a notarized statement, or other documentation, e.g., copy of a driver's license, attesting to the individual's identity. Requests submitted on behalf of other persons must include their written authorizations. Such requests in the form prescribed may also be presented in person at the Office of Inspector General, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Simultaneously with requesting notification of inclusion in this system of records, the individual may request record access as described in this section.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The OIG collects information from many sources, including the subject individuals, employees of the NCUA, other government employees, and witnesses and informants, and non-governmental sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), this system of records is exempt from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f) and (g) of the Act. This exemption applies to information in the system that relates to criminal law enforcement and meets the criteria of the (j)(2) exemption. Pursuant to 5 U.S.C. 552(k)(2), to the extent that the system contains investigative material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), this system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). The exemption rule is contained in 12 CFR 792.66 of the NCUA regulations.

NCUA–12

SYSTEM NAME:

Consumer Complaints Against Federal Credit Unions.

SYSTEM LOCATION:

Information is maintained in NCUA's regional offices (*see* appendix B for regional office locations).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who submit complaints concerning operating federal credit unions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaint letters, investigation reports, and related correspondence concerning the complainants and the federal credit union involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1766(i)(1) and 1789(a)(7); 5 U.S.C. 301; 15 U.S.C. 1601–1693.

PURPOSE:

This system documents the number and type of consumer complaints received and processed by NCUA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Information may be disclosed to officials of federal credit unions and other persons mentioned in a complaint or identified during an investigation. (2) Disclosures may be made to the Federal Reserve Board, other federal financial regulatory agencies, the Federal Financial Institutions Examination Council, the White House Office of Consumer Affairs, and the Congress, or any of its authorized committees in fulfilling reporting requirements or assessing implementation of applicable laws and regulations. (Such disclosures will be made in a nonidentifiable manner when feasible and appropriate.) (3) Referrals may also be made to other federal and nonfederal supervisory or regulatory authorities when the subject matter is a complaint or inquiry which is more properly within such agency's jurisdiction. (4) Standard routine uses as set forth in appendix A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper or computer database.

RETRIEVABILITY:

Records are retrievable from files by federal credit union name, by complainant name, or assigned control number.

SAFEGUARDS:

Records are maintained in secured offices in either a file cabinet or on a password protected computer system.

RETENTION AND DISPOSAL:

Records are retained for three years and then destroyed. Consumer's name, federal credit union's name, subject of complaint, date received, and date resolved are kept until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

The System Manager is the Regional Director in the regional office where the complaint was processed. (See appendix B for Regional Office addresses.)

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Request to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Complainant (and his or her representative, which may include, e.g., a member of Congress or an attorney); Federal credit union officials; employees and members of the credit union involved; and NCUA examiners and central files on federal credit unions.

NCUA–13

SYSTEM NAME:

Litigation Case Files.

SYSTEM LOCATION:

Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained in files by the case name of individuals who are: the subject of NCUA investigations made in contemplation of legal action; involved in civil litigation with NCUA or involved in administrative proceedings; involved in litigation of interest to NCUA; or pursuing tort claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in case files include: Investigative reports relating to possible felonies or violations of the Federal Credit Union Act; transcripts of testimony or affidavits; documents and other evidentiary matters, pleadings and other documents filed in court; orders filed or issued in civil, administrative or criminal proceedings; correspondence relating to investigatory or litigation matters; information provided by the individual under investigation or from a Federal credit union; and other memoranda gathered and prepared by staff in performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1766, 1786, 1787, and 1789; 28 U.S.C. 2671–2680.

PURPOSE:

This system documents the preparation and progress of legal proceedings and investigations conducted by the Office of General Counsel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The staff of the Office of General Counsel may use such records to render legal advice concerning investigations or courses of legal action; to represent NCUA in all judicial and administrative proceedings in which NCUA or any of its employees who, within the scope of employment and in an official capacity, is a party; or to intervene as an amicus curiae. (2) The information in this system may be disclosed to federal, state, local or professional licensing boards or Boards of Medical Examiners, when such records reflect on the qualifications or fitness of a licensed individual or an individual seeking to be licensed. (3) Standard routine uses set forth in appendix A.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

RECORD ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above.

RECORD SOURCE CATEGORIES:

Record source categories vary depending upon the legal issue but generally are obtained from the following: NCUA staff and internal agency memoranda; federal employees and private parties involved in torts; contracts; federal credit union files or officials; general law texts and sources; law enforcement officers; witnesses and others; administrative and court pleadings, transcripts or judicial orders/decisions; evidence gathered in connection with the matter involved; and from individuals to whom the records relate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is subject to the specific exemption provided by 5 U.S.C. 552a(k)(2), as the system of records is investigatory material compiled for law enforcement purposes.

NCUA–14

SYSTEM NAME:

PaymentNet J.P.Morgan Chase Bank PaymentNet.

SYSTEM LOCATION:

J.P.Morgan Chase Bank, N.A. Commercial Card Solutions (Elgin, IL).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of NCUA with individually billed government travel cards and/or centrally billed government travel cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

NCUA employee credit card data, including name and address, and past and present charges to account.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Travel Regulations, Travel and Transportation Reform Act of 1998 (Pub. L. 105–264).

PURPOSE:

The purpose of this system is for the Office of the Chief Financial Officer (OCFO) to monitor the usage of the government travel card by NCUA employees and to assure timely payments of accounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The system can be used by individual cardholders to access their own account information to monitor charges, payments, change their address, etc. It is also used by OCFO to provide oversight of the travel card program by monitoring card usage in order to reduce card misuse, abuse, and delinquencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in a database that is accessible by Internet over a 128-bit encryption secure connection.

RETRIEVABILITY:

Records are retrieved by name or account number.

SAFEGUARDS:

Records are maintained in a secure database that can only be accessed with a username and password provided by Bank of America after receipt of an application submitted by the OCFO. Only authorized staff in OCFO can access multiple employee records, all other employees can only access their own account information within the PaymentNet system.

RETENTION AND DISPOSAL:

All account activity (charges, payments, credits, *etc.*) is retained in the PaymentNet system for 36 months. All information on closed accounts (name, address, activity) is retained for 36 months before it is permanently removed from the PaymentNet system.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Financial Officer, Office of the Chief Financial Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

NOTIFICATION PROCEDURE:

An individual may inquire about his/her personal account information by accessing the PaymentNet system with a username and password provided to them by Bank of America or by written request to OCFO.

RECORD ACCESS PROCEDURES:

Upon approval of the cardholder application and issuance of the government travel card by BOA, a username and password is also

submitted to the cardholder for access to their account information in PaymentNet.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be submitted online through the PaymentNet system or submitted in writing to OCFO.

RECORD SOURCE CATEGORIES:

Records are prepared by the individual whom the record concerns by submission of an application to J.P.Morgan Chase Bank and by the subsequent activity to the individual's account.

NCUA–15

SYSTEM NAME:

Contract Employee Pay and Leave Records.

SYSTEM LOCATION:

Information within this system of records is located at the Asset Management and Assistance Center (AMAC) 4807 Spicewood Springs Road, Suite 5100, Austin TX 78759–8490, and the payroll processor, Paychex of San Antonio, Texas.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Contract employees hired by the Agent for the Liquidating Agent for work on liquidation cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Wages and related payroll data, including leave records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Fair Labor Standards Act.

PURPOSE:

This system documents employee information and ensures that employees receive proper compensation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information is used to document time worked and provide a record of attendance to support payment of wages and use of leave. Users of the system include the payroll officer (financial analyst), the employee's supervisor, and Paychex.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are maintained in a secured file cabinet, accessible only to the payroll officer and division manager.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the Fair Labor Standards Act.

SYSTEM MANAGER(S) AND ADDRESS:

Primary: Financial Analyst, Asset Management and Assistance Center (4807 Spicewood Springs Road, Suite 5100, Austin TX 78759–8490).

Secondary: Division of Accounting Service Director, Asset Management and Assistance Center (4807 Spicewood Springs Road, Suite 5100, Austin TX 78759–8490).

NOTIFICATION PROCEDURE:

An individual may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

NCUA–16

SYSTEM NAME:

Leave Transfer Program Case Files.

SYSTEM LOCATION:

Office of Human Resources, 1775 Duke Street, Alexandria, VA 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NCUA employees who submitted applications to become leave recipients under the provisions of the Leave Transfer program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave transfer program applications, leave requests, and medical documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 630.913.

PURPOSE:

To administer the NCUA leave transfer program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records are used to administer the NCUA leave transfer program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and filed in metal file cabinets.

RETRIEVABILITY:

The records are retrieved by the names of the employee.

SAFEGUARDS:

These files are kept in a locked room and are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

These records are maintained in accordance with NARA General Records Schedules 1 (Civilian Personnel Records). Disposal of manual records is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

An individual or an individual's authorized representative may inquire as to whether the system contains a record pertaining to the individual by addressing a request in person or by mail to the system manager listed above. If there is no record on the individual, the individual will be so advised.

NCUA–17

SYSTEM NAME:

Personal Identity Verification Files.

SYSTEM LOCATION:

Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require regular, ongoing access to federal facilities, information technology systems, or information classified in the interest of national security, including applicants for employment or contracts, federal employees, contractors, students, interns, volunteers, affiliates, individuals authorized to perform or use services provided in NCUA facilities and individuals formerly in any of these positions. The system also includes individuals accused of security violations or found in violation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, former names, birth date, birth place, Social Security number, home address, phone numbers, employment history, residential history, education and degrees earned, names of associates and references and their contact information, citizenship, names of relatives, birthdates and places of relatives, citizenship of relatives, names of relatives who work for the federal

government, criminal history, mental health history, drug use, financial information, fingerprints, summary report of investigation, results of suitability decisions, level of security clearance, date of issuance of security clearance, requests for appeal, witness statements, investigator's notes, tax return information, credit reports, security violations, circumstances of violation, and agency action taken. Copies of background investigation forms such as the SF–85, SF–85P, SF–86, or SF–87 may also be included in this file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive orders 10450, 10865, 12333, and 12356; sections 3301 and 9101 of title 5, U.S. Code; sections 2165 and 2201 of title 42, U.S. Code; sections 781 to 887 of title 50, U.S. Code; parts 5, 732, and 736 of title 5, Code of Federal Regulations; and Homeland Security Presidential Directive (HSPD) 12, Policy for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004.

PURPOSE(S):

The records in this system of records are used to document and support decisions regarding clearance for access to classified information, the suitability, eligibility, and fitness for service of applicants for Federal employment and contract positions, including students, interns, or volunteers to the extent their duties require access to federal facilities, information, systems, or applications. The records may be used to document security violations, employee access and attendance, and supervisory actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information maintained in this system is collected from PIV Applicants, the individuals to whom a PIV card is issued. The PIV Applicant may be a current or prospective Federal hire, a Federal employee or a contractor. The information is used in each step of the PIV Process for example, conducting a background investigation, completing the identity proofing and registration process, creating an employee record in the Comprehensive Human Resources Integrated System (CHRIS), issuing a PIV card and the determination of physical and logical access. Additionally, the information such as card expiration date, PIV Registrar Approval, etc. is maintained in this file and is used to assist in the production of the PIV card. (2) The information in this system may be disclosed to the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, the General Services Administration or an arbitrator or agent to the extent the disclosure is needed to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdictions, or to obtain information. (3) The information in this system may be disclosed to federal, state, local or professional licensing boards or boards of Medical Examiners, when such records reflect on the qualifications of a licensed individual or individual seeking to be licensed. (4) Standard routine uses as set forth in Appendix A.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and electronically in a secure location.

RETRIEVABILITY:

Files are retrieved by name or Social Security number (SSN), employee name, and employee identification number.

SAFEGUARDS:

For paper records: Comprehensive paper records are kept in a secure room at NCUA Central Office, Office of Human Resources. Limited paper records may be kept at NCUA regional offices in locked file cabinets in locked rooms. Access to the records is limited to those employees who have a need for them in the performance of their official duties.

For electronic records: Comprehensive electronic records are kept at the NCUA Central Office, Office of Human Resources. Access to the records is restricted to those with a specific role in the PIV process that requires access to information to perform their duties, and who have been given a password to access that part of the system. Controls are in place to identify unauthorized access. Persons given roles in the PIV process must complete training specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information. Electronic records of security badge and parking pass usage for access to the Central Office and access to parking are accessible by selected staff in the Division of Procurement and Facilities Management.

RETENTION AND DISPOSAL:

Records are destroyed upon notification of death or not later than five years after separation or transfer of employee to another agency, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officer, Office of Human Resources, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record pertaining to the individual by addressing a request in writing to the system manager listed above. If there is no record on the individual, the individual will be so advised.

When requesting notification of or access to records covered by this system, an individual should provide at a minimum his/her full name, date of birth, office and duty location in order to establish identity.

RECORDS ACCESS PROCEDURES:

Upon request, the system manager will set forth the procedures for gaining access to available records.

CONTESTING RECORD PROCEDURES:

Requests to amend or correct a record should be directed to the system manager listed above. Requesters should also reasonably identify the record, specify the information they are contesting, state the corrective action sought and the reasons for the correction along with supporting justification showing why the record is not accurate, timely, relevant, or complete.

RECORD SOURCE CATEGORIES:

Information is obtained from a variety of sources including the employee, contractor, or applicant via use of the SF–85, SF–85P, or SF–86 and personal interviews; employers' and former employers' records; FBI criminal history records and other databases; financial institutions and credit reports; medical records and health care providers; educational institutions; interviews of witnesses such as neighbors, friends, co-workers, business associates, teachers, landlords, or family members; tax records; and other public records. Security violation information is obtained from a variety of sources, such as witnesses or supervisor's reports. Electronic records are created based on use of security badges and parking passes at readers at entrances and exits to parking at the Central Office, building entrances, and building elevators.

Appendix A—Standard Routine Uses Applicable to NCUA Systems of Records

1. If a record in a system of records indicates a violation or potential violation of civil or criminal law or a regulation, and whether arising by general statute or particular program statute, or by regulation, rule, or order, the relevant records in the system or records may be disclosed as a routine use to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

2. A record from a system of records may be disclosed as a routine use to a Federal, State, or local agency which maintains civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from a system of records may be disclosed as a routine use to a Federal agency, in response to its request, for a matter concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

4. A record from a system of records may be disclosed as a routine use to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. Further, a record from any system of records may be disclosed as a routine use to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

5. A record from a system of records may be disclosed as a routine use to officers and employees of a federal agency for purposes of audit.

6. A record from a system of records may be disclosed as a routine use to a member of Congress or to a congressional staff member in response to an inquiry from the congressional office made at the request of the individual about whom the record is maintained.

7. A record from a system of records may be disclosed as a routine use to the officers and employees of the General Services Administration (GSA) in connection with administrative services provided to this Agency under agreement with GSA.

8. Records in a system of records may be disclosed as a routine use to the Department of Justice, when: (a) NCUA, or any of its components or employees acting in their official capacities, is a party to litigation; or (b) Any employee of NCUA in his or her individual capacity is a party to litigation and where the Department of Justice has agreed to represent the employee; or (c) The United States is a party in litigation, where NCUA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and NCUA determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, NCUA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

9. Records in a system of records may be disclosed as a routine use in a proceeding before a court or adjudicative body before which NCUA is authorized to appear (a) when NCUA or any of its components or employees are acting in their official capacities; (b) where NCUA or any employee of NCUA in his or her individual capacity has agreed to represent the employee; or (c) where NCUA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and NCUA determines that use of such records is relevant and necessary to the litigation, provided, however, NCUA determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

Appendix B—List of Regional Offices With Addresses and States Covered by Each Region

NCUA Region I Regional Office: 9 Washington Square, Washington Avenue Extension, Albany, NY 12205, Phone (518) 862–7400. States covered: Connecticut, Maine, Massachusetts, Michigan, New Hampshire, New York, Rhode Island, and Vermont.

NCUA Region II Regional Office: 1775 Duke Street, Suite 4206, Alexandria, VA 22314, Phone: (703) 519–4600. States covered: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, and West Virginia.

NCUA Region III Regional Office: 7000 Central Parkway, Suite 1600, Atlanta, GA 30328, Phone: (678) 443–3000. States covered: Alabama, Florida, Georgia, Indiana, Kentucky, Mississippi, North Carolina, Puerto Rico, Ohio, South Carolina, Tennessee, and Virgin Islands.

NCUA Region IV Regional Office: 4807 Spicewood Springs Road, Suite 5200, Austin, TX 78759, Phone: (512) 342–5600. States covered: Arkansas, Illinois Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin.

NCUA Region V Regional Office: 1230 West Washington Street, Suite 301, Tempe, AZ 85281, Phone: (602) 302–6000. States covered: Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

By the National Credit Union Administration Board on June 24, 2010.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2010–17330 Filed 7–15–10; 8:45 am]

BILLING CODE 7535–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 2, 2010.

Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Language, Linguistics, Rhetoric, and Communication in Fellowships, submitted to the Division

of Research Programs at the May 4, 2010 deadline.

2. *Date:* August 2, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Middle Eastern Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

3. *Date:* August 3, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Public Programming, submitted to the Office of Challenge Grants at the May 5, 2010 deadline.

4. *Date:* August 3, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for South and Southeast Asian Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

5. *Date:* August 3, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Medieval and Renaissance Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

6. *Date:* August 3, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Public Programming, submitted to the Office of Challenge Grants at the May 5, 2010 deadline.

7. *Date:* August 4, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American History I in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

8. *Date:* August 4, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American History II in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

9. *Date:* August 5, 2010.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for History II, submitted to the Office of Challenge Grants at the May 5, 2010 deadline.

10. *Date:* August 5, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Studies II in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

11. *Date:* August 5, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Art History II in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

12. *Date:* August 6, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American History and Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

13. *Date:* August 9, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Ancient and Classical Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

14. *Date:* August 9, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Romance Studies in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

15. *Date:* August 10, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Art History I in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

16. *Date:* August 10, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Political Science and Jurisprudence in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

17. *Date:* August 11, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for American Literature I in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

18. *Date:* August 11, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Literature II in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

19. *Date:* August 12, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American History III in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

20. *Date:* August 12, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Sociology and Psychology in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

21. *Date:* August 16, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Advanced Social Science Research on Japan in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

22. *Date:* August 17, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Literature and Studies in Awards for Faculty, submitted to the Division of Research Programs at the April 15, 2010 deadline.

23. *Date:* August 17, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for History and Politics in Awards for Faculty, submitted to the Division of Research Programs at the April 15, 2010 deadline.

24. *Date:* August 18, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Literature, Philosophy, and the Arts in Awards for Faculty, submitted to the Division of Research Programs at the April 15, 2010 deadline.

25. *Date:* August 18, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Social Sciences and Ethnic Studies in Awards for Faculty, submitted to the Division of Research Programs at the April 15, 2010 deadline.

26. *Date:* August 19, 2010.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Old and New World Archaeology in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

27. *Date:* August 19, 2010.
Time: 8:30 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Modern European History II in Fellowships, submitted to the Division of Research Programs at the May 4, 2010 deadline.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. 2010–17408 Filed 7–15–10; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0238]

Report to Congress on Abnormal Occurrences Fiscal Year 2009; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Pub. L. 93–438) defines an abnormal occurrence (AO) as an unscheduled incident or event which the U.S. Nuclear Regulatory Commission (NRC) determines to be significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Pub. L. 104–68) requires that AOs be reported to Congress annually. During Fiscal Year 2009, nine events that occurred at facilities licensed or otherwise regulated by the NRC and/or Agreement States were determined to be AOs. The report describes three events at NRC-licensed facilities. All three NRC-licensee events were medical events, as defined in Title 10, Part 35, of the Code of Federal Regulations (10 CFR part 35). The report also describes six events at Agreement State-licensed facilities. [Agreement States are those States that have entered into formal agreements with the NRC pursuant to Section 274 of the Atomic Energy Act (AEA) to regulate certain quantities of AEA licensed material at facilities located within their borders.] Currently, there are 37 Agreement States. The first two Agreement State-licensee events involved radiation exposure to an embryo/fetus. The other four Agreement State-licensee events were medical events, as defined in 10 CFR part 35, and occurred at medical institutions. As required by Section 208, the discussion for each event includes the date and place, nature and probable consequences, the cause or causes, and the actions taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 32, "Report to Congress on Abnormal Occurrences: Fiscal Year 2009." This report is available electronically at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/.*

There are three major categories of events reported in this document: I. For All Licensees, II. For Commercial Nuclear Power Plant Licensees, and III. Events at Facilities Other Than Nuclear Power Plants and All Transportation Events. The full report, available on the NRC Web site, provides the specific criteria for determining when an event is an abnormal occurrence (AO) and discusses "Other Events of Interest" that do not meet the AO criteria but which the Commission has determined should be included in the report. The event identification number begins with "AS" for Agreement State AO events and "NRC" for NRC AO events.

I. For All Licensees

A. Human Exposure to Radiation From Licensed Material

During this reporting period, two events at Agreement State-licensed facilities were significant enough to be reported as abnormal occurrences (AOs). Although both of these events occurred at medical facilities, they both involved unintended exposures to individuals who were not the patient. Therefore, these events belong under the criteria I.A, "For All Licensees" category as opposed to the criteria III.C, "For Medical Licensees" category.

AS09–01 Human Exposure to Radiation at Chester County Hospital in West Chester, Pennsylvania

Date and Place—March 30, 2009, West Chester, Pennsylvania.

Nature and Probable Consequences—Chester County Hospital (the licensee) reported that a therapeutic dose of 2,001.7 MBq (54.1 mCi) of iodine-131 resulted in a dose to an embryo/fetus of 119 mSv (11.9 rem). On March 30, 2009, the patient was given a pregnancy test and it yielded a negative result. Based on the negative pregnancy test, the licensee administered the iodine-131 to the patient.

On May 13, 2009, the patient informed the authorized user that she was pregnant. The administration of iodine-131 was given to the patient approximately 5 days post-conception, a time period at which the thyroid had not developed. The hospital discovered the pregnancy at 9.5 weeks gestation, at which time the thyroid had developed. Due to residual iodine-131 in the patient's system, both a whole body and an organ dose exposure occurred. The hospital calculated a total whole body dose to the embryo/fetus of 119 mSv (11.9 rem) and a fetal thyroid dose of 9.7 mSv (0.97 rem). The hospital recommended that the patient consult with a genetic counselor for any potential health effects to the embryo/fetus.

Cause(s)—The cause of this event was the close proximity of conception, which resulted in a negative pregnancy test, to the administration of iodine-131.

Actions Taken To Prevent Recurrence:

Licensee—The licensee is providing additional instructions to its staff to strongly emphasize to patients the risks associated with being pregnant prior to the administration of radioiodine treatments.

State—The State conducted a follow-up inspection and did not take any enforcement action regarding this event.

* * * * *

AS09–02 Human Exposure to Radiation at Loyola University Medical Center in Maywood, Illinois

Date and Place—September 21, 2009, Maywood, Illinois.

Nature and Probable Consequences—Loyola University Medical Center (the licensee) reported that the administration of 925 MBq (25 mCi) of iodine-131 resulted in a dose to an embryo/fetus of 67 mSv (6.7 rem). Prior to the administration of iodine-131, a urinary pregnancy test was conducted by the licensee on September 21, 2009, and it yielded a negative result. On September 29, 2009, the patient notified the licensee that she took a home pregnancy test and it was positive. The patient's pregnancy was confirmed by an independent clinic that administered a second pregnancy test.

The administration of iodine-131 was given to the patient at 2 to 3 weeks gestation (as determined by a consulting physician), a time period at which the thyroid had not developed. Shortly thereafter, the pregnancy ended. The licensee calculated a total whole body dose of 67 mSv (6.7 rem) to the embryo/fetus. There was no dose to the fetal thyroid since the pregnancy had ended before the thyroid had developed.

Cause(s)—The cause of this event was the close proximity of conception, which resulted in a negative pregnancy test, to the administration of iodine-131.

Actions Taken To Prevent Recurrence:

Licensee—The licensee reviewed its established patient selection criteria, screening methods, and testing protocols for any procedural changes. A more sensitive pregnancy test for women capable of bearing children will now be conducted no more than a few days prior to the dose administration.

State—After consulting an expert, the State determined that the administration occurred before the development of the thyroid. The State also performed independent calculations that verified the estimate of the fetal dose by the

licensee. The State reviewed and accepted the licensee's formal report on October 14, 2009.

* * * * *

II. Commercial Nuclear Power Plant Licensees

During this reporting period, no events at commercial nuclear power plants in the United States were significant enough to be reported as AOs.

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III. Events at Facilities Other Than Nuclear Power Plants and All Transportation Events

C. Medical Licensees

During this reporting period, three events at NRC-licensed or regulated facilities and four events at Agreement State-licensed facilities were significant enough to be reported as AOs.

AS09–03 Medical Event at St. Vincent's Medical Center Inc., in Jacksonville, Florida

Date and Place—September 10–17, 2008, Jacksonville, Florida.

Nature and Probable Consequences—St. Vincent's Medical Center Inc., (the licensee) reported that a medical event occurred associated with a high dose-rate (HDR) mammosite treatment for breast cancer containing 199.8 GBq (5.4 Ci) of iridium-192. A patient was prescribed to receive 34 Gy (3,400 rad) to the right breast but received 34 Gy (3,400 rad) to the skin of the left breast.

On October 16, 2008, the patient notified her physician of erytherma on her left breast. During a records review, the medical physicist determined that an error in programming the catheter length in the HDR device caused the source to stop 10 cm short of the intended tumor site in the right breast. Due to this programming error, the dose intended for the right breast was delivered to the skin of the left breast. The authorized user concluded that no chronic health effect to the patient is expected.

Cause(s)—The medical event was caused by human error in failing to verify that the correct catheter length was entered into the treatment planning system.

Actions Taken To Prevent Recurrence:

Licensee—The licensee committed to taking several corrective actions as a result of the medical event that include (1) utilizing a catheter length worksheet to determine and verify the mammosite catheter length, (2) documenting the mammosite catheter length by two individuals—one physicist and either a dosimetrist, physicist, or radiation therapist—during simulation treatment set-up, (3) providing procedures for the medical physicist and authorized user on documenting the catheter length on the catheter worksheet during the review of the treatment control unit and treatment plan, and (4) conducting a second measurement of the catheter length to verify that the length agrees with the data in the treatment control unit.

State—The Florida Bureau of Radiation Control conducted an investigation and reviewed the licensee's corrective actions and found the corrective actions to be adequate.

* * * * *

NRC09–01 Medical Event at Saint Mary's Medical Center in Huntington, West Virginia

Date and Place—October 15, 2008, Huntington, West Virginia.

Nature and Probable Consequences—Saint Mary's Medical Center (the licensee) reported that a medical event occurred associated with the administration of a 5.55 GBq (150 mCi) iodine-131 capsule for thyroid cancer. A patient was prescribed to receive 10.12 Gy (1,012 rad) to the esophagus but received 18 Gy (1,800 rad) to the esophagus. The patient and the referring physician were informed of this event.

During the administration, the patient attempted to swallow the capsule, but it became lodged in an obstruction in the upper portion of the esophagus. Licensee staff provided the patient with soda and applesauce to help dissolve the capsule, and after 2.5 hours the capsule passed the obstruction. Since the capsule was lodged in the patient's upper portion of the esophagus for longer than expected, an estimated dose of 18 Gy (1,800 rad) was received to a small area of esophageal tissue. If the capsule had not become lodged in the upper portion of the patient's esophagus, the esophagus would have received the intended dose of 10.12 Gy (1,012 rad) instead of 18 Gy (1,800 rad). The dose to the esophagus exceeded the intended dose by 78 percent.

On October 22, 2008, the event was discussed with the patient during a follow-up visit with the prescribing physician. The prescribing physician indicated that potential health effects from this administration could include esophagitis and radiation fibrosis.

Cause(s)—The cause of the medical event was human error in failing to recognize that the esophageal obstruction might interfere with the patient's ability to swallow the iodine-131 capsule.

Actions Taken To Prevent Recurrence:

Licensee—The licensee modified its procedure to include a pre-therapy esophageal dilation for patients known to have difficulty swallowing. In addition, patients known to have this difficulty may be administered liquid iodine-131 for treatment.

NRC—NRC contracted a medical consultant to review this event, its effect on the patient, and the licensee's corrective actions taken to prevent recurrence of similar events. The medical consultant concluded that no significant adverse health effect to the patient is expected. The NRC concluded an inspection on February 6, 2009, and one non-cited violation was issued to the licensee on February 10, 2009.

* * * * *

AS09–04 Medical Event at Presbyterian Hospital of Dallas in Dallas, Texas

Date and Place—December 2, 2008, Dallas, Texas.

Nature and Probable Consequences—Presbyterian Hospital of Dallas (the licensee) reported that a medical event occurred associated with its gamma stereotactic radiosurgery unit (gamma knife) containing 125.8 TBq (3,400 Ci) of cobalt-60. A patient being treated for trigeminal neuralgia was prescribed to receive 80 Gy (8,000 rad) to the fifth intracranial nerve but received 14.95 Gy (1,495 rad) to the seventh intracranial nerve. The patient and the referring physician were informed of this event.

An error in entry of information into the treatment planning system caused the wrong nerve to receive treatment. The error was identified by the neurosurgeon 9 minutes into the 45-minute treatment. The licensee concluded that no significant adverse health effect to the patient is expected.

Cause(s)—The medical event was caused by the misidentification of the anatomical target site listed on the written directive.

Actions Taken To Prevent Recurrence:

Licensee—The licensee modified its written procedure to include verification of the target site, by the neuroradiologist, for each treatment. In addition, an updated written directive will document the new procedure to ensure that the correct treatment site is targeted and treated in each procedure.

State—The State will conduct a review of at least 20 percent of the past treatment cases to ensure that this error had not previously occurred.

* * * * *

AS09–05 Medical Event at Cancer Care Northwest PET Center in Spokane, Washington

Date and Place—April 14, 2009, Spokane, Washington.

Nature and Probable Consequences—Cancer Care Northwest PET Center (the licensee) reported that a medical event occurred associated with a HDR brachytherapy treatment for prostate cancer containing 185 GBq (5 Ci) of iridium-192. During patient treatment, the aluminum connector to needle 13 became detached from the plastic guide tube and a dose of 12.5 Gy (1,250 rad) was delivered to a small area of the patient's inner thigh (wrong treatment site). The patient and the referring physician were informed of this event.

The source wire for needle 13 hung about 6 inches past the disconnected guide tube, which resulted in the skin dose. The licensee conducted several follow-up examinations of the patient's inner thigh and noted that no skin reddening or injury has occurred and the patient is not experiencing any pain in this area. Therefore, the licensee concluded that no significant adverse health effect to the patient is expected.

Cause(s)—The cause of the medical event was the source wire, for needle 13, snagged on the seam between the aluminum connector and the plastic guide tube during retraction.

Actions Taken To Prevent Recurrence:

Licensee—The licensee committed to taking several actions as a result of the medical event that include (1) requiring the staff to sign the patient quality assurance list when they check the applicators, transfer guide tubes, and aluminum connectors; (2) inspecting the guide tube catheters daily and examining the aluminum connectors prior to patient use; and (3) revising the refresher training to include new procedures for staff prior to patient treatment.

State—The State conducted follow-up inspection activities from April–May 2009, and reviewed the licensee's corrective actions. The State found the licensee's corrective actions adequate and did not take any enforcement action regarding this event.

* * * * *

AS09–06 Medical Event at The Urology Center in Cincinnati, Ohio

Date and Place—May 11, 2009, Cincinnati, Ohio.

Nature and Probable Consequences—The Urology Center (the licensee) reported that a medical event occurred associated with a brachytherapy seed implant procedure to treat prostate cancer. The patient was prescribed to receive a total dose of 144 Gy (14,400 rad) to the prostate using 64 iodine-125 seeds as permanent implants. Instead, the patient received an approximate dose of 76 Gy (7,600 rad) to the urethra and bulb of the penis (unintended sites). The patient and the referring physician were informed of this event.

According to the licensee, an interpretation of the ultrasound image of the patient's prostate resulted in 30 of the 64 seeds delivered to the prostate while the other 34 seeds were delivered outside the prostate. Due to the patient's prostate being smaller than normal, the prostate received 68 Gy (6,800 rad) of the prescribed dose and the urethra and bulb of the penis (unintended sites) received approximately 76 Gy (7,600 rad). Prior to the seeds being implanted, the urologist and radiation oncologist should have consulted on the ultrasound image of the patient's prostate to determine the correct seed placement. The licensee concluded that no significant adverse health effect on the patient is expected. On May 19, 2009, the patient returned for a second treatment to compensate for the original underdosing to the prostate.

Cause(s)—The cause of the medical event was the misinterpretation of the correct size of the patient's small prostate gland by ultrasound.

Actions Taken To Prevent Recurrence:

Licensee—Corrective actions taken by the licensee included instituting a new policy requiring agreement by both the urologist and radiation oncologist on seed placement for all prostate glands measuring 20 cubic centimeters or less. On May 26, 2009, the licensee submitted a written report of this event to the Ohio Department of Health, Bureau of Radiation Protection (ODH BRP).

State—On June 12, 2009, ODH BRP conducted an inspection of this event and determined that the licensee had followed the correct procedures for administrations requiring a written directive. ODH BRP reviewed the licensee's corrective actions for this event and found the corrective actions to be adequate.

* * * * *

NRC09–02 Medical Event at Gamma Knife Center of the Pacific in Honolulu, Hawaii

Date and Place—July 2, 2009, Honolulu, Hawaii.

Nature and Probable Consequences—Gamma Knife Center of the Pacific (the licensee) reported that a medical event occurred associated with its gamma stereotactic radiosurgery unit (gamma knife) containing 104.86 TBq (2,834 Ci) of cobalt-60. A patient being treated for multiple brain metastatic sites was prescribed to receive 24 Gy (2,400 rad) to seven discrete brain sites using an 8 mm collimator. However, an 18 mm collimator was used to treat two of the discrete brain sites, resulting in a dose of 24 Gy (2,400 rad) to additional brain tissue. The patient and the referring physician were informed of this event.

The patient received treatment to the first and second discrete brain sites and after receiving treatment to the second discrete site, it was discovered that an 18 mm collimator was used to deliver treatment instead of the prescribed 8 mm collimator. The larger collimator caused the volume of each of the two discrete sites to increase by 2.45 cubic meters, resulting in a dose of 24 Gy (2,400 rad) to additional brain tissue. After the 18 mm collimator was discovered, it was replaced with the 8 mm collimator and the patient received treatment to the five remaining discrete sites as prescribed. The licensee concluded that no significant adverse health effect to the patient is expected.

Cause(s)—The cause of the medical event was human error in failing to check the collimator size prior to patient treatment.

Actions Taken To Prevent Recurrence:

Licensee—Corrective actions taken by the licensee included (1) sending a notice to all authorized users, neurosurgeons, and medical physicists reiterating that they should each independently check the collimator size prior to patient treatment and (2) revising procedures to have a second independent verification of all treatment parameters, including the collimator size, by a treatment team member.

NRC—NRC conducted an onsite inspection and hired a medical consultant to review the event. The conclusions from the onsite inspection and medical consultant's review are ongoing.

* * * * *

NRC09–03 Medical Event at the Veterans Affairs San Diego Health Care System in San Diego, California

Date and Place—September 21, 2009, San Diego, California.

Nature and Probable Consequences—The Department of Veterans Affairs (the licensee), National Health Physics Program (NHPP) reported that a medical event occurred at the Veterans Affairs (VA) San Diego Health Care System associated with a therapeutic dosage of iodine-131 for the treatment of metastatic thyroid cancer. A patient was prescribed to receive 6.9 GBq (187 mCi) of iodine-131 to the metastatic sites around the body but received 6.1 GBq (166 mCi) to the stomach (wrong

treatment site). The patient and the referring physician were informed of this event.

On September 21, 2009, a dosage of 6.9 GBq (187 mCi) of iodine-131 was administered to the patient through an existing feeding tube. Daily radiation measurements indicated small decreases in radiation readings that were consistent with the physical decay of iodine-131, but not consistent with the biological elimination of iodine-131. On September 25, 2009, the feeding tube was replaced and a subsequent investigation revealed that the majority of the dosage, 6.1 GBq (166 mCi), was administered to the wrong orifice of the feeding tube. As a result, the dosage remained in the balloon of the feeding tube and irradiated the patient's stomach, resulting in an approximate dose of 16 Gy to 19 Gy (1,600 rad to 1,900 rad) to the stomach.

Cause(s)—Three root causes were identified for this medical event: (1) Inadequate training of staff, (2) inadequate procedures, and (3) an inadequate procedure on the verification that administrations involving feeding tubes were being administered in accordance with a written directive.

Actions Taken To Prevent Recurrence:

Licensee—Corrective actions taken by the licensee included (1) immediate suspension of any further gastric tube administrations until the direct cause of the medical event was identified, (2) suspension of one individual's participation in administrations requiring a written directive, (3) informal training of the nuclear medicine technologists by the Radiation Safety Officer, and (4) development of draft written policies and procedures on the administration of iodine-131 through a gastric tube.

NRC—The NRC Region III Office conducted a reactive inspection on November 3, 2009, and also contracted a medical consultant to review this event. Based on the results of the inspection, five apparent violations of NRC's regulations were identified. Enforcement action is pending and the medical consultant's review is on-going.

Dated at Rockville, Maryland, this 12th day of July 2010.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–17373 Filed 7–15–10; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Collection Renewal; Correction

ACTION: 60-day notice and request for comments; correction.

SUMMARY: The Peace Corps published a document in the **Federal Register** of June 28, 2010, [FR Doc. 2010–15584, pages 36721–36722], concerning a proposal to renew three currently approved collections of information: 1. World Wise Schools Conference Online Registration Form (OMB Control No. 0420–0514); Speakers Match: Online Request for a Speaker Form (OMB Control No. 0420–0539); and Correspondence Match Educator Online Enrollment Form: Educator Sign Up Form (OMB Control No. 0420–0540). The document contained an incorrect OMB Control Number for the World Wise Schools Conference—Online Registration Form. The correct information should read: 1. Title: World Wise Schools Conference—Online Registration Form (OMB Control Number: 0420–0541). The remaining two information collections are correct as listed. The dates for comments has been extended because of the correction made to the notice.

DATES: Comments must be submitted on or before September 14, 2010.

ADDRESSES: Comments should be addressed to Marjorie Anctil, Director of World Wise Schools, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Marjorie Anctil can be contacted by telephone at 202–692–1461 or e-mail at *manctil@peacecorps.gov.* E-mail comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Marjorie Anctil, at Peace Corps address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* World Wise Schools Conference—Online Registration Form.

OMB Control Number: 0420–0541.

Respondents: Educators and employees of governmental and nongovernmental organizations interested in promoting global education in the classroom.

Estimated annual number of respondents: 300.

Estimated average time to respond: 10 minutes.

Frequency of response: Annually.

Estimated total annual burden hours: 50 hours.

General description of collection: The information collected is used to officially register attendees to the annual World Wise Schools Conference. The information is used as a record of attendance.

2. *Title:* Speakers Match: Online Request for a Speaker Form.

OMB Control Number: 0420–0539.

Type of Review: Regular—extension, without change, currently approved collection.

Respondents: Educators interested in promoting global education in the classroom.

Estimated annual number of responses: 300.

Estimated average time to respond: 10 minutes.

Frequency of response: Annually.

Estimated annual burden hours: 50 hours.

General description of collection: The information collected is used to make suitable matches between the educators and returned Peace Corps Volunteers for the Speakers Match program.

3. *Title:* Correspondence Match Educator Online Enrollment Form: Educator Sign Up Form.

OMB Control Number: 0420–0540.

Respondents: Educators interested in promoting global education in the classroom.

Estimated annual number of responses: 10,000.

Estimated average time to respond: 10 minutes.

Frequency of response: Annually.

Estimated annual burden hours: 1667 hours.

General description of collection: The information collected is used to make suitable matches between the educators and currently serving Peace Corps Volunteers.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps and the Paul D. Coverdell World Wise Schools, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC on July 9, 2010.

Earl W. Yates,

Associate Director for Management.

[FR Doc. 2010–17370 Filed 7–15–10; 8:45 am]

BILLING CODE 6051–01–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: Representative Payee Monitoring; OMB 3220–0151.

Under Section 12 of the Railroad Retirement Act (RRA), the RRB may pay annuity benefits to a representative payee when an employee, spouse or survivor annuitant is incompetent or a minor. The RRB is responsible for determining if direct payment to an annuitant or a representative payee would best serve the annuitant's best interest. The accountability requirements authorizing the RRB to conduct periodic monitoring of representative payees, including a written accounting of benefit payments received, are prescribed in 20 CFR 266.7.

The RRB utilizes the following forms to conduct its representative payee monitoring program.

Form G–99a, *Representative Payee Report,* is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. RRB Form G–99c, *Representative Payee Evaluation Report,* is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a, or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity. Completion of the forms in this collection is required to retain benefits.

The RRB proposes no changes to Forms G–99a or G–99c. Approximately 5,400 Form G–99a's and 420 G–99c's are completed annually. The completion time for Form G–99a is estimated at 18 minutes per response. The completion time for Form G–99c is estimated at between 24 to 31 minutes per response. Total annual respondent burden hours for the information collection is estimated at 1,802 hours.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.Gov.* Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or e-mailed to *Patricia.Henaghan@RRB.Gov.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

RRB Clearance Officer.

[FR Doc. 2010–17365 Filed 7–15–10; 8:45 am]

BILLING CODE 7905–01–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: Earnings Information Request; OMB 3220–0184; RRB Form G–19–F.

Under Section 2 of the Railroad Retirement Act, an annuity is not payable, or is reduced for any month(s) in which the beneficiary works for a railroad or earns more than prescribed amounts. The provisions relating to the reduction or non-payment of annuities by reason of work are prescribed in 20 CFR part 230.

The RRB utilizes Form G–19–F, *Earnings Information Request,* to obtain earnings information that either had not been previously reported or erroneously reported by a beneficiary. If a respondent fails to complete the form, the RRB may be unable to pay them benefits. One response is requested of each respondent.

The RRB proposes no changes to Form G–19–F. Approximately 900 G–19–F's are completed annually at an estimated completion time of eight minutes per response. Total respondent burden is estimated at 120 hours.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.Gov.* Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or e-mailed to *Patricia.Henaghan@RRB.Gov.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

RRB Clearance Officer.

[FR Doc. 2010–17368 Filed 7–15–10; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12233 and #12234]

Montana Disaster #MT–00056

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Montana (FEMA–1922–DR), dated 07/10/2010.

Incident: Severe storms and flooding.

Incident Period: 06/15/2010 and continuing.

Effective Date: 07/10/2010.

Physical Loan Application Deadline Date: 09/08/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 04/11/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/10/2010, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Hill and the Rocky Boy's Indian Reservation.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12233B and for economic injury is 12234B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17378 Filed 7–15–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12166 and #12167]

California Disaster Number CA–00155

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of California (FEMA–1911–DR), dated 05/07/2010 .

Incident: Earthquake.

Incident Period: 04/04/2010 through 07/04/2010.

DATES: *Effective Date:* 07/04/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/07/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of California, dated 05/07/2010, is hereby amended to establish the incident period for this disaster as beginning 04/04/2010 and continuing through 07/04/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17391 Filed 7–15–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12123 and #12124]

New York Disaster Number NY–00089

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1899–DR), dated 04/16/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/13/2010 Through 03/31/2010.

DATES: *Effective Date:* 07/09/2010.

Physical Loan Application Deadline Date: 06/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/18/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 04/16/2010, is hereby amended to re-establish the incident period for this disaster as beginning 03/13/2010 and continuing through 03/31/2010 .

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17393 Filed 7–15–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12123 and #12124]

New York Disaster Number NY–00089

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1899–DR), dated 04/16/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/13/2010 through 03/31/2010.

DATES: *Effective Date:* 07/09/2010.

Physical Loan Application Deadline Date: 06/15/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/18/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 04/16/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Otsego, Schoharie, Warren.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17396 Filed 7–15–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12144 and #12145]

Virginia Disaster Number VA–00029

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA–1905–DR), dated 04/27/2010.

Incident: Severe winter storms and snowstorms.

Incident Period: 02/05/2010 through 02/11/2010.

Effective Date: 07/09/2010.

Physical Loan Application Deadline Date: 06/28/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/27/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Virginia, dated 04/27/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Page.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–17392 Filed 7–15–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/79–0415 issued to Bay Partners SBIC II, L.P., and said license is hereby declared null and void as of June 10, 2010.

United States Small Business Administration.

Sean J. Greene,

AA, Investment.

[FR Doc. 2010–17318 Filed 7–15–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under section 309 of the Act and section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small business Investment Company License No. 01/71–0397 issued to Longworth Venture Partners II–A, L.P. and said license is hereby declared null and void. United States Small Business Administration.

Dated: July 2, 2010.

Sean J. Greene,

AA/Investment.

[FR Doc. 2010–17319 Filed 7–15–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of E-Sync Networks, Inc. (n/k/a ESNI, Inc.), EchoCath, Inc., Edison Brothers Stores, Inc., Electronic Technology Group, Inc. (n/k/a SolutionNet International, Inc.), EMCEE Broadcast Products, Inc., ERD Waste Corp., Eurasia Gold Fields, Inc., European Micro Holdings, Inc., and Exotech, Inc.; Order of Suspension of Trading

July 14, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of E-Sync Networks, Inc. (n/k/a ESNI, Inc.) because it has not filed any periodic reports since the period ended December 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EchoCath, Inc. because it has not filed any periodic reports since the period ended May 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Edison Brothers Stores, Inc. because it has not filed any periodic reports since October 31, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Electronic Technology Group, Inc. (n/k/a SolutionNet International, Inc.) because it has not filed any periodic reports since the period ended April 30, 1994.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EMCEE Broadcast Products, Inc. because it has not filed any periodic reports since the period ended September 30, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ERD Waste Corp. because it has not filed any periodic reports since the period ended June 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eurasia Gold Fields, Inc. because it has not filed any periodic reports since the period ended September 30, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of European Micro Holdings, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Exotech, Inc. because it has not filed any periodic reports since the period ended March 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 14, 2010, through 11:59 p.m. EDT on July 27, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–17495 Filed 7–14–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64277; File Nos. SR–NYSE–2010–48 and SR–NYSEAMEX–2010–61]

Self-Regulatory Organizations; New York Stock Exchange LLC and NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Procedures With Respect to Comparison of Executed Transactions

July 9, 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 17, 2010, New York Stock Exchange LLC ("NYSE") and NYSE Amex LLC ("NYSE Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes and on June 29, 2010, NYSE and NYSEAMEX amended the proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by NYSE and NYSE Amex (collectively, "Exchanges"). The Exchanges filed the proposed rule changes pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder [4] so that the proposals were effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The Exchanges will amend NYSE Rule 134 (Differences and Omissions-Cleared Transactions) and NYSE Amex Equities Rule 134 (NYSE Amex Equities. Differences and Omissions-Cleared Transactions) to provide for certain technical procedures with respect to comparison of executed transactions.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the Exchanges 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 Exchanges have prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Background

The Exchanges operate the On-Line Comparison System ("OCS") to assist in trade settlement. OCS conducts comparison processing, which includes matching initial trade submissions, correction processing, omnibus processing, and questioned trade ("QT") resolution for trades that take place on the Exchanges. The OCS system is used by the Exchanges' members in their roles as clearing firms, brokers, and Designated Market Making Units ("DMM Units") for trade executions. OCS is linked internally to NYSE's trading systems and externally to the National Securities Clearing Corporation.[5]

To facilitate the comparison process, the Exchanges utilize omnibus account designations to record trade data.[6] Using omnibus account designations allows for universal contras for one trade side, thereby reducing the number of different data elements that have to be independently recorded into a broker's hand-held device or written on a Floor report for a trade.

In May 2009, each of the Exchanges amended its Rule 134 to enable them to assign on the second business day after the trade date ("T+2") any open balance in any of the omnibus accounts they use to compare trades to either a DMM Unit or to the member organization that had been identified as the clearing firm for one side of an unresolved trade.[7] Specifically, each of the Exchanges added new subsection (e)(iii) to its Rule 134 to enable the Exchanges to assign a Floor broker's clearing firm or DMM Unit at the close of business on T+2 as the contra side to an imbalance in any omnibus account that is used by OCS.

2. Proposed Amendment of NYSE Rule 134 and NYSE Amex Rule 134

Each of the Exchanges will now amend its Rule 134(e)(iii). Rule 134(e)(iii) will now specify that DMM units are assigned as the contra party to any unresolved omnibus account imbalances remaining in OCS. New subsection (iv) to Rule 134(e) will provide that a Floor broker's clearing firm will be assigned as the contra party to any uncompared e-Quote transactions remaining in OCS. Each of the Exchanges will also add to both subsections that the contra party shall be assigned pursuant to the processes set forth in subsection (e)(i) and (e)(ii) of their Rule 134 but no earlier than 7 p.m.

By creating a new subsection (iv) pertaining only to Floor brokers' clearing firms and removing all such references to Floor brokers' clearing firms from subsection (e)(iii), the Exchanges are making clear that the DMM unit is assigned as the contra party to an omnibus account imbalance and that clearing firms are the assigned contra party to an uncompared trade. Specifically, a Floor broker's clearing firm is assigned as the default contra side in a trade resulting from an execution involving e-Quotes (*i.e.,* trades involving Floor broker agency interest files).[8] The DMM Unit is assigned in instances where there is an open imbalance in an omnibus account whether the DMM was involved in the transaction or not.

For new subsection 134(e)(iv), the Exchanges will shorten the time frame for assignment of uncompared e-Quote transactions from T+2 to the first business day after the trade date ("T+1"). The Exchanges believe that the shortened time frame for resolving uncompared e-Quote transactions will provide Floor brokers and clearing firms with more information and certainty on settlement date, which is the third business day after trade date (T+3). In particular, the Exchanges believe that the changes for resolving uncompared e-Quote transactions are necessary for situations where there are system outages. Under normal trading conditions, the number of e-Quote QTs that remain unresolved by the end of T+1 is relatively low. In the event of a Broker System outage, however, the number of e-Quote QTs could increase dramatically. Therefore, to mitigate risk and exposure to the Floor broker community and to facilitate comparison and settlement, the Exchanges believe that reducing the time period from close

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] National Securities Clearing Corporation ("NSCC") is a clearing agency registered with the Commission under Section 17A of the Act. NSCC provides centralized clearance and settlement services for equity security trades in the U.S.

[6] An "omnibus account" is an account in which the transactions of multiple individual participants are combined.

[7] Securities Exchange Release Act No. 59997 (May 28, 2009), 74 FR 28086 (June 12, 2009).

[8] NYSE Rule 70(a)(i).

of business on T+2 to the close of business on T+1 is appropriate. The Exchanges further understand that the change from T+2 to T+1 will not impact clearing member organization's systems. Rather, clearing member organizations have requested the change to provide them with more time before settlement on T+3 to resolve uncompared transactions.

3. Statutory Basis

The Exchanges state that the basis under the Act for these proposed rule changes is the requirement under Section 6(b)(5) [9] that a national securities exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchanges believe that these rule changes accomplish these goals by enhancing the comparison process at the Exchanges thereby supporting the timely settlement of securities transactions.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes 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 Changes Received From Members, Participants, or Others

The Exchanges have not solicited or received written comments with respect to the proposed rule changes. The Exchanges will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges have filed the proposed rule changes pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule changes do not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which they were filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule changes have become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) [13] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchanges have asked the Commission to waive the 30-day operative delay so that the proposals may become operative immediately upon filing.

The Commission is granting this request because doing so will enable the Exchanges to further clarify and strengthen their processes to resolve uncompared e-Quote transactions or unresolved account imbalances without undue delay while still affording interested parties the opportunity to submit comments or concerns to the Commission regarding these proposals. The new processes should instill greater confidence among the Exchanges' members and investors that such situations will be handled in a timely and orderly manner.

For these reasons, the Commission is waiving the 30-day delay in operability so that the proposed rule changes have become operative immediately upon filing.

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 No. SR–NYSE–2010–48 or SR–NYSEAMEX–2010–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSE–2010–48 or SR–NYSEAMEX–2010–61. At least one of these file numbers 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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchanges principal offices and on NYSE's Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2010–48 or SR–NYSEAMEX–2010–61 and should be submitted on or before August 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17355 Filed 7–15–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b)(5).

[10] Above note 3.

[11] Above note 2.

[12] Above note 3.

[13] 17 CFR 240.19b(f)(6)(iii).

[14] Above note 4.

[15] Above note 13.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62482; File No. SR–FINRA–2010–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 4210 (Margin Requirements), FINRA Rule 4220 (Daily Record of Required Margin) and FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time Under Regulation T and SEC Rule 15c3–3) in the Consolidated FINRA Rulebook

July 12, 2010.

I. Introduction

On May 14, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) 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 adopt FINRA Rule 4210 (Margin Requirements), FINRA Rule 4220 (Daily Record of Required Margin) and FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time under Regulation T and SEC Rule 15c3–3) as part of the process of developing a consolidated FINRA rulebook. The proposed rule change was published for comment in the **Federal Register** on June 8, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA proposes to adopt (1) NASD Rules 2520, 2521, 2522, and IM–2522 regarding margin requirements, (2) NASD Rule 3160 regarding extension of time requests under Regulation T and SEC Rule 15c3–3, and (3) Incorporated NYSE Rule 432(a) regarding daily record of margin requirements as FINRA rules in the Consolidated FINRA Rulebook, subject to certain amendments, and to delete Incorporated NYSE Rule 431 (Margin Requirements), Incorporated NYSE Rule 431 Interpretations,[5] Incorporated NYSE Rule 432(b) and Incorporated NYSE Rule 434 (Required Submissions of Requests for Extension of Time for Customers). The proposed rule change would (1) consolidate and renumber NASD Rules 2520, 2521, 2522 and IM–2522 as FINRA Rule 4210 (Margin Requirements), (2) renumber NASD Rule 3160 as FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time Under Regulation T and SEC Rule 15c3–3), and (3) renumber Incorporated NYSE Rule 432(a) as FINRA Rule 4220 (Daily Record of Required Margin) in the Consolidated FINRA Rulebook.

Margin Requirements—NASD Rules 2520, 2521, 2522, and IM–2522 and Incorporated NYSE Rule 431

FINRA proposes to adopt the margin requirements set forth in NASD Rules 2520 through 2522 and IM–2522 as FINRA Rule 4210, subject to certain amendments, discussed below and to delete Incorporated NYSE Rule 431 (Margin Requirements). The proposed amendments, among other things, reflect certain requirements in Incorporated NYSE Rule 431.

NASD Rule 2520 (Margin Requirements) and Incorporated NYSE Rule 431, which are almost identical, prescribe requirements governing the extension of credit by members that offer margin accounts to customers, as generally permitted in accordance with Regulation T of the Board of Governors of the Federal Reserve System ("Regulation T").[6] These rules promulgate the margin requirements that determine the amount of collateral customers are expected to maintain in their margin accounts, including strategy-based margin accounts and portfolio margin accounts. Maintenance margin requirements for equity, fixed income, warrants and option securities also are established under these rules.

Rule Structure

FINRA proposes to combine NASD Rules 2520, 2521, 2522 and IM–2522 into the single consolidated margin rule, FINRA Rule 4210. In addition, FINRA proposes to re-structure the rule to improve its organization and make it easier to read. First, FINRA proposes to incorporate NASD Rule 2521 (Margin—Exemption for Certain Members) as FINRA Rule 4210(h), which provides that any member for which another self-regulatory organization acts as the designated examining authority is exempt from FINRA Rule 4210. Second, FINRA proposes to incorporate NASD Rule 2522 (Definitions Related to Options, Currency Warrants, Currency Index Warrants and Stock Index Warrant Transactions) as FINRA Rule 4210(f)(2)(A), which contains definitions regarding margining options, currency warrants, currency index warrants and stock index warrant transactions.[7] In so doing, FINRA proposes to delete extraneous definitions and retain only those definitions that are pertinent to the new rule. Third, FINRA proposes to combine the margin provisions regarding currency warrants, currency index warrants and stock index warrants from NASD Rule 2520(f)(10) together with similar sections in paragraph (f)(2) of FINRA Rule 4210. All margin provisions regarding such warrants were combined in a single section in corresponding Incorporated NYSE Rule 431(f)(2), and FINRA proposes to follow this model. FINRA believes combining all provisions in a single section regarding such warrants will make the rule easier to read. Finally, FINRA proposes to incorporate NASD IM–2522 (Computation of Elapsed Days) as Supplementary Material to FINRA Rule 4210, which provides illustrations on how to calculate the number of elapsed days for accrued interest on Treasury bonds or notes.

Net Capital Calculations

FINRA proposes in several instances in FINRA Rule 4210 [8] to specify that the member should reference SEC Rule 15c3–1 and, if applicable, FINRA Rule 4110 (Capital Compliance) when calculating net capital, charges against net capital and haircut requirements. Members that may be subject to greater net capital requirements pursuant to FINRA Rule 4110 would need to ensure they are in compliance with both the SEC and FINRA net capital provisions in calculating net capital and its impact on margin calculations. In addition,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62205 (June 2, 2010), 75 FR 32519 (June 8, 2010).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See supra* note 4.

[6] *See* Regulation T, 12 CFR 220.4.

[7] In this regard, FINRA proposes to adopt the model of Incorporated NYSE Rule 431 of consolidating relevant definitions into FINRA Rule 4210.

[8] *See, e.g.,* FINRA Rule 4210(e)(2)(D), (e)(2)(F), (e)(2)(G), (e)(4), (e)(5) and (e)(6). Incorporated NYSE Rule 431 referenced NYSE's net capital rules in these same sections, and FINRA proposes to follow this model.

consistent with the corresponding Incorporated NYSE Rule 431 requirements, FINRA proposes to provide in FINRA Rule 4210(e)(5)(A) and (B) (regarding specialists' and market makers' accounts), (e)(6)(A) (regarding broker-dealer accounts) and (e)(6)(B)(i)c. (regarding joint back office arrangements) that when computing charges against net capital for transactions in securities covered by FINRA Rule 4210(e)(2)(F) (regarding transactions with exempt accounts involving certain "good faith" securities) and FINRA Rule 4210(e)(2)(G) (regarding transactions with exempt accounts involving highly rated foreign sovereign debt securities and investment grade debt securities), absent a greater haircut requirement that may have been imposed on such securities pursuant to FINRA Rule 4110(a), the respective requirements of those paragraphs may be used, rather than the haircut requirements of SEC Rule 15c3–1.

Joint Accounts Exemption

FINRA proposes to integrate Incorporated NYSE Rule 431 Supplementary Material .10 into FINRA Rule 4210(e)(3) regarding joint accounts in which the carrying member or a partner or stockholder therein has an interest. The provision permits a member to seek an exemption under the FINRA Rule 9600 Series if the account is confined exclusively to transactions and positions in exempted securities.

Additional Requirements on Control and Restricted Securities and Relationship to FINRA Rule 4120 (Regulatory Notification and Business Curtailment)

FINRA proposes to adopt provisions from Incorporated NYSE Rule 431 pertaining to deductions from net capital on control and restricted securities, which are not contained in NASD Rule 2520.[9] These provisions, which would be set forth in FINRA Rule 4210(e)(8)(C)(ii), (iii) and (v), require that a member make deductions from its net capital if it extends credit over specified thresholds, discussed below, on control and restricted securities, and it must take such deductions into account when determining if it has reached any of the financial triggers specified in FINRA Rule 4120.[10] The proposed rule change also would make conforming amendments to FINRA Rule 4120(a)(1)(F) and (c)(1)(F) (Regulatory Notification and Business Curtailment) to clarify that a member must take into account the special deductions from net capital set forth in FINRA Rule 4210(e)(8)(C) in determining its status under FINRA Rule 4120.

Day Trading

FINRA proposes to adopt Supplementary Material .30 and .60 from Incorporated NYSE Rule 431 regarding day trading in proposed FINRA Rule 4210(f)(8)(B). FINRA proposes to integrate Supplementary Material .60 from Incorporated NYSE Rule 431 in FINRA Rule 4210(f)(8)(B)(iii) to provide that the day-trading buying power for non-equity securities may be computed using the applicable special maintenance margin requirements pursuant to other provisions of the margin rule. In addition, FINRA proposes to adopt Supplementary Material .30 from Incorporated NYSE Rule 431 as FINRA Rule 4210(f)(8)(B)(iv)b. to provide that in the event that the member at which a customer seeks to open an account or resume day trading in an existing account, knows or has a reasonable basis to believe that the customer will engage in pattern day trading, then the minimum equity required ($25,000) must be deposited in the account prior to commencement of day trading. FINRA also proposes to relocate paragraph (f)(8)(C) of NASD Rule 2520 into FINRA Rule 4210(f)(8)(B)(iii) that specifies that day trading deficiencies must be met within five business days of the trade date.

Portfolio Margining

FINRA proposes to amend FINRA Rule 4210(g)(5) to highlight to members that portfolio margin-eligible participants, in addition to being required to be approved to engage in uncovered short option contracts pursuant to FINRA Rule 2360, must be approved to engage in security futures transactions pursuant to FINRA Rule 2370.

Conforming Amendments

FINRA proposes to add the terms "approved market maker," "market maker" and "market making" to FINRA Rule 4210(f)(10)(F) to conform to rule changes made by the NYSE.[11] FINRA also proposes amending the definitions of the same terms used in FINRA Rule 4210(e)(5)(A) and (f)(10)(E) for consistency purposes.

Clarifying and Technical Amendments

Finally, FINRA proposes to make several technical changes to the margin rule text to update terminology and similar clarifications. First, FINRA proposes to add definitions to FINRA Rule 4210(f)(2)(A) regarding "listed" and "OTC" options and employ such terms throughout FINRA Rule 4210(f)(2). FINRA is not proposing any substantive changes to the margin requirements for listed or over-the-counter options; rather, the proposed rule change would make the rule easier to read by creating such definitions and using the terms consistently throughout the rule text.

Second, in proposed FINRA Rule 4210(f)(2)(I)(iv), FINRA proposes several clarifications to terminology where no margin may be required if the specified options or warrants are carried "short" in the account of a customer, against an escrow agreement, and either are held in the account at the time the options or warrants are written, or received in the account promptly thereafter. The proposed rule change would clarify that with respect to such options or warrants, an escrow agreement is used, in a form satisfactory to FINRA, issued by a third party custodian bank or trust company, and in compliance with the requirements of Rule 610 of The Options Clearing Corporation. The corresponding provisions in Incorporated NYSE Rule 431[12] used the terms "letter of guarantee" and "escrow receipt" while NASD Rule 2520 used the term "letter of guarantee." While in this context such terms generally were used interchangeably, FINRA proposes to use the term "escrow agreement" to eliminate any potential confusion.[13] The proposed rule change also would replace the term "guarantor" with the term "custodian" to more accurately reflect the third party's role. In addition, the proposed rule change would revise the definition of what constitutes a qualified security by eliminating the reference to the list of Over-the-Counter Margin Stocks published by the Board of Governors of the Federal Reserve

[9] *See* Incorporated NYSE Rule 431(e)(8)(C)(ii), (iii) and (v).

[10] FINRA Rule 4120 is based on Incorporated NYSE Rules 325 and 326, which were referenced in Incorporated NYSE Rule 431(e)(8)(C)(ii), (iii) and (v).

[11] *See* Securities Exchange Act Release No. 59077 (December 10, 2008), 73 FR 76691 (December 17, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Exchange Rule 104T to Make a Technical Amendment to Delete Language Relating to Orders Received by NYSE Systems and DMM Yielding; Clarifying the Duration of the Provisions of Rule 104T; Making Technical Amendments to Rule 98 and Rule 123E to Update Rule References for DMM Net Capital Requirements; Rescinding Paragraph (g) of Rule 123; and Making Conforming Changes to Certain Exchange Rules to Replace the Term "Specialist" with "DMM"; File No. SR–NYSE–2008–127).

[12] *See* Incorporated NYSE Rule 431(f)(2)(H)(iv).

[13] Such approach also is consistent with the CBOE rules. *See* CBOE Rule 12.3(d).

System as the Federal Reserve no longer publishes such a list.

Third, the proposed rule change would insert the term "aggregate" before exercise price throughout proposed FINRA Rule 4210(f)(2)(H) and (f)(2)(N) to clarify a calculation must be made in the strategies and spreads that are noted (*i.e.,* offsets, reverse conversions, butterfly spread, etc.). Finally, the proposed rule change would make various non-substantive changes to reflect the formatting, presentation and style conventions used in the Consolidated FINRA Rulebook.

Daily Record of Margin Requirements—Incorporated NYSE Rule 432(a)

FINRA proposes to adopt Incorporated NYSE Rule 432(a) (Daily Record of Required Margin) as FINRA Rule 4220 in substantially the form it exists today. Incorporated NYSE Rule 432(a) sets forth the requirements for daily recordkeeping of initial and maintenance margin calls that are issued pursuant to Regulation T and the margin rules. There is no corresponding NASD rule. FINRA believes that this is an important requirement to heighten FINRA's ability to monitor members' margin call practices. In addition, Incorporated NYSE Rule 432(b) prohibits a member from allowing a customer to make a practice of satisfying initial margin calls by the liquidation of securities. However, this provision is substantially similar to the provision in proposed FINRA Rule 4210(f)(7), except that the proposed FINRA rule provision does not contain the exception for omnibus accounts. Accordingly, FINRA proposes to eliminate Incorporated NYSE Rule 432(b) and modify paragraph (f)(7) of FINRA Rule 4210 to add that the prohibition on liquidations shall not apply to any account carried on an omnibus basis as prescribed by Regulation T.

Required Submissions of Requests for Extension of Time Under Regulation T and SEC Rule 15c3–3—NASD Rule 3160 and Incorporated NYSE Rule 434

FINRA proposes to adopt NASD Rule 3160 (Extensions of Time Under Regulation T and SEC Rule 15c3–3) as FINRA Rule 4230 with one modification discussed below and delete the substantively similar Incorporated NYSE Rule 434 (Required Submission of Requests for Extensions of Time for Customers). NASD Rule 3160 and Incorporated NYSE Rule 434 set forth requirements governing members' requests for extensions of time, as permitted in accordance with Regulation T and SEC Rule 15c3–3(n). These rules provide that when FINRA is the designated examining authority for a member, requests for extensions of time must be submitted to FINRA for approval, in a format FINRA requires. In addition, NASD Rule 3160 requires each clearing member that submits extensions of time on behalf of broker-dealers for which it clears to submit a monthly report to FINRA that indicates overall ratios of requested extensions of time to total transactions that have exceeded a percentage specified by FINRA.[14] FINRA monitors the number of Regulation T and SEC Rule 15c3–3 extension requests for each firm to determine whether to impose prohibitions on further extensions of time.[15]

FINRA proposes to add a provision to proposed FINRA Rule 4230 to clarify that for the months when no broker-dealer for which a clearing member clears exceeds the extension of time ratio criteria (*i.e.,* 2%), the clearing member must submit a report indicating such. FINRA had previously requested such submissions but believes the submissions are essential to ensure FINRA has a complete and accurate understanding of correspondent firm extension requests.

As stated in the notice, FINRA represented that it will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval. The implementation date will be no later than 180 days following Commission approval.

III. Commission Findings

After careful consideration of the proposal, 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 association.[16] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[17] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes the proposed rule change will further the purposes of the Act by, among other things, clarifying and streamlining the margin requirements applicable to its members, as well as rules addressing extension of time requests under Regulation T and Commission Rule 15c3–3 and daily record of required margin. The Commission therefore believes that it is appropriate and consistent with the Act for FINRA to adopt FINRA Rule 4210 (Margin Requirements), FINRA Rule 4220 (Daily Record of Required Margin) and FINRA Rule 4230 (Required Submissions for Requests for Extensions of Time under Regulation T and SEC Rule 15c3–3) in the Consolidated FINRA Rulebook.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–FINRA–2010–024) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–17356 Filed 7–15–10; 8:45 am]

BILLING CODE 8010–01–P

[14] *See Notice to Members* 06–62 (November 2006). FINRA would retain the reporting threshold specified in *Notice to Members* 06–62 of requiring a report for all introducing or correspondent firms that have overall ratios of requests for extensions of time to total transactions for the month that exceed 2%. In the event FINRA adjusts the reporting threshold, or the limitation threshold stated in note 15 below, it would advise members of the new parameters in a *Regulatory Notice.*

[15] *See supra* note 14. FINRA will continue to prohibit further extension of time requests for (1) introducing or correspondent firms that exceed a 3% ratio of the number of extension of time requests to total transactions for the month and (2) clearing firms that exceed a 1% ratio of extension of time requests to total transactions.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78*o*–3(b)(6).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 3, 2010

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption

of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0167.

Date Filed: June 29, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 20, 2010.

Description: Application of Virgin America Inc. requesting a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property and mail between the United States and Mexico.

Docket Number: DOT–OST–2010–0093.

Date Filed: July 28, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 19, 2010.

Description: Amendment of Open Joint Stock Company Transaero Airlines to its pending application for a foreign air carrier permit to include authority to provide scheduled foreign air transportation of persons, property and mail (i) from any point or points behind the Russian Federation, via any point or points in the Russian Federation and intermediate points, to New York, New York and Miami, Florida, and (ii) from New York, New York and Miami, Florida, to any point or points in the Russian Federation and beyond.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Alternate Federal Register Liaison.

[FR Doc. 2010–17360 Filed 7–15–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0094]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on the proposed collection of information.

This document describes a proposed collection of information under regulations in 49 CFR parts 591, 592, and 593 that pertain to the importation of motor vehicles and items of motor vehicle equipment that are subject to the Federal motor vehicle safety, bumper, and theft prevention standards.

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

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2010–0094] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: 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., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. *Telephone:* 1–800–647–5527.
- *Fax:* 202–493–2251

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. *Please see* the Privacy Act heading below.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for assessing the dockets. Alternately, you may visit in person the Docket Management Facility at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance (NVS–223), National Highway Traffic Safety Administration, West Building—4th Floor—Room W43–481, 1200 New Jersey Avenue, SE., Washington, DC 20590. Mr. Sachs' telephone number is (202) 366–3151. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Prior Approval

On August 31, 2007, NHTSA submitted to OMB a request for the extension of the agency's approval (assigned OMB Control No. 2127–0002) of the information collection that is incident to NHTSA's administration of the vehicle importation regulations at 49 CFR Parts 591, 592, and 593. On November 11, 2007, OMB notified NHTSA that it had approved this extension request through November 30, 2010. That approval was based on NHTSA submissions identifying information being collected on an annual basis from 63,818 respondents, expending 42,413 hours of effort, at a cost of $1,039,756. NHTSA wishes to file with OMB a request for that agency to extend its approval for an additional three years.

Changes in Program

Since the information collection associated with NHTSA's importation program was last approved by OMB, no significant changes have taken place that impact the information collection and the assessment of its burden on affected members of the public. The U.S. dollar has not gained sufficient strength against foreign currencies to significantly increase the volume of vehicle imports that are subject to NHTSA's scrutiny. The focus of NHTSA's importation program is on vehicles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS). These vehicles must be imported by a registered importer (RI) under bond to ensure that the vehicles are brought into compliance with applicable standards following importation. Nonconforming vehicles are entered under Box 3 on the HS–7 Declaration form. In calendar year 2002, 212,210 nonconforming vehicles were imported under Box 3. Over 97 percent of those vehicles were imported from Canada. In 2003, after the U.S. dollar began to weaken against the Canadian dollar, the volume of nonconforming vehicle imports under Box 3 was reduced by more than half, to 97,337 vehicles. The trend accelerated over the next five years, with 43,648 vehicles imported under Box 3 in 2004, 12,642 imported in 2005, 10,953 imported in 2006, 7,470 imported in 2007, and 6,311 imported in 2008. After the U.S. dollar had gained some strength against the Canadian dollar, the volume of imports under Box 3 increased in 2009 to 10,752 vehicles.

When NHTSA last requested OMB approval for the information collection associated with the vehicle importation program, the agency estimated that 11,000 nonconforming vehicles would be imported on an annual basis under Box 3, for which HS–7 Declaration forms and HS–474 DOT Conformance bonds would have to be furnished. The agency estimated that it would take five minutes to complete each HS–7 Declaration form, and six minutes to complete each HS–474 DOT Conformance bond, for a total expenditure of 2,017 hours to complete these forms. Given the continued reduction in nonconforming vehicle imports under Box 3 in recent years, future projections should assume an average of 8,200 vehicle imports per year. Relying on this figure, the hour burden associated with the completion of paperwork for these vehicles would be close to 1,503 hours (0.08333 hours to complete each HS–7 × 8,200 vehicles = 683 hours; 0.1 hours to complete each HS–474 × 8,200 vehicles = 820 hours; 683 + 820 = 1,503 hours). This represents approximately a 25 percent reduction in burden hours in comparison to the figures used when OMB approval was last obtained.

Scope of Accounting for Burdens

In this document, the agency has not focused exclusively on vehicles imported under the RI program, but has instead made a concerted effort to quantify the hour burden associated with the completion of paperwork for vehicles and equipment items imported in any legitimate way under NHTSA's regulations. As a consequence, we are providing particular information on the paperwork burden associated with the importation of conforming motor vehicles; the temporary importation of nonconforming vehicles for personal use by nonresidents and by foreign diplomatic and military personnel; the temporary importation of nonconforming vehicles for purposes of research, investigations, demonstrations or training, and other similar purposes; the importation of vehicles that are not primarily manufactured for on-road use; and other entry categories permitted under the agency's regulations. In addition, we have attempted to account for all forms, whether required or optional, and other types of information solicitations associated with vehicle and equipment importation that appear on the agency's Web site and in newsletters and other informational media that we employ to inform RIs and others of our requirements. Accounting for all paperwork burdens in this manner, we project that a total of 40,764 hours will be expended each year to complete paperwork associated with all aspects of NHTSA's program that regulates the importation of motor vehicles and equipment items subject to the FMVSS.

Issues for Comments To Address

Under the Paperwork Reduction Act of 1995 (PRA), before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Solicitation of Comments

In compliance with these requirements, NHTSA is requesting public comment on the following proposed collection of information:

Title: Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards.

Type of Request: Extension of a Currently Approved Collection.

OMB Control Number: 2127–0002.

Affected Public: Importers of vehicles and regulated items of motor vehicle equipment.

Requested Expiration Date of Approval—November 30, 2013.

Summary of Collection of Information—

1. Declaration requirement for the importation of motor vehicles and regulated items of motor vehicle equipment: NHTSA's regulations at 49 CFR part 591 provide that no person shall import a motor vehicle or regulated item of motor vehicle equipment (*e.g.*, tires, rims, brake hoses, brake fluid, seat belt assemblies, lighting equipment, glazing, motorcycle helmets, child restraints, compressed natural gas containers, warning devices, rear impact guards, and platform lift systems) unless the importer files a declaration. *See* 49 CFR 591.5. This declaration is filed with U.S. Customs and Border Protection (Customs) on a paper copy of the HS–7 Declaration form, or, if the entry is made by a Customs House Broker, it can be made electronically using Customs' Automated Broker Interface (ABI) system. The HS–7 Declaration form has 14 boxes, each of which identifies a lawful basis for the importation of a motor vehicle or equipment item into the United States.

a. Importation of vehicles at least 25 years old or equipment not subject to the safety standards under Box 1: A motor vehicle at least 25 years old can be lawfully imported without regard to its compliance with the FMVSS. So too can an equipment item manufactured on a date when no applicable FMVSS was in effect. These vehicles and equipment items are declared under Box 1 on the HS–7 Declaration form. In calendar year 2007, 10,736 vehicles were imported under Box 1. In 2008, 2,734 vehicles were imported, and in 2009, the volume of imports increased to 8,980 vehicles. Based on an average of these figures, the agency projects that roughly 7,500 vehicles will be imported each year under Box 1 over the next three years. Assuming that an HS–7 Declaration form is filed for each of these vehicles, and that it will take five minutes to complete each of these forms, the agency estimates the hour burden associated with completing the paperwork for these vehicles to be approximately 625 hours per year (0.083333 hours × 7,500 = 625 hours).

b. Importation of conforming vehicles and equipment under Box 2A: Vehicles and equipment that are originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards, and that bear a label or tag certifying such compliance that is permanently affixed by the original manufacturer, are declared under Box 2A on the HS–7 Declaration form. In 2007, 4,060,121 vehicles were imported under Box 2A. In 2008, the figure decreased to 3,717,910 vehicles, and decreased again in 2009, to 3,222,043. Based on an average of these figures, the agency projects that roughly 3,700,000 vehicles will be imported each year under Box 2A for the next three years. The overwhelming majority of vehicles entered under Box 2A are imported by

original manufacturers. As a rule, manufacturers do not file a separate HS–7 Declaration form for each conforming vehicle they import under Box 2A. Instead, the manufacturers furnish NHTSA with a single declaration form, on a monthly basis, to which they attach a list of all vehicles, identified by make, model, model year, and vehicle identification number (VIN), that were imported under Box 2A during that month. In this manner, it is not unusual for a single HS–7 Declaration form to be filed with the agency to cover the entry of many thousands of vehicles. Assuming that manufacturers account for 90 percent of the vehicles imported under Box 2A, and that a manufacturer will, on average, report the entry of 5,000 vehicles on a single Declaration form, and that all other vehicles imported under Box 2A are declared individually, the agency projects the hour burden associated with completing the paperwork for the entry of these vehicles to be 30,832 hours per year (3,700,000 vehicles × .9 = 3,330,000 vehicles imported by original manufacturers; 3,330,000 vehicles ÷ 5,000 vehicles per declaration forms filed = 666 declaration forms being filed per year by manufacturers; assuming that a separate declaration is filed for each other vehicle imported under Box 2A yields 370,000 declarations being filed per year for these vehicles; 370,000 + 666 = 370,666 declarations per year; 0.08333 hours to complete each declaration × 370,666 declarations = 30,832 hours).

c. Importation of conforming Canadian-market vehicles for personal use under Box 2B: A motor vehicle that is certified by its original manufacturer as complying with all applicable Canadian motor vehicle safety standards can be imported by an individual for personal use under Box 2B. To accomplish the entry, the importer must furnish Customs with a letter from the vehicle's original manufacturer confirming that the vehicle conforms to all applicable U.S. Federal motor vehicle safety, bumper, and theft prevention standards, or that it conforms to all such standards except for the labeling requirements of Standard Nos. 101 *Controls and Displays* and 110 or 120 *Tire Selection and Rims*, and/or the requirements of Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* relating to daytime running lamps. NHTSA received from Customs a total of 1,452 HS–7 Declaration forms for vehicles imported under Box 2B in calendar year 2007. In addition, declarations were filed electronically for 753 vehicles imported under Box 2B in 2007. Combining these figures yields a total of 2,205 vehicles imported under Box 2B in that calendar year. NHTSA received from Customs a total of 653 HS–7 Declaration forms for vehicles imported under Box 2B in 2008. In addition, electronic entries were made for 538 vehicles imported under Box 2B in that calendar year. Combining these figures yields a total of 1,189 vehicles imported under Box 2B in 2008. NHTSA received from Customs a total of 1,170 HS–7 Declaration forms for vehicles imported under Box 2B in 2009. In addition, electronic entries were made for 421 vehicles imported under Box 2B in that calendar year. Combining these figures yields a total of 1,591 vehicles imported under Box 2B in 2008. Assuming these figures represent a fair approximation of the volume of vehicles imported under Box 2B in those three calendar years, the agency projects that roughly 1,675 vehicles will be imported under Box 2B in each of the next three calendar years. Assuming that a separate HS–7 Declaration form is filed for each of these vehicles, the hour burden associated with the completing the paperwork for the entry of these vehicles will be 140 hours per year (1,675 vehicles × 0.08333 hours per entry = 140 hours).

d. Importation of nonconforming vehicles by registered importers under Box 3:

Statutory and Regulatory Background

Section 30112(a) of Title 49, U.S. Code prohibits, with certain exceptions, the importation into the United States of a motor vehicle manufactured after the date an applicable Federal motor vehicle safety standard (FMVSS) takes effect, unless the motor vehicle was manufactured in compliance with the standard and was so certified by its original manufacturer. Under one of the exceptions to this prohibition, found at 49 U.S.C. 30141, a nonconforming vehicle can be imported into the United States provided (1) NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS, and (2) it is imported by a registered importer (RI), or by a person who has a contract with an RI to bring the vehicle into conformity with all applicable standards following importation. Regulations implementing this statute are found at 49 CFR parts 591 and 592.

HS–7 Declaration Form

The regulations require a declaration to be filed (on the HS–7 Declaration Form) at the time a vehicle is imported that identifies, among other things, whether the vehicle was originally manufactured to conform to all applicable FMVSS, and if it was not, to state the basis for the importation of the vehicle.

A nonconforming vehicle that NHTSA has decided to be eligible for importation can be imported by an RI, or by a person who has a contract with an RI to modify the vehicle so that it conforms to all applicable FMVSS, under Box 3 on the HS–7 Declaration form. As previously noted, the volume of imports under Box 3 initially declined and then slightly increased in recent years. In 2007, 7,740 vehicles were imported under Box 3, in 2008, 6,311 vehicles were imported, and in 2009, 10,572 vehicles were imported. Based on these figures, the agency projects that 8,200 vehicles will be imported each year under Box 3. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be 683 hours (0.08333 hours to complete each HS–7 × 8,200 vehicles = 683 hours).

HS–474 Conformance Bond

NHTSA's regulations also require an RI, among other things, to furnish a bond (on the HS–474 Conformance Bond form) at the time of entry for each nonconforming vehicle it imports, to ensure that the vehicle will be brought into conformity with all applicable safety and bumper standards within 120 days of entry or will be exported from, or abandoned to, the United States. A HS–474 Conformance Bond has to be furnished for each nonconforming vehicle imported under Box 3. Assuming an importation volume of 8,200 vehicles per year, the hour burden associated with the completion of the HS–474 will be 820 hours (0.1 hours to complete each HS–474 × 8,200 vehicles = 820 hours).

Conformity Statement

After modifying the vehicle to conform to all applicable standards, the RI submits a statement of conformity (on a suggested form) to NHTSA, which will then issue a letter permitting the bond to be released if the agency is satisfied that the vehicle has been modified in the manner stated by the RI. The statement of conformity contains a check off list on which the RI identifies the FMVSS and other agency requirements to which the vehicle conforms as originally manufactured and the FMVSS and other requirements to which the vehicle was modified to conform. The RI also attaches to the statement of conformity documentary and photographic evidence of the

modifications that it made to the vehicle to achieve conformity with applicable standards. Collectively, these documents are referred to as a "conformity package."

A conformity package must be submitted for each nonconforming vehicle imported under Box 3. Because the Canadian motor vehicle safety standards are identical in most respects to the FMVSS, there are relatively few modifications that need to be performed on a Canadian-certified vehicle to conform it to the FMVSS and the conformity packages that are submitted on these vehicles are considerably less comprehensive than those submitted for vehicles from Europe, Japan, and other foreign markets. The agency estimates that it would take the average RI no more than 30 minutes to collect information for, and assemble, a conformity package for a Canadian-certified vehicle.

Generally, more modifications are needed to conform a non-Canadian vehicle to the FMVSS. To properly document these modifications, more information must be included in the conformity package for a non-Canadian vehicle than is required for a Canadian-certified vehicle. The agency estimates that it would take an RI approximately twice as long, or roughly one hour, to compile information for, and assemble, a conformity package for a typical non-Canadian vehicle.

Of the 7,794 nonconforming vehicles imported under Box 3 in 2007, 7,434, or over 95 percent, were Canadian market and 360, or under five percent, were from markets other than Canada. Of the 6,311 nonconforming vehicles imported under Box 3 in 2008, 5,775, or roughly 91.5 percent, were Canadian market and 536, or roughly 8.5 percent, were from markets other than Canada. Of the 10,751 nonconforming vehicles imported under Box 3 in 2009, 10.259, or over 95 percent, were Canadian market and 492, or less than five percent, were from markets other than Canada. Assuming this trend continues in future years, the agency estimates the hour burden associated with the submission of conformity packages on Canadian-certified vehicles to be 3,895 hours per year (8,200 vehicles × 95 percent or 0.95 = 7,790 vehicles; 7,790 vehicles × 0.5 hours per vehicle = 3,895 hours). The agency estimates the hour burden associated with the submission of conformity packages for non-Canadian vehicles to be 410 hours per year (8,200 vehicles × 5 percent or 0.05 = 410 vehicles; 410 vehicles × 1.0 hours per vehicle = 410 hours). Adding these figures yields an estimated burden of 4,305 hours per year for the entire RI industry to compile and submit conformity packages to NHTSA on nonconforming vehicles imported under Box 3 (3,895 hours + 410 hours = 4,305 hours).

Import Eligibility Petition

As previously noted, a motor vehicle that was not originally manufactured to comply with all applicable FMVSS cannot be lawfully imported into the United States on a permanent basis unless NHTSA decides that the vehicle is eligible for importation, based on its capability of being modified to conform to those standards. Under 49 U.S.C. 30141, the eligibility decision can be based on the nonconforming vehicle's substantial similarity to a vehicle of the same make, model, and model year that was manufactured for importation into, and sale in the United States, and certified as complying with all applicable FMVSS by its original manufacturer. Where there is no substantially similar U.S.-certified vehicle, the eligibility decision must be predicated on the vehicle having safety features that are capable of being modified to conform to the FMVSS, based on destructive crash test data or such other evidence that the agency may deem adequate. The agency makes import eligibility decisions either on its own initiative, or in response to petitions filed by RIs. Only a small number of RIs (currently about 13 out of the 70 RIs registered with the agency) ever submit import eligibility petitions. Many of these businesses have, over, the years, submitted multiple petitions to the agency. The agency estimates that it would take the typical RI that petitions the agency roughly two hours to complete the paperwork associated with the submission of a petition for a vehicle that has a substantially similar U.S.-certified counterpart, and roughly twice as long, or four hours, to complete the paperwork associated with the submission of a petition for a vehicle that lacks a substantially similar U.S.-certified counterpart. In 2007, 22 import eligibility petitions were submitted to the agency. Of these, 17, or 77 percent, were for vehicles with substantially similar U.S.-certified counterparts and 5, or 23 percent, were for vehicles for which there were no substantially similar U.S. certified counterparts. In 2008, 15 import eligibility petitions were submitted to the agency. Of these, 14, or 93 percent, were for vehicles with substantially similar U.S.-certified counterparts, and 1, or 7 percent, were for vehicles for which there were no substantially similar U.S.-certified counterparts. In 2009, 12 import eligibility petitions were submitted to the agency. Of these, 9, or 75 percent, were for vehicles with substantially similar U.S.-certified counterparts, and 3, or 25 percent, were for vehicles for which there were no substantially similar U.S.-certified counterparts. Assuming this trend continues in future years, the agency estimates that roughly 13 import eligibility petitions will be submitted each year, 80 percent of which, or 10 petitions, will be for vehicles with substantially similar U.S.-certified counterparts, and 20 percent of which, or 3 petitions, will be for vehicles lacking substantially similar U.S.-certified counterparts. Based on these figures, the agency estimates that the hour burden for the paperwork associated with the submission of import eligibility petitions to be 32 hours per year (10 petitions × 2 hours per petition = 20 hours; 3 petitions × 4 hours per petition = 12 hours; 20 hours + 12 hours = 32 hours). The agency is considering an amendment to its regulations that would require an import eligibility petition to include the type classification (*e.g.,* passenger car, multipurpose passenger vehicle, truck, bus, motorcycle, trailer) of the vehicle for which import eligibility is sought and the gross vehicle weight rating or "GVWR" of the vehicle. If this amendment were to be adopted, it would have no appreciable effect on the burden hour estimate provided above.

e. Importation of vehicles or equipment intended solely for export under Box 4: A nonconforming vehicle or equipment item that is intended solely for export, and bears a tag or label to that effect, can be entered under Box 4 on the HS–7 Declaration form. The majority of vehicles imported for export only under Box 4 are imported by original manufacturers that do not file individual declaration forms with the agency for each vehicle imported, but instead include those vehicles in the monthly count supplied to the agency along with conforming vehicles imported under Box 2A. The agency received only 39 HS–7 Declaration forms for vehicles imported under Box 4 in 2009. Assuming this represents the share of vehicles imported under Box 4 by parties other than original manufacturers, the agency projects that HS–7 Declaration forms will be filed for no more than one percent of the vehicles imported under Box 4 in future years. Averaging the volume of vehicles imported for export only under Box 4 over the past three years yields an estimate of roughly 40,000 vehicles being imported on an annual basis in the next three years, and 400 HS–7 Declaration forms being filed in each of

those years. Based on that figure, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 34 hours (0.08333 hours to complete each HS–7 × 400 vehicles = 33.33 hours).

f. Temporary importation of nonconforming vehicles by nonresidents of the United States under Box 5: Under an international convention to which the United States is a signatory, a nonresident of the United States can import a nonconforming vehicle for personal use, for a period of up to one year, provided the vehicle is not sold while in the United States and is exported no later than one year from its date of entry. These vehicles are entered under Box 5 on the HS–7 Declaration form. To enter a vehicle under Box 5, the importer must also furnish Customs with the importer's passport number and the name of the country that issued the passport. In 2007, a total of 264 vehicles were imported under Box 5. In 2008, 334 vehicles were imported under that box. In 2009, 358 were imported. Based on these figures, the agency estimates that roughly 320 vehicles will be imported under Box 5 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 27 hours (0.08333 hours to complete each HS–7 × 4320 vehicles = 26.6666 hours).

g. Temporary importation of nonconforming vehicles by foreign diplomat under Box 6: A member of a foreign government on assignment in the United States, or a member of the secretariat of a public international organization so designated under the International Organizations Immunities Act, and within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State, can temporarily import a nonconforming vehicle for personal use while in the United States. These vehicles are entered under Box 6 on the HS–7 Declaration form. The importer must attach to the declaration a copy of the importer's official orders and supply Customs with the name of the embassy to which the importer is attached. In 2007, a total of 26 vehicles were imported under Box 6. In 2008, 3 vehicles were imported under that box. In 2009, 25 were imported. Based on these figures, the agency estimates that roughly 25 vehicles will be imported under Box 6 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be roughly 2 hours (0.08333 hours to complete each HS–7 × 25 vehicles = 2.08 hours).

h. Temporary importation of nonconforming vehicles and equipment under Box 7: Under 49 U.S.C. 30114, NHTSA is authorized to exempt a motor vehicle or item of motor vehicle equipment from the importation restriction in 49 U.S.C. 30112(a), on such terms the agency decides are necessary, for purposes of research, investigations, demonstrations, training, competitive racing events, show, or display. Regulations implementing this provision are found at 49 CFR part 591. Under those regulations, written permission from NHTSA is needed to temporarily import a nonconforming motor vehicle or equipment item for one of the specified purposes unless the importer is a manufacturer of motor vehicles that are certified to the FMVSS. An application form that can be used to obtain the letter of permission is posted to the agency's Web site at *http://www.nhtsa.gov/cars/rules/import.* If NHTSA grants it permission, the nonconforming motor vehicle or equipment item can be temporarily imported under Box 7 on the HS–7 Declaration form. In 2007, 4,741 vehicles were imported under Box 7. In 2008, 5,860 vehicles were imported under that box. In 2009, 4,090 were imported. Permission letters were requested from NHTSA for 222 of the vehicles imported in 2007, 302 of the vehicles imported in 2008, and 254 of the vehicles imported in 2009, representing roughly 5 percent of the total number of vehicles imported under Box 7 in those years. The remaining vehicles were imported by original manufacturers of vehicles that are certified to the FMVSS, who can temporarily import nonconforming vehicles for any of the specified purposes under Box 7 without the need for a NHTSA permission letter. Averaging the volume of imports over the past two years, the agency projects that roughly 5,000 vehicles will be imported under Box 7 in each of the next three years. Assuming that applications for NHTSA permission letters will be submitted for ten percent of those vehicles, and that a single application will be filed for each vehicle, the agency estimates that 500 applications will be filed in each of the next three years. Based on the estimate that it will take roughly five minutes to complete each of those applications, the agency projects that under 42 hours will be expended on an annual basis to submit applications for permission from NHTSA to import vehicles under Box 7 (0.0833 hours per application × 500 applications = 41.66 hours). Assuming that a single HS–7 Declaration form is filed for each vehicle imported under Box 7, the agency projects that under 420 hours will be expended on an annual basis in completing the declaration for vehicles imported under Box 7 (0.0833 hours per declaration × 5000 vehicles = 416.66 hours).

i. Importation of off-road vehicles under Box 8: NHTSA regulates the importation of "motor vehicles," which are defined (at 49 U.S.C. 30102) as vehicles that are driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways. Vehicles that are not primarily manufactured for on-road use do not qualify as "motor vehicles" under this definition, and may therefore be imported without regard to their compliance with the FMVSS. These vehicles are entered under Box 8 on the HS–7 Declaration form. Vehicles that can be entered in this fashion include those that are originally manufactured for closed circuit racing. Although approval from NHTSA is not needed to import a vehicle that was originally manufactured for racing purposes, the agency will issue a letter recognizing a particular vehicle as having been so manufactured if the importer requests the agency to do so. An application form that can be used to obtain such a letter is also posted to the agency's Web site at *http://www.nhtsa.gov/cars/rules/import.* In 2007, applications were submitted to NHTSA for 78 vehicles imported under Box 8. In 2008, 66 applications were filed. In 2009, 62 were filed. Based on these figures, the agency projects that 70 applications to import vehicles for racing purposes under Box 8 will be submitted in each of the next three years. Assuming that it will take five minutes to complete each of these applications, the agency estimates that under 6 hours will be expended in completing these applications (0.08333 hours × 70 applications = 5.83 hours).

In 2007, a total of 122,960 vehicles were imported under Box 8. In 2008, 175,282 vehicles were imported under that box. In 2009, 99,524 were imported. Averaging those figures, the agency projects that roughly 135,000 vehicles will be imported under Box 8 in each of the next three years. The vast majority of these vehicles were off-road motorbikes or all-terrain vehicles that were imported in bulk shipments for which a single declaration was filed. NHTSA received only 57 HS–7 Declaration forms for vehicles imported under Box 8 in 2007, 16 for vehicles imported in 2008, and 15 for those imported in 2009. The remainder of the entries were made electronically. Based on the assumption that each entry

covers 100 vehicles, the agency estimates that approximately 13,500 Box 8 entries will be made on an annual basis over the next three years. Relying on this assumption, the agency projects that slightly less than 1,125 hours will be expended on an annual basis in completing the declaration for vehicles imported under Box 8 (0.0833 hours per declaration × 13,500 vehicles = 1,124.99 hours).

j. Importation of vehicles or equipment requiring further manufacturing operations under Box 9: A motor vehicle or equipment item that requires further manufacturing operations to perform its intended function, other than the addition of readily attachable components such as mirrors or wipers, or minor finishing operations such as painting, can be entered under Box 9 on the HS–7 Declaration form. Documents from the manufacturer must be furnished for these entries. In 2007, 8,943 vehicles were imported under Box 9. In 2008, 9,307 vehicles were imported under that box. In 2009, 7,570 were imported. Averaging those figures, the agency projects that roughly 8,600 vehicles will be imported under Box 9 in each of the next three years. Assuming that a separate HS–7 Declaration form is filed for each of those vehicles, the agency projects that approximately 717 hours will be expended on an annual basis in completing the declaration for vehicles imported under Box 9 (0.0833 hours per declaration × 8,600 vehicles = 716.66).

k. Importation of vehicles for show or display under Box 10: Vehicles that are deemed by NHTSA to have sufficient technological or historical significance that they would be worthy of being exhibited in car shows if they were brought to the United States are eligible for importation for purposes of show or display under Box 10 on the HS–7 Declaration form. Written permission from NHTSA is also needed to import a vehicle for that purpose. An application form that can be used to request the agency to decide that a particular make, model, and model year vehicle is eligible for importation for purposes of show or display is posted to the agency's Web site at *http://www.nhtsa.gov/cars/rules/import.* In 2007, the agency received 18 applications to determine vehicles eligible for importation for purposes of show or display. In 2008, the agency received 22 such applications. In 2009, the agency received 8. Averaging these figures, the agency projects that it will receive 16 applications to determine vehicles eligible for importation for purposes of show or display in each of the next three years. Assuming that it will take the typical applicant up to ten hours to compile and assemble the materials needed to support each application, the agency estimates that up to 160 hours will be expended in this activity in each of those years.

Also on the agency's Web site is an application form that can be used to request NHTSA to permit a particular vehicle to be imported for purposes of show or display once the agency has decided that the vehicle is of a make, model, and model year that is eligible for importation for those purposes. Certain restrictions apply to vehicles that are imported for purposes of show or display. Among those is a requirement that the vehicle not be driven in excess of 2,500 miles per year. The application specifies the terms of the importation and makes provision for the applicant to agree to those terms. In 2007, the agency received 15 applications to import specific vehicles for purposes of show or display. In 2008, the agency received 13 such applications. In 2009, the agency received 8. Averaging those figures, the agency estimates that it will receive roughly 12 applications in each of the next three years. Assuming that it will take the typical applicant up to one hour to compile and assemble the materials needed to support each application, the agency estimates that up to 12 hours will be expended in this activity in each of those years.

l. Importation of equipment subject to the Theft Prevention Standard under Box 11: Items of motor vehicle equipment that are marked in accordance with the Theft Prevention Standard in 49 CFR part 541 are entered under Box 11 on the HS–7 Declaration form. In 2007, there were 3,557 entries under Box 11. In 2008, there were 1,747 such entries. In 2009 there were 1,684. Averaging these figures, the agency estimates that 2,350 entries will be made under Box 11 in each of the next three years. Virtually all of these entries are made electronically. This is evidenced by the fact that the agency received only 37 HS–7 Declaration forms for Box 11 entries made in 2009. Assuming that it will take five minutes to complete each of these entries, the agency projects that under 196 hours will be expended on an annual basis in making these entries for equipment imported under Box 11 (0.0833 hours per declaration × 2,350 equipment items = 195.83 hours).

m. Temporary importation of nonconforming vehicles by foreign military personnel under Box 12: A member of the armed forces of a foreign country on assignment in the United States can temporarily import a nonconforming vehicle for personal use during the member's tour of duty under Box 12 on the HS–7 Declaration form. In 2007, a total of 219 vehicles were imported under Box 12. In 2008, 69 such vehicles were imported. In 2009, 26 were imported. Averaging these figures, the agency projects that roughly 105 vehicles will be imported under Box 12 in each of the next three years. Assuming that volume, the hour burden associated with the completion of the HS–7 Declaration form for these vehicles will be under 9 hours (0.08333 hours to complete each HS–7 × 105 vehicles = 8.75 hours).

n. Importation of vehicles to prepare import eligibility petitions under Box 13: A nonconforming vehicle imported by an RI for the purpose of preparing a petition for NHTSA to decide that a particular make, model, and model year vehicle is eligible for importation is entered under Box 13 on the HS–7 Declaration form. A letter from NHTSA granting the importer permission to import the vehicle for that purpose must be filed with the declaration. NHTSA has issued guidance to inform RIs that it will permit no more than two vehicles to be imported for the purpose of preparing an import eligibility petition. Box 13 was incorporated into the HS–7 Declaration form when that form was last revised in May, 2006. Since that time, the agency has received requests to permit the importation of 12 vehicles under Box 13 in 2007, 15 in 2008, and 28 in 2009. As previously noted, the agency projects that roughly 13 import eligibility petitions will be submitted in each of the next three years. The agency permits an RI to import up to two vehicles for the purpose of preparing an import eligibility petition. Assuming that each petitioning RI imports two vehicles, the agency estimates that it will receive up to 26 requests per year for letters permitting those vehicles to be imported under Box 13. Estimating that it will take five minutes to complete each of those requests, the hour burden associated with this activity will be roughly 1 hour (0.08333 hours to complete each request × 26 vehicles = 1.08 hours).

2. Information collected from applicants for RI status and existing RIs seeking to renew their registrations: Under 49 U.S.C. 30141, a motor vehicle that was not originally manufactured to comply with all applicable FMVSS cannot be lawfully imported into the United States on a permanent basis unless (1) NHTSA decides it is eligible for importation, based on its capability of being modified to conform to all applicable FMVSS and (2) it is imported by an RI or by a person who has a

contract with an RI to modify the vehicle so that it complies with all applicable FMVSS following importation. NHTSA is authorized by 49 U.S.C. 30141(c) to establish, by regulation, procedures for registering RIs. Those regulations are found in 49 CFR part 592.

a. Information collected from applicants: Under the terms of the regulations in part 592, an applicant for RI status must submit to the agency information that identifies the applicant, specifies the manner in which the applicant's business is organized (*i.e.,* sole proprietorship, partnership, or corporation), and, depending on the form of organization, identifies the principals of the business. The application must also state that the applicant has never had a registration revoked and identify any principal previously affiliated with another RI. The application must also provide the street address and telephone number in the United States of each facility for the conformance, storage, and repair of vehicles that the applicant will use to fulfill its duties as an RI, including records maintenance, and the street address in the United States that it designates as its mailing address. The applicant must also furnish a business license or other similar document issued by a State or local authority authorizing it to do business as an importer, seller, or modifier of motor vehicles, or a statement that it has made a bona fide inquiry and is not required by any State or local authority to maintain such a license. The application must also set forth sufficient information to allow the Administrator to conclude that the applicant (1) is technically able to modify nonconforming vehicles to conform to applicable Federal motor vehicle safety and bumper standards, (2) owns or leases one or more facilities sufficient in nature and size to repair, conform, and store the vehicles for which it furnishes statements of conformity to NHTSA, (3) is financially and technically able to provide notification of and a remedy for a noncompliance with an FMVSS or a defect related to motor vehicle safety determined to exist in the vehicles it imports, and (4) is able to acquire and maintain information on the vehicles that it imports and the owners of those vehicles so that it can notify the owners if a safety-related defect or noncompliance is determined to exist in such vehicles. The application must also contain a statement that the applicant will abide by the duties of an RI and attesting to the truthfulness and correctness of the information provided in the application. A brochure containing sample documents that an applicant may use in applying to become an RI is posted to the agency's Web site at *http://www.nhtsa.gov/cars/rules/import.* In 2007, NHTSA received 7 applications for RI status. In 2008, the agency received 6 applications of this kind. In 2009, the agency received 11. Based on these figures, the agency anticipates that it will receive 8 applications for RI status in each of the next three years. Assuming that it will take up to ten hours to compile and assemble the material needed to support a single application, the agency estimates that 80 hours will be expended in this activity for each of the next three years (8 applications × 10 hours = 80 hours). The agency is considering an amendment to its regulations that would require an applicant for RI status to disclose whether the applicant has been convicted of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment. If this amendment were to be adopted, it would have no appreciable effect on the burden hour estimate provided above.

b. Information collected from existing RIs: To maintain its registration, an RI must file an annual statement affirming that all information it has on file with the agency remains correct and that it continues to comply with the requirements for being an RI. Formats that existing RIs may use to renew their registrations are included in a newsletter sent electronically to each RI before the renewal is due and posted to the agency's Web site at *http://www.nhtsa.gov/cars/rules/import.* The number of RI renewals declined in recent years on account of the weakening of the U.S. dollar against the Canadian dollar, and the concomitant reduction in the volume of vehicles imported from Canada. In 2007, NHTSA received renewal packages from 64 RIs. In 2008, the agency received 63 renewal packages. In 2009, the number of renewal packages submitted increased to 70. Based on these figures, the agency anticipates that it will receive an average of 65 renewal packages in each of the next three years. Assuming that it will take up to two hours to compile and assemble the material needed to support a single application for renewal, the agency estimates that 130 hours will be expended in this activity for each of the next three years (65 renewal applications × 2 hours = 130 hours). The agency is considering an amendment to its regulations that would require an RI seeking to renew its registration to disclose whether the RI has been convicted of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment. If this amendment were to be adopted, it would have no appreciable effect on the burden hour estimate provided above.

3. Information to be retained by RIs: The agency's regulations at 49 CFR 592.6(b) require an RI to maintain and retain certain specified records for each motor vehicle for which it furnishes a certificate of conformity to NHTSA, for a period of 10 years from the vehicle's date of entry. As described in the regulations, those records must consist of "correspondence and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator." The regulations further specify that the records to be retained must include (1) a copy of the HS–7 Declaration Form furnished for the vehicle at the time of importation, (2) all vehicle or equipment purchase or sales orders or agreements, conformance agreements with importers other than RIs, and correspondence between the RI and the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity to NHTSA, (3) the last known name and address of the owner or purchaser of each vehicle for which the RI furnishes a certificate of conformity, and the vehicle identification number (VIN) of the vehicle, and (4) records, both photographic and documentary, reflecting the modifications made by the RI, which were submitted to NHTSA to obtain release of the conformance bond furnished for the vehicle at the time of importation. *See* 49 CFR 592.6(b)(1) through (b)(4).

The latter records are referred to as a "conformity package." Most conformity packages submitted to the agency covering vehicles imported from Canada are comprised of approximately six sheets of paper (including a check-off sheet identifying the vehicle and the standards that it was originally manufactured to conform to and those that it was modified to conform to, a statement identifying the recall history of the vehicle, a copy of the HS–474 conformance bond covering the vehicle, and a copy of the mandatory service insurance policy obtained by the RI to cover its recall obligations for the vehicle). In addition, most conformity packages include photographs of the vehicle, components that were modified or replaced to conform the vehicle to applicable standards, and the certification labels affixed to the vehicle.

Approximately 120 conformity packages can be stored in a cubic foot

of space. Based on projected imports of 8,200 nonconforming vehicles per year, 68.3 cubic feet of space will be needed on an industry-wide basis to store one year's worth of conformity packages. Assuming an annual cost of $20 per cubic foot to store the information, NHTSA estimates the aggregate cost to industry for storing a year's worth of conformity packages to be $1,366 per year. Over a ten-year retention period, a member of the industry would be required to retain 55 annual units of records (assuming that one annual unit was stored in the first year, two annual units in the second year, and so on). The aggregate cost to industry of the ten-year record retention requirement will therefore be $75,130 (55 × $1,366).

RIs are also required under 49 CFR 592.6(b) to retain a copy of the HS–7 Declaration Form furnished to Customs at the time of entry for each nonconforming vehicle for which they submit a conformity package to NHTSA. Paper HS–7 Declaration Forms are only filed for a small fraction of the nonconforming vehicles imported into the United States. Customs brokers file entries for most nonconforming vehicles electronically by using the Automated Broker Interface (ABI) system. For example, in Calendar year 2006, 10,953 ABI entries were made for nonconforming vehicles imported into the United States under Box 3, and only 440 paper HS–7 Declaration Forms (representing less than four percent of the total) were filed for such vehicles. Because HS–7 Declaration Forms are filed for only a small fraction of the nonconforming vehicles that are imported by RIs, the storage requirement for those records can have no more than a negligible cost impact on the industry. Because the remaining records that RIs are required to retain under 49 CFR 592.6(b) may be stored electronically, the costs incident to the storage of those records should also be negligible.

RIs who conduct recall campaigns to remedy a safety-related defect or a noncompliance with an FMVSS determined to exist in a vehicle they import must report the progress of those campaigns to NHTSA. The agency estimates that it should take each RI that is required to conduct a safety recall campaign approximately one hour to compile information for and prepare each of the two reports it would be required to submit to the agency detailing the progress of the recall campaign. Since vehicle manufacturers in most cases include vehicles imported by RIs in their own recall campaigns, it is likely that very few of these reports would have to be prepared or submitted by RIs.

Description of the Need for the Information and Proposed Use of the Information—The information collection detailed above is necessary to ensure that motor vehicles and items of motor vehicle equipment subject to the Federal motor vehicle safety, bumper and theft prevention standards are lawfully imported into the United States. To be lawfully imported, the vehicle or equipment item must be covered by one of the boxes on the HS–7 Declaration form and the importer must declare, subject to penalty for making false statements, that the vehicle or equipment item is entitled to entry under the conditions specified on the form, including the provision of any supporting information or materials that may be required.

NHTSA relies on the information provided by RIs and applicants for RI status to obtain and renew their registrations so that it can better ensure that RIs are meeting their obligations under the statutes and regulations governing the importation of nonconforming vehicles and can make more informed decisions in conferring RI status on applicants and in permitting RI status to be retained by those currently holding registrations. In this manner, those lacking the capability to responsibly provide RI services, or who have committed or are associated with those who have committed past violations of the vehicle importation laws, can be more readily denied registration as an RI, or if they already hold such a registration, have that registration suspended or revoked when circumstances warrant such action.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Responses to the Collection of Information)—With regard to the HS–7 Declaration form, likely respondents include any private individual or commercial entity importing into the United States a vehicle or item of motor vehicle equipment subject to the Federal motor vehicle safety standards. It is difficult to estimate, with reliability, the absolute number of such respondents; however, that number would include:

- The 70 RIs who are currently registered with NHTSA and import nonconforming vehicles under Boxes 3 and 13;
- The roughly 1,650 individuals who import each year Canadian-certified vehicles for personal use under Box 2B;
- The several hundred original manufacturers who import conforming motor vehicles and equipment items under Box 2a; nonconforming vehicles or equipment intended for export under Box 4; nonconforming vehicles and equipment on a temporary basis for purposes of research, investigations, or other reasons specified under Box 7; vehicles and equipment requiring further manufacturing operations under Box 9; and equipment subject to the Theft Prevention Standard under Box 11.
- The several hundred dealers, distributors, and individuals who import off-road vehicles such as dirt bikes and all-terrain vehicles or ATVs, as well as other vehicles that are not primarily manufactured for on-road use under Box 8.
- The several hundred nonresidents of the United States and foreign diplomatic and military personnel who temporarily import nonconforming vehicles for personal use under Boxes 5, 6, and 12.

Estimate of the Total Annual Reporting and Recordkeeping Burden of the Collection of Information—Adding together the burden hours detailed above yields a total of 40,764 hours expended on an annual basis for all paperwork associated with the filing of the HS–7 Declaration form and other aspects of the vehicle importation program.

Estimate of the Total Annual Costs of the Collection of Information—Other than the cost of the burden hours, the only additional costs associated with this information collection are those incident to the storage, for a period of ten years, of records pertaining to the nonconforming vehicles that each RI imports into the United States.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50 and 501.8(f).

Issued on: July 12, 2010.

Jeffrey Giuseppe,

Acting Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–17364 Filed 7–15–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Financial Stability; Proposed Collection; Comment Request

AGENCY: Office of Financial Stability (OFS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the

following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, OFS is soliciting comments concerning information collection requirements contained in Title 31 CFR parts 30 and 31.

DATES: Written comments should be received on or before September 14, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to: Department of the Treasury, Daniel Abramowitz, 1500 Pennsylvania Avenue, NW., Washington, DC 20220; (202) 927–9645.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to the address above.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1505–0209.

Title: Troubled Asset Relief Program—Conflicts of Interest.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), as amended by the American Recovery and Reinvestment Act (ARRA) of 2009, the Department of the Treasury has implemented aspects of the Troubled Asset Relief Program (TARP) by codifying section 108 of EESA. Title 31 CFR part 31, TARP Conflict of Interest, sets forth the process for reviewing and addressing actual or potential conflicts of interest among any individuals or entities seeking or having a contract or financial agency agreement with the Treasury for services under EESA. The information collection required by this part will be used to evaluate and minimize real and apparent conflicts of interest related to contractual or financial agent agreement services performed under TARP.

Type of Review: Revision of a currently approved information collection.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Number of Respondents: 35.

Estimated Number of Responses: 418.

Estimated Total Annual Burden Hours: 3,446 hours.

OMB Control Number: 1505–0219.

Title: TARP Capital Purchase Program—Executive Compensation

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), as amended by the American Recovery and Reinvestment Act (ARRA) of 2009, the Department of the Treasury has implemented aspects of the Troubled Asset Relief Program (TARP) by codifying section 111 of EESA. Title 31 CFR part 30, TARP Standards for Compensation Corporate Governance, provides guidance on the executive compensation and corporate governance provision of EESA that apply to entities that receive financial assistance under TARP. The collection of information required by this part will be used to monitor compliance with the executive compensation requirements; monitor and evaluate the compensation practices of TARP recipients, and as a basis for determinations on the compensation structures and compensation payments by the Special Master on Executive Compensation.

Type of Review: Revision of a currently approved information collection.

Affected Public: Private sector: Businesses or other for-profits.

Estimated Number of Respondents: 650.

Estimated Number of Responses: 3,083.

Estimated Total Annual Burden Hours: 11,130 hours.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 30, 2010.

Daniel Abramowitz,

Office of Financial Stability PRA Program Officer.

[FR Doc. 2010–17399 Filed 7–15–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Renewal; Joint Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury (collectively, the Banking Agencies or Agencies).

ACTION: Joint submission of information collection renewal to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: The OCC, FDIC and OTS as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed renewal of the interagency Transfer Agent and Amendment Form, as required by the Paperwork Reduction Act of 1995. To renew this information collection, the OCC, FDIC, and OTS seek additional public comment regarding this notice, which is the second of two notices required by the PRA, and will seek OMB review of, and clearance for, the information collection discussed herein. The Board has approved this information collection under its delegated authority from OMB. The Banking Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATES: Comments must be submitted on or before August 16, 2010.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the Agencies. All comments, which should refer to the OMB control number(s), will be shared among the Agencies.

OCC: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0124, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202)

874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

FDIC: Interested parties are invited to submit written comments. All comments should refer to the name and number of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.*
- *Mail:* Gary A. Kuiper (202.898.3877), Federal Deposit Insurance Corporation, 550 17th Street, NW., F–1072, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

OTS: You may submit comments, identified by "1550–0118 (Form TA–1)," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov.* Please include "1550–0118 (Form TA–1)" in the subject line of the message and include your name and telephone number in the message.
- *Fax:* (202) 906–6518.
- *Mail:* Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: "1550–0118 (Form TA–1)."
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, Attention: "1550–0118 (Form TA–1)."

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection. All comments received will be posted without change to the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the Agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the proposed information collection discussed in this notice, please contact any of the agency clearance officers whose names appear below.

OCC: Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Shore, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, 202.898.3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira Mills, OTS Clearance Officer, at *ira.mills@ots.treas.gov*, (202) 906–6531, or facsimile number (202) 906–6518, Regulations & Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Banking Agencies are proposing to extend for three years, without revision, the uniform interagency Transfer Agent Registration and Amendment Form. The Securities Exchange Act of 1934 (the Act) requires any person acting as a transfer agent to register as such and to amend registration information when it changes.

Report Title: Transfer Agent Registration and Amendment Form.

Form Number: TA–1.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Estimated Time per Response: 1.25 hours: registration, 10 minutes: amendment.

OCC

OMB Number: 1557–0124.

Estimated Number of Respondents: 3 registrations, 10 amendments.

Estimated Total Annual Burden: 6 hours.

Board

OMB Number: 7100–0099.

Estimated Number of Respondents: 5 registrations, 10 amendments.

Estimated Total Annual Burden: 8 hours.

FDIC

OMB Number: 3064–0026.

Estimated Number of Respondents: 2 registrations, 10 amendments.

Estimated Total Annual Burden: 5 hours.

OTS

OMB Number: 1550–0118.

Estimated Number of Respondents: 5 registrations, 10 amendments.

Estimated Total Annual Burden: 8 hours.

General Description of Reports

This information collection is mandatory: Sections 17A(c), 17(a)(3), and 23(a) of the Act, as amended (15 U.S.C. 78q–1(c), 78q(a)(3), and 78w(a)) (Board, FDIC and OTS); and Sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Act, as amended (15 U.S.C. 781, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p (OCC). Additionally, the Board's Regulation H (section 208.31(a)) and Regulation Y (section 225.4(d)), as well as § 341.3 of the FDIC's Rules and Regulations implement the provisions of the Act. The registrations are public filings and are not considered confidential.

Abstract

Section 17A(c) of the Act requires all transfer agents for securities registered under section 12 of the Act to register "by filing with the appropriate regulatory agency * * * an application for registration in such form and containing such information and documents * * * as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section." In general, an entity performing transfer agent functions for a security is required to register if the security is registered on

a national securities exchange and if the issuer has total assets of $10 million or more and a class of equity security held of record by 500 or more persons.

Request for Comment

The Agencies invite comment on:

(a) Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;

(b) The accuracy of the Agencies' estimates of the burden of the information collections, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be shared among the Agencies. Unless otherwise afforded confidential treatment pursuant to Federal law, all comments will become a matter of public record.

Dated: July 2, 2010.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, July 6, 2010.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 7th day of July, 2010.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

Dated: July 9, 2010.

Ira L. Mills,

OTS Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2010–17329 Filed 7–15–10; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P, 6720–01–P

Valles Caldera Trust

Notice of Intent To Prepare an Environmental Impact Statement for a Long-Term Landscape Restoration and Management Plan To Restore and Manage the Forest, Grassland, and Riparian Ecosystems of the Valles Caldera National Preserve

Authority: The National Environmental Policy Act of 1969 (NEPA), CEQ Regulations at 40 CFR parts 1500 through 1508, The Valles Caldera Preservation Act, Public Law 106–248, NEPA Procedures for the Valles Caldera National Preserve, 68 CFR 42460.

AGENCY: Valles Caldera Trust.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Valles Caldera Trust (VCT) a wholly owned government corporation empowered to provide management and administrative services for the Valles Caldera National Preserve (VCNP) intends to prepare an Environmental Impact Statement (EIS) to analyze and disclose the potential impacts of a proposed Landscape Restoration and Management Plan (LRMP) which includes mechanical treatments, prescribed burning, management of lightning caused wildland fires (wildland fire use), restoration or riparian areas, closure and maintenance of roads and eradication of noxious weeds and invasive plants. A combination of these management activities are being proposed over the next 10-years as follows:

1. *Mechanical Treatments*—Mechanical treatments are being proposed on approximately 20,000 acres over 10 years depending on funding and possible adjustments based on monitoring and evaluation of treatments. These treatments include tree cutting and removing or otherwise disposing of the associated biomass. Trees may be cut using chainsaws or equipment. Feller-bunchers, masticators, or small dozers equipped with saw blades, are some of the more common types of equipment employed. Forest thinning will be implemented under prescription parameters that will specify the size, species and other parameters that would determine whether a tree will be cut or left. In general, the forests of the preserve are dominated by an excess of trees 7–16 in diameter and these trees sizes would be targeted for removal.

2. *Prescribed Fire/Wildland Fire Use*—Prescribed fire is being proposed in conjunction with the mechanical treatment described above. In addition, prescribed fire alone is being proposed on nearly 59,000 acres of forest and grassland ecosystems over a 10-year period. The management of lightning caused fires (wildland fire use) to achieve resource benefits is also being proposed. Wildland fire use would be limited initially due to the current forest condition but could increase over time as forests are treated and wildfire risk is reduced. The use of wildland fire is being proposed as a tool for restoration and management of the preserve's forests and grasslands and ultimately proposes to reintroduce fire as a beneficial ecosystem process. The actual acres treated with prescribed fire over 10 years would depend on funding, environmental conditions—especially weather, the completion of mechanical treatments, and possible adjustments due to monitoring and evaluation results.

3. *Road Closure, Rehabilitation and Maintenance*—The closure and rehabilitation of approximately 1000 miles of roads is being proposed over the next 10 years. Administrative closures would be the primary tool used to close roads to motorized use, allowing natural rehabilitation. Approximately 150 miles of the road network requires physical rehabilitation to halt ongoing erosion. Some roads would be reduced to a maintenance level-1, rather than closed. This designation allows non-motorized use as well as temporary motorized use for administrative actions such as forest management, search and rescue, or wildland fire management.

4. In combination with road management actions as described above, the trust is also proposing to restore wetland and riparian areas throughout the preserve. The wetland and wet meadow systems containing the preserves riparian areas, and streams comprise just over 6,800 acres, mostly within the open valle systems. Restoration activities would include stream bank and channel restoration to address site specific erosion, placement of log and fabric dams, gully plugs, or Zuni bowl techniques to protect and restore wetlands. Willow plantings or placement of sod plugs are among techniques proposed for improving stream bank integrity.

5. *Prevention and Eradication of Noxious Weeds*—Under the proposed LRMP, current efforts to eradicate Canada, musk, and bull thistle populations would continue. This includes continuing to mechanically treat (cut, hoe and bag seed heads) musk thistle in combination with the application of the herbicide, clopyralid to treat Canada and bull thistle. The trust is also proposing to use clopyralid to eradicate oxeye daisy (Leucanthemum vulgare), and glyphosate (Roundup), Imazipic (Plateau), or the combination of both (Journey) to eradicate cheatgrass (Bromus tectorum) primarily in road cuts and other disturbed areas. The VCT is also proposing to implement performance requirements to reduce the risk of introducing new noxious weed species or further spread of existing species.

6. *No Treatment*—Areas of the preserve could remain untreated based

on the existing condition, access, available funding, priorities, and annual weather or other conditions which affect implementation.

Based on initial analysis and public comments, alternatives to the proposed action will be developed. Action alternatives will likely vary in the acres treated by wildland fire and mechanical methods but also may include other actions not currently being considered.

Purpose and Need for Action: The purpose of the proposed LRMP is to move the current forest structure towards the reference condition: the condition that, to the best of our knowledge, is resilient and sustainable under expected climate and disturbance events. Currently the condition of the preserve's forests is significantly departed from the reference condition. The riparian and grassland systems are moderately departed from the reference condition but, are at risk of being directly and indirect affected by the current condition of the forests.

The action is needed to meet the purposes and goals identified in the Valles Caldera Preservation Act (*http://www.vallescaldera.gov/about/trust/docs/PL%20106–248.pdf*), the Management Principles adopted by the VCT Board of Trustees in 2001, (*http://www.vallescaldera.gov/about/trust/docs/MgmtPrinciples.pdf*), and the collaboratively developed goals and objectives presented in the Southwest Jemez Mountains Collaborative Forest Landscape Restoration Strategy (*http://www.fs.fed.us/r3/sfe/jemez_mtn_rest/docs.htm*.).

DATES: This scoping process will culminate in the preparation of a draft EIS which will be made available for public comment. To ensure that the Trust has an opportunity to fully consider public comments in the development of the alternatives and determining the scope of the analysis and to facilitate the prompt preparation of the draft EIS, comments regarding the proposed Landscape Restoration and Management Plan, are requested on or before August 18, 2010.

To receive future notices regarding planning and decision making for the LRMP, including the times and locations of public meetings, subscribe to the Trust's user maintained mailing list. To subscribe, access our Web site, *http://www.vallescaldera.gov,* and select the "Mailing List" tab from the upper left corner of the home page. You will be asked to select one or more topics of interest. Check "Project Planning and Decisions" to receive updates on this and other planning efforts.

ADDRESSES: You may submit comments on the proposed LRMP by any of the following methods:

E-mail: comments@vallescaldera.gov; include Landscape Restoration and Management Plan as the subject.

Surface Mail: The Valles Caldera Trust, P.O. Box 359 Jemez Springs, NM 87025.

Hand Delivery/Courier: Valles Caldera Trust, 18161 State Highway 4, Jemez Springs, New Mexico.

Agency Web site: Detailed information on the existing condition of the preserve's ecosystems, the methodology used to assess the existing condition, including collaboration with the Santa Fe National Forest and others on landscape restoration across the southwestern Jemez Mountains is available on the trusts Web site, *http://www.vallescaldera.gov.* Select feedback from these pages to provide comments.

FOR FURTHER INFORMATION: Contact Marie E. Rodriguez, Natural Resource Coordinator at *mrodriguez@vallescaldera.gov,* or 505/661–3333.

SUPPLEMENTARY INFORMATION: The Valles Caldera National Preserve (VCNP) is located in north-central New Mexico in the Jemez Mountains, primarily in Sandoval County with a small inclusion in Rio Arriba County. The VCNP was acquired by the Federal Government in 2000 with the signing of the Valles Caldera Preservation Act (Pub. L. 106–248). Besides acquisition of the land, the law established the Valles Caldera Trust, a wholly owned government corporation and non-profit 501(c) 1 organization to manage the Preserve. Management of the VCNP is considered an experiment in public land management. The purposes and goals from Public Law 106–248 that are being specifically addressed in the proposed LRMP include: the protection and preservation of the preserve's natural and cultural resources and values, the multiple use and sustained yield of timber and forage resources, enhancing the objectives on surrounding National Forest System land, and providing benefits to local communities and businesses.

Since 2002, the Trust has been gathering data and information in order to comprehensively assess the existing condition of preserve's resources. This effort has yielded a 6-meter resolution map of the preserve's ecosystems, a delineation of individual stands as defined by structure and composition, a preserve-wide stratified sampling of the preserve's forests which inventoried and permanently located nearly 600 forest field plots. Other inventory and monitoring activities has included the establishment of 41 permanent monitoring sites in the preserve grasslands and riparian areas, 2 sites that measure forest processes (carbon and water cycling), 5 climate stations, and stations that measure bother water quality and quantity as various locations. The trust has also completed inventories to identify the flora and fauna species represented on the preserve, threatened and endangered wildlife species and habitats, and studies to understand the population and relationships of key wildlife species. These inventories and studies have been undertaken by the trust in collaboration with other Federal and well as state agencies, as well as many universities, non-government organizations, and volunteers. This comprehensive baseline data provides the basis for planning and implementing a LRMP supported by a systematic approach to adaptive management as required in the NEPA procedures of the trust.

Beginning in December 2008, the Valles Caldera Trust, Santa Fe National Forest, New Mexico Forest and Watershed Restoration Institute, and The Nature Conservancy began meeting to strategize a collaborative effort to manage and restore over 200,000 acres in the upper Jemez River Watershed. Through this collaborative effort we were able to work across boundaries, sharing data and specialists in support of assessing the existing conditions. Further efficiencies can be gained through collaboratively implementing management actions as well as monitoring and evaluating activities across boundaries.

The restoration partners worked together to expand their collaboration to federal, state and local agencies, non-government organizations, and individual citizens interested in forest restoration and management in the Jemez Mountains. A three day workshop was held February 9–11, 2010 in Santa Fe, New Mexico to review and affirm the current assessments and develop a strategy to collaboratively restore the ecosystems within the 210,000 acre landscape including all of the VCNP. The strategy included goals and objectives for restoration, types of restoration treatments that should be considered, the priority of treatments, as well as a strategy for monitoring and evaluating the effectiveness and effects of treatments. This strategy was submitted for funding under the Collaborative Forest Landscape Restoration Program. Information on that program as well as the strategy

submitted and all supporting information are available on the Santa Fe National Forest's Web site, *http://www.fs.fed.us/r3/sfe/jemez_mtn_rest/docs.htm.* The proposed LRMP was based upon this collaborative strategy.

Responsible Official: Dennis Trujillo, Preserve Manager, is designated as the Responsible Official and will make the implementing decision oversee planning and implementation of the proposed LRMP.

Dated: July 8, 2010.

Gary Bratcher,

Executive Director.

[FR Doc. 2010–17371 Filed 7–15–10; 8:45 am]

BILLING CODE 3410–H6–P

DEPARTMENT OF VETERANS AFFAIRS

VBA/VHA Musculoskeletal Forum: Improving VA's Disability Evaluation Criteria

AGENCY: Department of Veterans Affairs.

ACTION: Notice of meeting.

SUMMARY: The Department of Veterans Affairs (VA) will hold the Veterans Benefits Administration (VBA)/Veterans Health Administration (VHA) Musculoskeletal Forum: Improving VA's Disability Criteria to capture public comment and current medical science information from presentations made by subject matter experts. VA plans to use this information to update the sections of VA's Schedule for Rating Disabilities (VASRD) that pertain to diseases and injuries of the musculoskeletal system. See 38 CFR 4.40–4.73. Specifically, diagnostic code descriptors and evaluation criteria will be discussed. Contingent upon available capacity and time, individuals wishing to make oral statements will be accommodated on a first-come, first-served basis.

DATES: The meeting will be held on Tuesday, August 10, 2010, from 7:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Capital Hilton, located at 1001 16th Street, NW., in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Tuttle, VASRD Coordinator, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Anyone wishing to attend the meeting or seeking additional information may also contact Mr. Tuttle at (202) 461–9037 or *Bradley.Tuttle2@va.gov,* or Thomas Kniffen at (202) 461–9725 or *Thomas.Kniffen@va.gov.*

Dated: July 8, 2010.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2010–17320 Filed 7–15–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
July 16, 2010

Part II

Department of Transportation

14 CFR Parts 217, 234, 241, et al.
Submitting Airline Data via the Internet; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 217, 234, 241, 248, 250, 291, 298, and 385

[Docket No. OST 2006–26053]

RIN 2139–AA11

Submitting Airline Data via the Internet

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation requires U.S. air carriers to submit their recurrent financial, traffic, operational and consumer data reports electronically via the Internet using the comma separated value (CSV) file format or a PDF file for reports that are not entered into a database such as signed certifications, transmittal letters, and annual reports. This rule will enhance security of the data submissions, eliminate air carriers' fax and mailing costs, eliminate the need for the Department to manually enter hardcopy data submissions, and provide reporting air carriers with immediate notification and a receipt from the Department that the report was received. This action is taken on the Department's initiative.

DATES: *Effective Date:* October 1, 2010.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Bureau of Transportation Statistics, Research and Innovative Technology Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

A copy of the proposed rule, copies of the public comments, and an electronic copy of this final rule may be downloaded at *http://www.regulations.gov*, by searching docket OST 2006–26053.

Background

Receiving and processing aviation data are essential business processes for the Department of Transportation (DOT). To increase data collection and processing efficiencies and reduce the burden and costs of the filing process for both the air carriers and the government, all recurrent aviation data, that are collected by the Research and Innovative Technology Administration's (RITA's) Bureau of Transportation Statistics (BTS), must be submitted electronically (e-filing). The new e-filing system is designed to be user friendly. E-filing via the Internet is more secure than submitting files as attachments to e-mails. Carrier-designated personnel will be given a user name and password that will enable them to access the BTS e-filing system and meet their reporting obligations by either attaching a comma separated value or PDF file. To assist U.S. and foreign air carriers that may not be familiar with the CSV file format, BTS is providing on its Web site downloadable Excel forms that the air carriers may complete and save in the CSV format to meet the filing requirements. A significant advantage of e-filing is that it does not have the size limit constraints encountered by attachments to e-mail submissions. E-filing provides the submitters with a confirmation acknowledgement and a receipt that the filing has been received by BTS. E-filing will eliminate the need for BTS to manually enter hardcopy records into its various databases. E-filing also reduces the possibility of human error in manual data entry.

Comments

The Department issued a notice of proposed rulemaking to require airlines to submit their recurrent financial, traffic, operational, and consumer reports to BTS via the Internet on December 20, 2006, (71 FR 76226). Comments were received from Air Transport Association of America, Inc. (ATA); United Parcel Service, Co. (UPS); American Airlines, Inc.; Eugene M. Schulman; Miller, Hamilton, Snider & Odom, LLC; and Ameristar Air Cargo. On January 12, 2007, following a telephonic inquiry by Ruel Lacanienta, a senior analyst with American Airlines, American Airlines sent its comments to RITA in an e-mail submission. RITA placed the American Airlines comments in the docket.

The comments, with the exception of Miller, Hamilton, Snider & Odom, fully support the Department's proposal to collect aviation data via the Internet.

ATA believes that: (1) BTS should be able to release aviation data to the public on a timelier schedule by eliminating the need to manually enter data. (2) Since the Department has proposed a phased e-filing requirement for the various data collections, carriers should be given 90-days advance notice with the relevant technical and process details to comply with the filing deadline. (3) The Department should incorporate a data submission grace period as new data sets become subject to e-filing in case of unforeseen problems. (4) Respondents should receive immediate confirmation of data transmittal success or failure. (5) Confidentiality in the data transfer process should be maintained and the Department should ensure its ability to hold certain data elements confidential, as is done today when specific types of data are filed with petitions for confidential treatment. (6) The Department should hold a stakeholder meeting before the new requirements are implemented.

The Department is in agreement with most of ATA's comments. BTS anticipates a reduction in the time to process the quarterly financial data. However, the reduction in the processing time may not be immediate. We anticipate that the reduction should be realized within three reporting cycles. International T–100 and T–100(f) traffic data are restricted from public release for a 6-month period; therefore, while e-filing will reduce processing time, e-filing will not advance the public release of international traffic data. U.S. air carrier traffic data between two foreign points are restricted from public release for three years, so e-filing will not impact the release of these data. We do not anticipate reducing the lag time for the release of on-time data, which are already released on an accelerated basis.

We agree with the ATA request for a 90-day lead time for implementation of the rules requirements for e-filing. The reporting elements are not changing and the Department will only be requiring the use of a comma separated values (CSV) or portable document format (PDF) file format in submitting the same data elements that are now being reported. CSV is a delimited data format that has fields/columns separated by the comma character and records/rows separated by new lines. The Department believes that this change in reporting does not represent a significant burden for the affected air carriers. The 90-day lead time will allow carriers to test their new data transmission procedures.

The ATA commented that there could be "unforeseen problems" with the e-filing system and asked DOT incorporate a grace period for each filing deadline. Section 385.19(f), delegates the Director of the Office of Airline Information (OAI), BTS, authority to grant air carriers extensions of the due dates for filing required aviation reports. In response to the ATA comment, the Department is amending part 385.19(f) to include foreign air carriers to that delegated authority so that foreign air carriers may also file a request for an extension. This will help assure that the administrative process provides all carriers sufficient lead time to convert to the CSV format. If an air carrier or

foreign air carrier encounters unforeseen problems that will delay the implementation of e-filing, an affected carrier may submit a request for an extension of the scheduled due date. As a reminder, the regulations require that requests for filing extensions must be submitted at least 3 days in advance of the report's due date.

As to ATA's comment that respondents should receive immediate confirmation of data transmittal success or failure, the e-filing system is designed so that the submitter of reports will receive an immediate confirmation that the reports were received. It should be noted that carriers that submit an "acceptable" report may later be directed to revise the report due to errors identified in an in-depth data quality review performed by the BTS data administrators.

In its comments, ATA noted that confidentiality in the data process should be maintained and the Department should be able to ensure that certain data elements remain confidential, as is done today.

The Department agrees with ATA that the current treatment of confidential data should be retained in the new system for transmitting data. Also, UPS requests clarification of the treatment of confidential information including the airframe and aircraft engine cost data reported on Form 41, Schedules B–43 *Inventory of Airframes and Aircraft Engines* and B–7 *Airframes and Aircraft Engines Acquisitions and Retirements.*

The e-filing system will not adversely affect the public withholding of confidential data. It will, however, result in a burden reduction for air carriers requesting confidential treatment, by relieving them of the requirement to submit a redacted version of their data submission. Under the e-filing system, the party requesting confidential treatment will submit a formal motion for confidential treatment to both DOT Dockets and the appropriate DOT Group E-mail Address for the affected data base. These e-mails will alert the public, through Dockets, that confidential treatment has been requested and the data base administrator that special handling of the data submission is required. Motions for confidential treatment must continue to adhere to the requirements found in DOT's Rules of Practice in Proceedings, which are contained in Title 14 of the Code of Federal Regulations Part 302.12, Objections to public disclosure of information. After submitting the motion for confidential treatment, the air carrier will transmit a complete e-file data submission that contains both confidential and non-confidential data. BTS will then validate the entire file and withhold the designated confidential data from public release pending a decision from DOT on the carrier's motion.

The E-mail Addresses for contacting the data base administrators are:

298c.Support@dot.gov	(PART 298—Form 298–C Financial reports).
F41Financials.Support@dot.gov	(PART 241—Form 41 Financial reports).
ODsurvey.Support@dot.gov	(PART 241—Passenger Origin & Destination Survey reports).
OnTime.Support@dot.gov	(PART 234—ASQP 'On-Time' and 'Mishandled Baggage' reports).
Form251.Support@dot.gov	(PART 251—Passengers Denied Confirmed Space—denied boarding—reports).
T100f.Support@dot.gov	(PART 217—Form 41 Schedule T100(f) Foreign Air Carrier Traffic reports).
T100.AK.Support@dot.gov	(Alaskan Air Carrier WEEKLY T100 reports).
T100.Support@dot.gov	(PART 241—Form T100 U.S. Air Carrier Traffic reports).
Form291.Support@dot.gov	(PART 291—Statement of Operations—Section 41103 Operations reports).
Part248Audit.Support@dot.gov	(PART 248—Annual Audit reports).
OAI.eSubmit.Support@dot.gov	(To request a user account and other general inquiries).

The Department agrees with ATA's comment as to the value of holding a stakeholders meeting prior to the initial submission of data. We will schedule a meeting for reporting carriers at the DOT Headquarters Building and announce the meeting in the **Federal Register**. An E-filing User Guide and other instructional materials will be distributed at the meeting and the material also will be available on the BTS Web site at: *http://www.bts.gov/programs/airline_information/efiling.*

American Airlines supports the Department's e-filing initiative and requests that the Department offer the secure file transfer protocol (SFTP) for delivery of large files to reduce the manual intervention required for large files. While this mode of delivery is not currently available due to higher workload priorities and limited staff resources, BTS does plan to implement the SFTP mode of delivery in the future.

The Director of Operations at Ameristar Air Cargo commented that e-filing is a long overdue convenience for the airlines.

Lester Bridgeman of the law firm Miller, Hamilton, Snider & Odom commented that the notice of proposed rulemaking (NPRM) includes no specific e-filing formats for foreign air carriers. Mr. Bridgeman has concerns that the NPRM may not be in compliance with 5 U.S.C. sec. 553(b)(3) which requires a NPRM to provide either the term or the substance of the proposed rule or a description of the subjects and issues involved.

DOT believes it met the requirements of 5 U.S.C. 553(b)(3). In the NPRM, the Department proposed two options for foreign air carriers to submit their T–100(f) reports via the Internet. The carriers could either complete the schedule on a Web-based form, or they could attach a file when they log into the new system. The substance of the NPRM was that carriers would be required to submit their reports to DOT through a secured Internet site. There is no change to the underlying reporting elements.

In the final rule, BTS decided that foreign carriers will be required to submit their reports through a secured Internet site using a comma separated value (CSV) file format. To assist foreign air carriers that may be unfamiliar with CSV files, BTS is placing a downloadable spreadsheet with the required data elements for the Schedule T–100(f) report on the RITA Web site along with documentation on the required file format and file naming convention. Foreign carriers may populate the spreadsheet and save it in the CSV format, and attach the saved file for e-filing.

The schedule for implementing e-filing is:

October 1, 2010

(1) Part 234 Airline Service Quality Performance (ASQP) reports (both on-time data and mishandled baggage reports—due November 15, 2010.

(2) Part 217 T–100(f)—Foreign Air Carrier Traffic Data by Nonstop Segment and on-Flight Market—due November 30, 2010.

(3) Part 241 T–100—U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market—due November 30, 2010.

(4) Part 241 Passenger Origin-Destination Survey Report—due February 15, 2011.

(5) Part 241 Form 41 schedules:

P–12(a) Fuel Consumption by Type of Service and Entity—due November 20, 2010.
P–1(a) Interim Operations Report—due November 30, 2010.
P–10 Employment Statistics by Labor Category—due February 20, 2011.
A Certification (PDF file)—due February 10, 2011.
B–1 and B–1.1 Balance Sheet—due February 10, 2011.
P–1.1 and P–1.2 Statement of Operations—due February 10, 2011.
P–2 Notes to BTS Form 41 Report (PDF file)—due February 10, 2011.
P–5.1 and P–5.2 Aircraft Operating Expenses—due February 10, 2011.
P–6 Operating Expenses by Objective Groupings—due February 10, 2011.
P–7 Operating Expenses by Functional Groupings—due February 10, 2011.
B–7 Airframe and Aircraft Engine Acquisitions and Retirements—due February 10, 2011.
B–12 Statement of Changes in Financial Position (PDF file)—due February 10, 2011.
T–8 Report of All-Cargo Operations—due March 30, 2011.
B–43 Inventory of Airframes and Aircraft Engines—due March 30, 2011.

(6) Part/Form 251—Report of Passengers Denied Confirmed Space—due January 30, 2011.

(7) Part/Form 291—A Statement of Operations for Section 41103 Operations—due February 10, 2011.

January 1, 2011

(1) Part/Form 248—Audit Reports—the earliest carriers are required to report via e-filing is February 15, 2011.

(2) Part 298 Form 298–C, Schedules F–1—Report of Financial Data, and F–2—Report of Aircraft Operating Expenses and Related Statistics—May 10, 2011.

Part 248 Audit Reports are due at BTS within 15 days after the due date of the appropriate periodic BTS Form 41 report filed for the 12-month period covered by the audit report or the date the accountant submits an audit report to the air carrier, whichever is later.

Carriers may volunteer to start e-filing before the dates listed above by contacting the e-mail address for the data base administrator. BTS welcomes carriers to submit a trial version of e-filing before the initial due date for required e-filing submission. In order to retain consistent data, carriers will submit their reports both by e-filing and their current mode of delivery until one cycle of the e-filed report is completed successfully. Once completed successfully, e-filing will be the only accepted means of delivery.

Selected Alaskan carriers are currently participating in an e-filing pilot program for submitting their T–100 traffic data. These carriers are allowed to logon to the RITA Web site and electronically submit T–100 market and/or segment data. The Web application uploads the files to an isolated secure location on a Pilot Server, logs the receipt, and sends an acknowledgement to the submitter.

Depending on the form, an air carrier will attach either a CSV or PDF file to meet its reporting obligation. For "free form" reports, such as the BTS Schedule B–12, Statement of changes in Financial Position, and P–2 Notes to BTS Form 41, carriers will attach a PDF file to meet their reporting obligations. The signed certifications for Forms 41 and 298–C, the On-time Data and Mishandled Baggage Reports certification and transmittal letters, and the transmittal letter for the Passenger Origin-Destination Survey will also be delivered as PDF files.

An Accounting and Reporting Directive that specifies the required file format is being published with the final rule.

The e-filing system performs user authentication, validates filer information and checks the file name extension for the format of the data to be uploaded, uploads the files to an isolated secure location, logs the receipt of the data report, and transmits an acknowledgement of receipt to the sender. The URL of the BTS E–Filing Center is *http://eSubmit.rita.dot.gov.* The URL will automatically redirect the user to a secure portal (http).

In updating the regulatory language in Appendix A to SEC. 19–7—INSTRUCTIONS TO AIR CARRIERS FOR COLLECTING AND REPORTING PASSENGER ORIGIN-DESTINATION SURVEY STATISTICS, the Department is removing the language in the Appendix which referred to "magnetic tapes" and ADP (automatic data processing) instructions. Technology advances have rendered this regulatory language obsolete and thus, the Department is removing the obsolete language. In addition, in updating the regulatory language in 14 CFR Part 241.25, the Department is removing the portion of the Appendix that contains instructions pertaining to magnetic tape specifications, record layouts for microcomputer diskettes and mainframe reporting. Technology advances have rendered this regulatory language obsolete and thus, the Department is removing the obsolete language. The Department is moving the two remaining paragraphs, the discussion of reporting concept (paragraph l) and joint-service operations (paragraph i), to 14 CFR 241.19–2.

Statutory and Executive Order Reviews

A. Executive Order No. 12866: Regulatory and Planning Review

Under Executive Order No. 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed action is not a "significant regulatory action" under Executive Order No. 12866 and was not reviewed by OMB.

B. Paperwork Reduction Act

This action does not add any additional reporting burden to air carriers, as the reported elements are unchanged. In fact, this rule will lessen the compliance costs for Respondents by reducing Respondents' mailing costs. In addition, this action will enhance data security and save government costs by eliminating the need for the BTS to manually enter hardcopy data submissions. Finally, this rule will provide air carriers with immediate submission notification and a receipt that the BTS has received the data.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

I certify that no small entity will experience a significant adverse economic impact from this rule.

D. Executive Order 12612

This rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism") and BTS has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Trade Agreements Act

This act prohibits agencies from setting standards that create unnecessary obstacles to foreign commerce of the United States. The department has taken special steps to ease the transition for foreign air carriers to e-submission. BTS is providing a Web application which the carrier may use to save data in the CSV format for e-submission. E-submission should reduce air carrier compliance costs.

F. Unfunded Mandates Reform Act of 1995

This Act requires agencies to prepare written assessment of costs, benefits, and other effects of a proposed rule that include a Federal mandate likely to result in the expenditure by State, local, or Tribal government. This rule imposes no expenditures on State, local, or Tribal government.

G. Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda each April and October. The RIN Number 2139–AA11 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Cost/Benefit Analysis

The benefits of e-filing primarily lie in business process improvement, data quality improvement, strengthened security, and automatic notification to late filers. As the system rolls out, the following savings are anticipated:

Air carriers that use a delivery service to deliver the required reports to BTS will save the cost of that service. BTS estimates the industry savings at $1,095 annually (100 submissions at an average cost of $10.95 per submission). Most carriers will use their Web browsers to download their reports to BTS, thus, reducing work-time by eliminating the need to type hard copy reports and address and package the submission.

RITA/BTS savings are estimated at one fourth of a full-time employee (FTE) for a data administrator or approximately $65,000 (GS 11 salary and operations cost) and an additional $165,000 savings in data processing and data administration manually keying data.

Qualitatively, the e-filing project aims to lay the foundation for continuous data quality management through process improvements utilizing automatic editing of the electronically submitted data. Other benefits of the new system are: (1) Filings will be performed electronically using an e-filing portal. (2) There will be a standardized CVS file format. (3) Carriers will receive an automated receipt when files are submitted. (4) BTS will reduce the time needed to load carrier submissions into data bases. (5) There will be an automatic log and submission record management system, including e-mail capability and a Web application to display the submission status, track the submitted data (including originals and revisions), and log in major events in processing. (6) Automatic e-mails will alert air carriers when they have a delinquent report.

List of Subjects in 14 CFR Parts 217, 241, 250, 291, and 298

Administrative practices and procedures, Air carriers, Air taxis, Consumer Protection, Freight, Reporting and recordkeeping requirements, and Uniform system of accounts.

■ Accordingly, the Department of Transportation amends 14 CFR Chapter II as follows:

PART 217—[AMENDED]

■ 1. The authority citation for part 217 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 41102, 41301, 41708, and 41709.

■ 2. In § 217.3, paragraph (e) is revised to read as follows:

§ 217.3 Reporting requirements.

* * * * *

(e) Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

■ 3. In § 217.10:

■ a. Paragraphs (a) and (b) are revised;

■ b. Paragraph (a)(3) of the appendix is revised;

■ c. Paragraph (a)(7) of the appendix is removed and reserved;

■ d. Paragraph (e) introductory text of the appendix is revised; and

■ e. Paragraphs (f) and (j) are removed and reserved.

The revisions read as follows:

§ 217.10 Instructions.

(a) Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

(b) The detailed instructions for preparing Schedule T–100(f) are contained in the appendix to this section.

Appendix to Section 217.10 of 14 CFR Part 217—Instructions to Foreign Air Carriers for Reporting Traffic Data on Form 41 Schedule T–100(F)

(a) * * *

(3) Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

* * * * *

(e) Preparation of Schedule T–100 (f):

* * * * *

PART 241—[AMENDED]

■ 4. The authority citation for part 241 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 41101, 41708, and 41709.

■ 5. Section 1–8 is revised to read as follows:

Sec. 1–8 Address for reports and correspondence.

Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

■ 6. Section 19–1 (c) is revised to read as follows:

Sec. 19–1 Applicability.

* * * * *

(c) Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

* * * * *

■ 7. Section 19–2 is amended by adding paragraphs (d), (e), and (f) to read as follows:

Sec. 19–2 Maintenance of data.

* * * * *

(d) Schedule T–100 collects summarized flight stage data and on-

flight market data. All traffic statistics shall be compiled in terms of each revenue flight stage as actually performed. The detail T–100 data shall be maintained in a manner permitting monthly summarization and organization into two basic groupings: The nonstop segment information that must be summarized by equipment type, within class of service, within pair-of-points, without regard to individual flight numbers. The second grouping requires that the enplanement/deplanement information be broken out into separate units called "on-flight market records." These records must be summarized by class of service, within pair-of-points, without regard for equipment type or flight number.

(e) The Department may authorize joint-service operations between two direct air carriers. Examples of these joint-services are blocked-space agreements, part-charter agreements, code-share agreements, wet-lease agreements, and other similar arrangements. Joint services operations are reported by the air carrier in operational control of the aircraft. The traffic moving under these agreements is reported on Schedule T–100 the same way as any other traffic on the aircraft.

(f) Any questions regarding T–100 should be e-mailed to *T100.Support@dot.gov*.

■ 8. Section 19–7 is amended by:

■ a. Adding a new sentence to the end of paragraph (a);

■ b. Revising paragraph (b);

■ c. Revising appendix A to section 19–7 introductory text;

■ d. Revising paragraph C, removing and reserving paragraph D, and revising paragraph E of section IV of Appendix A to section 19–7;

■ e. Revising paragraph B of section VI of Appendix A to section 19–7; and

■ f. Removing and reserving sections IX and XI of Appendix A to section 19–7.

The addition and revisions read as follows:

Sec. 19–7 Passenger origin-destination survey.

(a) * * * Copies of these *Instructions* and *Directives* are available on the BTS Web page at (*http://www.bts.gov/programs/airline_information/*).

(b) Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

* * * * *

Appendix A to § 19–7—Instructions to Air Carriers for Collecting and Reporting Passenger Origin-Destination Survey Statistics

All questions, comments, extension and waiver requests should be e-mailed to *ODsurvey.Support@dot.gov*.

* * * * *

IV. Submission of Reports

* * * * *

C. *Format of the Report.* Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

D. [Reserved]

E. All reports shall be filed with the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

* * * * *

VI. Summarization of Recorded Data

* * * * *

B. *Rules for Summarization.* Sort the recorded entries into sequence by the entire record (excluding the passenger field) *i.e.,* by origin, complete routing (including fare-basis codes), tickets destination, and dollar value of ticket. *All identical records are then to be combined into one summary record.* The number of passengers on the summary record is to be the sum of the passenger amounts of all the individual records combined. Passengers are only summarized where records are identical in all respects except in the number of passengers including dollar value of ticket. *Note:* Do not summarize dollars over identical records. This summarization is to include the entries from group tickets, but only after the entries for *group tickets with 11 or more passengers have been summarized and divided by 10,* as stated in Section V.D.(2)(d).

* * * * *

Section 21 [Amended]

■ 9. In section 21, paragraphs (e) and (f) are removed and reserved.

■ 10. Section 23, schedule B–12, is amended by adding paragraph (i) to read as follows:

Section 23 Certification and Balance Sheet Elements

* * * * *

Schedule B–12—Statement of Cash Flows

* * * * *

(i) Carriers shall submit Schedule B–12 in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

* * * * *

■ 11. Section 24, Schedule P–2, paragraph (a) is revised to read as follows:

Section 24 Profit and Loss Elements

* * * * *

Schedule P–2—Notes to BTS Form 41 Report

(a) This schedule shall be filed quarterly by all Group II and Group III air carriers and Group I air carriers with annual revenues of $20 million or more. Carriers shall submit Schedule P–2 in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

* * * * *

Section 25 [Amended]

■ 12. In section 25 remove and reserve paragraph (b), remove Schedule T–100(f), and remove Appendix to Section 241.25 of CFR Part 241—Instructions To U.S. Air Carriers For Reporting Traffic And Capacity Data On Form 41 Schedule T–100.

PART 248—[AMENDED]

■ 13. The authority citation for part 248 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 41102, 41708, and 41709.

■ 14. Amend § 248.2 by adding a new paragraph (c) to read as follows:

§ 248.2 Filing of audit reports.

* * * * *

(c) Carriers shall submit their audit reports or their statement that no audit was performed in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

* * * * *

PART 250—[AMENDED]

■ 15. The authority citation for part 250 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 41102, 41301, 41708, 41709, and 41712.

■ 16. Amend § 250.10 by designating the existing test as paragraph (a) and adding paragraph (b) as to read follows:

§ 250.10 Report of passengers denied confirmed space.

* * * * *

(b) Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airlines Information.

* * * * *

PART 291—[AMENDED]

■ 17. The authority citation for part 291 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 41103, 41708 and 41709.

■ 18. In § 291.42, revise paragraph (a)(2) to read as follows:

§ 291.42 Section 41103 financial and traffic reporting.

(a) * * *

(2) Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

* * * * *

■ 19. In § 291.45, revise paragraph (e)(2) to read as follows:

§ 291.45 BTS Schedule T–100, U.S. Air Carrier Traffic and Capacity by Nonstop Segment and On-Flight Market.

* * * * *

(e) * * *

(2) *Carrier, Carrier entity code.* Each air carrier shall report its name and entity code (a five digit code assigned by BTS that identifies both the air carrier and its entity) for its particular operations. The Office of Airline Information (OAI) will assign or confirm codes upon request. Such requests should be transmitted by e-mail to *T100.Support@DOT.gov.*

* * * * *

PART 298—[AMENDED]

■ 20. The authority citation for part 298 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 41102, 41708, and 41709.

■ 21. In § 298.60, paragraph (c) is revised and paragraphs (d) and (e) are removed.

The revision reads as follows:

§ 298.60 General reporting instructions.

* * * * *

(c) Reports required by this section shall be submitted to the Bureau of Transportation Statistics in a format specified in accounting and reporting directives issued by the Bureau of Transportation Statistics' Director of Airline Information.

§ 298.61 [Amended]

■ 22. In § 298.61, remove Appendix to § 298.61—Instructions to U.S. Air Carriers for Reporting Traffic and Capacity Data on Schedule T–100.

PART 385—[AMENDED]

■ 23. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 329 and chapters 40101, 41101, 41301, and 41701.

■ 24. In § 385.19, paragraph (f) is revised to read as follows:

§ 385.19 Authority of the Director, Office of Aviation Information, Bureau of Transportation Statistics.

* * * * *

(f) Grant or deny a request by an air carrier or foreign air carrier for an extension of a filing date for reports required by subchapters A and D of this chapter.

* * * * *

Issued in Washington, DC, on July 1, 2010.

Peter H. Appel,

Administrator, Research and Innovative Technology Administration.

Note: The following appendix will not appear in the Code of Federal Regulations.

DEPARTMENT OF TRANSPORTATION
BUREAU OF TRANSPORTATION STATISTICS
OFFICE OF AIRLINE INFORMATION
ACCOUNTING AND REPORTING DIRECTIVE
RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION

No. *293* Issue Date: *6–23–2010*
Effective Date: *10–1–2010*

1. E-filing

This Accounting and Reporting Directive gives detailed instructions for the file format for submitting recurrent reports via a secured Web portal using a comma separated vales (CSV) of the already required data or a PDF file. CSV is a *delimited* data format that has *fields/columns* separated by the *comma character* and *records/rows* separated by *new lines.*

PART 241—Form T100

Traffic and Capacity Statistics Segment Report

REQUIREMENTS

RECORD DESCRIPTION: T100—Traffic and Capacity Statistics for Segment Report

Field description	Data type	Length	Comments	Sample data
Data Type	Character	1	One letter code (S)	S
Entity code	Character	5	Five character code assigned by DOT	0A050
Year of Data	Numeric	4	Year (CCYY)	2010
Month of Data	Numeric	2	Month (MM)	03
Origin Airport	Character	3	Three letter OAG airport code	BWI
Destination Airport	Character	3	Three letter OAG airport code	LAS
Service Class	Character	1	One letter service class code: F, G, L, N, P, R, H	F
Segment Aircraft Type	Numeric	3	DOT assigned three numeric aircraft type code	698
Segment Cabin Configuration	Numeric	1	One numeric aircraft cabin configuration code: 1,2,3,4	1
Segment Departures Performed	Numeric	5	Up to five numeric departures performed	25
Segment Available Capacity	Numeric	10	Up to ten numeric, reported in pounds	125000000
Segment Available Seats	Numeric	7	Up to seven numeric, aircraft seating capacity	1250
Segment Passengers Transported	Numeric	7	Up to seven numeric, reported transported passengers	922
Segment Freight Transported	Numeric	10	Up to ten numeric, freight reported in pounds	25338
Segment Mail Transported	Numeric	10	Up to ten numeric, mail reported in pounds	989
Segment Scheduled Departures	Numeric	5	Up to five numeric scheduled departures	23
Segment Ramp to Ramp Minutes	Numeric	10	Up to ten numeric, reported in minutes	789
Segment Airborne Minutes	Numeric	10	Up to ten numeric, reported in minutes	685

RECORD FORMAT:

The T100—Traffic and Capacity Statistics for Segment data reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format

is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003–T100SEG.csv

Sample Record Format:

S,0A050,2010,03,BWI,LAS,F,698,1,25,12500000,1250,922,25338,989,23,789,685

PART 217—T100(f) Certification

REQUIREMENTS

RECORD DESCRIPTION/INSTRUCTIONS: T100(f) Certification

A certification statement is required identifying an appropriate official of the reporting carrier. The certification statement will read:

Carrier Name:
Address:
Homeland:
(Homeland is the name of the country under the laws of which air carrier organized.)
Carrier Code:
Report Date (Year/Month):

I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14CFR Part 217. I affirm that, to the best of my knowledge and belief, this is a true, correct and complete report.

Date:

Signature:

Name (Please Print or Type):
Title:
Telephone Number:

Name of Person Who Prepared Report:
Telephone Number:
E-mail Address:

RECORD FORMAT:

Once signed, the T100(f) Certification must be published as an electronic "portable document format" file format, for uploading to the eSubmit application.

The portable document format file MUST BE indicated when naming the file, by using the letters [PDF] or [pdf] following the file name, as the file name extension. You must have Adobe Reader software downloaded on your computer in order to "save as/print" your document as a "pdf" file.

While the file name is flexible and may be determined by the individual air carrier, the portable document format (pdf) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

Suggested file name: XXX201003–217T100fCert.pdf

PART 217—T100 (f) Foreign Air Carrier Traffic Data

REQUIREMENTS

RECORD DESCRIPTION: T100 (f) Foreign Air Carrier Traffic Data

Field description	Data type	Length	Comments	Sample data
Carrier Code	Character	3	2 or 3 digit Carrier Code	BA
Year and Month of Data	Numeric	6	Format: YYYYMM YYYY = century and year; Format: MM: 01 = January 12 = December	200612
Origin Airport	Character	3	The three letter OAG code identifying the airport.	IAH
Destination Airport	Character	3	The three letter OAG code identifying the airport.	LGW
Service Class	Character	1	One letter service class code: F, G, L, N, P, R, H	F
Segment Aircraft Type and Cabin Configuration	Number	4	The 1st 3 characters identify the type of aircraft used on the non-stop segment. The 4th character is used to identify the type of cabin configuration: 1—Passenger 2—Cargo 3—Passenger/Cargo	6271
Segment Departures Performed	Number	Up to 5	Up to five numeric Revenue departures performed	49
Segment Passengers	Number	Up to 10	Up to seven numeric, reported transported passengers	6707
Segment Freight	Number	Up to 10	Up to ten numeric, freight reported in kilos	521842
Segment Available Seats	Number	Up to 7	Up to seven numeric, aircraft seating capacity	10976
Segment Available Capacity	Number	Up to 10	Up to ten numeric, reported in kilos	1903195
Market Passengers	Number	Up to 10	Up to seven numbers Enplaned passengers	6707
Market Freight	Number	Up to 10	Up to ten numbers, reported in kilos	521842

RECORD FORMAT:

The T100(f) Foreign Air Carrier Traffic Data reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XXX201003–T100F.csv

Sample Record Format:

BA,200612,IAH,DTW,F,6261,30,1647,17137,5670,772500,0,0

BA,200612,IAH,LGW,F,6271,49,6707,521842,10976,1903195,6707,521842

BA,200612,IAH,LHR,F,0,0,0,0,0,0,1643,12935

PART 241—T100—Alaskan Air Carrier Weekly Traffic and Capacity Data Report

REQUIREMENTS

RECORD DESCRIPTION: T100—Alaskan Air Carrier Weekly Segment and Market Report

Field description	Data type	Length	Comments	Sample data
Data Type	Character	1	One letter code (S)	S
Entity code	Character	5	Five character code assigned by DOT	06000
Year of Data	Numeric	4	Year (CCYY)	2010
Month of Data	Numeric	2	Month (MM)	05
Day of Service	Numeric	2	Day of month the service was performed—for use by USPS Only	27
Origin Airport	Character	3	Three letter OAG airport code	FAI

Field description	Data type	Length	Comments	Sample data
Destination Airport	Character	3	Three letter OAG airport code	GAL
Service Class	Character	1	One letter service class code: F, G, L, N, P, R	F
Segment Aircraft Type	Numeric	3	DOT assigned three numeric aircraft type code	405
Segment Cabin Configuration	Numeric	1	One numeric aircraft cabin configuration code: 1, 2, 3, 4	3
Segment Departures Performed	Numeric	5	Up to five numeric departures performed	1
Segment Available Capacity	Numeric	10	Up to ten numeric, reported in pounds	3793
Segment Available Seats	Numeric	7	Up to seven numeric, aircraft seating capacity	16
Segment Passengers Transported	Numeric	7	Up to seven numeric, reported transported passengers	3
Segment Freight Transported	Numeric	10	Up to ten numeric, freight reported in pounds	239
Segment Mail Transported	Numeric	10	Up to ten numeric, mail reported in pounds	1106
Segment Scheduled Departures	Numeric	5	Scheduled departures	1
Segment Ramp-to-Ramp time	Numeric	10	Up to ten numeric, reported in minutes	72
Segment Airborne time in minutes	Numeric	10	Up to ten numeric, reported in minutes	60
DOT Certification	Numeric	3	Values are: 135, 121—for use by USPS Only	121

RECORD FORMAT:

The T100—Alaskan Air Carrier Weekly Segment Report reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX20100528–T100AKSEG.csv

Sample Record Format:

S,06000,2010,05,27,FAI,GAL,F,405,3,1,3793,16,3,239,1106,1,72,60,121

PART 241—T100–Alaskan Air Carrier Weekly Market Report

REQUIREMENTS

RECORD DESCRIPTION: T100—Alaskan Air Carrier Traffic and Capacity Data—On-Flight Market

Field description	Data type	Length	Comments	Sample data
Data Type	Character	1	One letter code (M)	M
Entity code	Character	5	Five character code assigned by DOT	06000
Year of Data	Numeric	4	Year (CCYY)	2010
Month of Data	Numeric	2	Month (MM)	05
Day of Service	Numeric	2	Day of month the service was performed—for use by USPS Only	27
Origin Airport	Character	3	Three letter OAG airport code	FAI
Destination Airport	Character	3	Three letter OAG airport code	GAL
Service Class	Character	1	One letter service class code: F, G, L, N, P, R	F
Market Passengers enplaned	Numeric	7	Up to seven numeric, reported market passengers	3
Market Freight Enplaned	Numeric	10	Up to ten numeric, reported in pounds	239
Market Mail Enplaned	Numeric	10	Up to ten numeric, reported in pounds	1000

RECORD FORMAT:

The T100—Alaskan Air Carrier Weekly Market Report reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003–T100AKMKT.csv

Sample Record Format:

M,06000,2010,05,27,FAI,GAL,F,3,239,1000

PART 241—U.S. Carrier Origin-Destination Survey Transmittal Letter

REQUIREMENTS

RECORD DESCRIPTION/INSTRUCTIONS: Origin-Destination Survey Transmittal Letter—U.S. Carriers

Full name of airline:

Reporting period:

A certification statement for the Origin and Destination Survey Report is required identifying an appropriate official of the reporting carrier. This statement certifies that:

I _____,
(Name)

and _____,
(Title)

of the above named carrier, certify that the information in this transmittal letter is to the best of my knowledge and belief, true, correct and a complete report for the period stated.

Total Number of records:

Total Number of passengers:

Date:

Signature:

Name (Please Print or Type):

RECORD FORMAT:

Once signed, the Origin-Destination Survey Transmittal Letter must be published as an electronic "portable document format" file format, for uploading to the eSubmit application.

The portable document format file MUST BE indicated when naming the file, by using the letters [PDF] or [pdf] following the file name, as the file name extension. You must have Adobe Reader software downloaded on your computer in order to "save as/print" your document as a 'pdf' file.

While the file name is flexible and may be determined by the individual air carrier, the portable document format (pdf) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

File name: XX201003–ONDtransmittal.pdf
NOTE:
XX = Carrier 2 letter code
2010 = Year of report
03 = Quarter of report (First Quarter) 06 = (Second Quarter) 09 = (Third Quarter) 12 = (Fourth Quarter)

PART 241—Foreign Carrier Origin-Destination Survey Transmittal Letter

REQUIREMENTS

RECORD DESCRIPTION/INSTRUCTIONS: Origin-Destination Survey Transmittal Letter—Foreign Carriers

Full name of airline:

Reporting period:

A certification statement for the Origin and Destination Survey Report is required identifying an appropriate official of the reporting carrier. This statement certifies that:

I _____,
(Name)

and _____,
(Title)

of the above named carrier, certify that the information in this transmittal letter is to the best of my knowledge and belief, true, correct and a complete report for the period stated.

Total Number of records:

Total Number of passengers:

Date:

Signature:

Name (Please Print or Type):

RECORD FORMAT:

Once signed, the Origin-Destination Survey Transmittal Letter must be published as an electronic "portable document format" file format, for uploading to the eSubmit application.

The portable document format file MUST BE indicated when naming the file, by using the letters [PDF] or [pdf] following the file name, as the file name extension. You must have Adobe Reader software downloaded on your computer in order to "save as/print" your document as a 'pdf' file.

While the file name is flexible and may be determined by the individual air carrier, the portable document format (pdf) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

File name: XX201003–FONDtransmittal.pdf

NOTE:
XX = Carrier 2 letter code
2010 = Year of report
03 = Quarter of report (First Quarter), 06 = (Second Quarter), 09 = (Third Quarter), and 12 = (Fourth Quarter).

PART 241—Passenger Origin-Destination Survey Report

REQUIREMENTS

RECORD DESCRIPTION: Origin-Destination Survey Report—U.S. Carriers

Field description	Data type	Length	Comments	Sample data
Carrier code	Character	2	IATA code	XX
Year	Numeric	3	Date: YYQ Where '09' = Year: 2009, Quarter: 4	094
Fare	Numeric	variable	Value of the ticket in whole U.S. dollars($)	4913
Passenger Count	Numeric	variable		3
1st Airport Code	Character	3	*1st Airport Code is the 3 letter code for the first Origin airport*	BOS
1st Operating Carrier	Character	2	IATA Carrier Code	IO
1st Ticketed Carrier	Character	2	IATA Carrier Code	XX
1st Fare Basis Code	Character	1	C—Unrestricted Business Class D—Restricted Business Class F—Unrestricted First Class G—Restricted First Class X—Restricted Coach Y—Unrestricted Coach U—Unknown	G
2nd Airport Code	Character	3	*2nd Airport Code is the 3 letter code for the first destination airport*	LAX
2nd Operating Carrier	Character	2		VA
2nd Ticketed Carrier	Character	2		VA
2nd Fare Basis Code	Character	1		G
3rd Airport Code			*3rd Airport Code is the 3 letter code for the second destination airport*	SYD
3rd Operating Carrier	Character	2	*Surface Segment Indicator—for Operating Carrier.*	
3rd Ticketed Carrier	Character	2	*Surface Segment Indicator—for Ticketed Carrier*	
3rd Fare Basis Code	Character	1	*For surface travel segment, leave the Fare Basis Code blank*	
4th Airport Code	Character	3	*4th Airport Code is the 3 letter code for the third destination airport*	CNS
4th Operating Carrier	Character	2		DJ
4th Ticketed Carrier	Character	2		VA
4th Fare Basis Code	Character	1		G
5th Airport Code	Character	3	*5th Airport Code is the 3 letter code for the fourth destination airport*	BNE
5th Operating Carrier	Character	2		VA
5th Ticketed Carrier	Character	2		VA
5th Fare Basis Code	Character	1		G
6th Airport Code	Character	3	*6th Airport Code is the 3 letter code for the fifth destination airport*	LAX
6th Operating Carrier	Character	2		IO
6th Ticketed Carrier	Character	2		IO
6th Fare Basis Code	Character	1		G
7th Airport Code	Character	3	*7th Airport Code is the 3 letter code for the sixth destination airport.*	BOS
7th Operating Carrier	Character	2		OH
7th Ticketed Carrier	Character	2		DL
7th Fare Basis Code	Character	1		G
8th Airport Code	Character	3	*8th Airport Code is the 3 letter code for the seventh destination airport, and in this example, the final destination for this ticket*	DCA

Field description	Data type	Length	Comments	Sample data
8th Operating Carrier	Character	2	If 23 coupons have to be recorded, then the format continues as follows:	EV
8th Ticketed Carrier	Character	2		DL
8th Fare Basis Code	Character	1		X
9th Airport Code	Character	3	*9th Airport Code is the 3 letter code for the eighth destination airport, and in this example, the final destination for this ticket*	CLT
9th Operating Carrier	Character	2		YV
9th Ticketed Carrier	Character	2		YV
9th Fare Basis Code	Character	1		X
10th Airport Code	Character	3	*10th Airport Code is the 3 letter code for the ninth destination airport, and in this example, the final destination for this ticket*	ATL
10th Operating Carrier	Character	2		FL
10th Ticketed Carrier	Character	2		FL
10th Fare Basis Code	Character	1		Y
11th Airport Code	Character	3	*11th Airport Code is the 3 letter code for the tenth destination airport, and in this example, the final destination for this ticket*	MIA
11th Operating Carrier	Character	2		MQ
11th Ticketed Carrier	Character	2		AA
11th Fare Basis Code	Character	1		G
12th Airport Code	Character	3	*12th Airport Code is the 3 letter code for the eleventh destination airport, and in this example, the final destination for this ticket*	FLL
12th Operating Carrier	Character	2		NK
12th Ticketed Carrier	Character	2		NK
12th Fare Basis Code	Character	1		X
13th Airport Code	Character	3	*13th Airport Code is the 3 letter code for the twelfth destination airport, and in this example, the final destination for this ticket*	FMY
13th Operating Carrier	Character	2		NK
13th Ticketed Carrier	Character	2		NK
13th Fare Basis Code	Character	1		X
14th Airport Code	Character	3	*14th Airport Code is the 3 letter code for the thirteenth destination airport, and in this example, the final destination for this ticket*	ATL
14th Operating Carrier	Character	2		EV
14th Ticketed Carrier	Character	2		DL
14th Fare Basis Code	Character	1		Y
15th Airport Code	Character	3	*15th Airport Code is the 3 letter code for the fourteenth destination airport, and in this example, the final destination for this ticket*	LAS
15th Operating Carrier	Character	2		SY
15th Ticketed Carrier	Character	2		SY
15th Fare Basis Code	Character	1		Y
16th Airport Code	Character	3	*16th Airport Code is the 3 letter code for the fifteenth destination airport, and in this example, the final destination for this ticket*	SAN
16th Operating Carrier	Character	2		XE
16th Ticketed Carrier	Character	2		CO
16th Fare Basis Code	Character	1		Y
17th Airport Code	Character	3	*17th Airport Code is the 3 letter code for the sixteenth destination airport, and in this example, the final destination for this ticket*	MEX
17th Operating Carrier	Character	2		AM
17th Ticketed	Character	2		MX
17th Fare Basis Code	Character	1		Y
18th Airport Code	Character	3	*18th Airport Code is the 3 letter code for the seventeenth destination airport, and in this example, the final destination for this ticket*	LIM
18th Operating Carrier	Character	2		AA
18th Ticketed Carrier	Character	2		AA
18th Fare Basis Code	Character	1		Y
19th Airport Code	Character	3	*19th Airport Code is the 3 letter code for the eighteenth destination airport, and in this example, the final destination for this ticket*	MEX
19th Operating Carrier	Character	2		MX
19th Ticketed Carrier	Character	2		MX
19th Fare Basis Code	Character	1		Y
20th Airport Code	Character	3	*20th Airport Code is the 3 letter code for the nineteenth destination airport, and in this example, the final destination for this ticket*	LAX
20th Operating Carrier	Character	2		AA

Field description	Data type	Length	Comments	Sample data
20th Ticketed Carrier	Character	2		AA
20th Fare Basis Code	Character	1		G
21st Airport Code	Character	3	*21st Airport Code is the 3 letter code for the twentieth destination airport, and in this example, the final destination for this ticket*	PDX
21st Operating Carrier	Character	2		QX
21st Ticketed Carrier	Character	2		AS
21st Fare Basis Code	Character	1		G
22nd Airport Code	Character	3	*22nd Airport Code is the 3 letter code for the twenty-first destination airport, and in this example, the final destination for this ticket*	ANC
22nd Operating Carrier	Character	2		NW
22nd Ticketed Carrier	Character	2		AS
22nd Fare Basis Code	Character	1		Y
23rd Airport Code	Character	3	*23rd Airport Code is the 3 letter code for the twenty-second destination airport, and in this example, the final destination for this ticket*	BNE
23rd Operating Carrier	Character	2		VA
23rd Ticketed Carrier	Character	2		VA
23rd Fare Basis Code	Character	1		G
24th Airport Code	Character	3	*24th Airport Code is the 3 letter code for the twenty-third destination airport, and in this example, the final destination for this ticket*	SYD

RECORD FORMAT:

The **Origin-Destination Survey** reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file with file extension [CSV] or [csv] following the file name.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003–OND.csv

Sample Record Format:

XX,94,4913,1,BOS,IO,XX,G,LAX,VA,VA,G, SYD,—,—,,CNS,DJ,VA,G,BNE,VA,VA,G,LAX, IO,IO,G,BOS

NOTE: The second itinerary in the sample record format above indicates a surface segment between SYD and CNS. The —,—,, indicate the positions the two carriers and fare code would have occupied had there been air transportation between the two airports.

PART 241—Passenger Origin-Destination Survey Report

REQUIREMENTS

RECORD DESCRIPTION: Origin-Destination Survey Report—Foreign Carriers

Field description	Data type	Length	Comments	Sample data
Carrier code	Character	2	IATA code	XX
Year	Numeric	3	Date: YYQ Where '09' = Year: 2009 Quarter: 4	094
Fare	Numeric	variable	Value of the ticket in whole U.S. dollars($)	1234
Passenger Count	Numeric	variable		3
1st Airport Code	Character	3	*1st Airport Code is the 3 letter code for the first Origin airport*	BOS
1st Operating Carrier	Character	2	IATA Carrier Code	IO
1st Ticketed Carrier	Character	2	IATA Carrier Code	XX
1st Fare Basis Code	Character	1	C—Unrestricted Business Class D—Restricted Business Class F—Unrestricted First Class G—Restricted First Class X—Restricted Coach Y—Unrestricted Coach U—Unknown	G
2nd Airport Code	Character	3	*2nd Airport Code is the 3 letter code for the first destination airport*	LAX
2nd Operating Carrier	Character	2		VA
2nd Ticketed Carrier	Character	2		VA
2nd Fare Basis Code	Character	1		G
3rd Airport Code			*3rd Airport Code is the 3 letter code for the second destination airport*	SYD
3rd Operating Carrier	Character	2	*Surface Segment Indicator—for Operating Carrier*	
3rd Ticketed Carrier	Character	2	*Surface Segment Indicator—for Ticketed Carrier*	
3rd Fare Basis Code	Character	1	*For surface travel segment*	
4th Airport Code	Character	3	*4th Airport Code is the 3 letter code for the third destination airport*	CNS
4th Operating Carrier	Character	2		DJ
4th Ticketed Carrier	Character	2		VA
4th Fare Basis Code	Character	1		G

Field description	Data type	Length	Comments	Sample data
5th Airport Code	Character	3	*5th Airport Code is the 3 letter code for the fourth destination airport*	BNE
5th Operating Carrier	Character	2		VA
5th Ticketed Carrier	Character	2		VA
5th Fare Basis Code	Character	1		G
6th Airport Code	Character	3	*6th Airport Code is the 3 letter code for the fifth destination airport*	LAX
6th Operating Carrier	Character	2		IO
6th Ticketed Carrier	Character	2		IO
6th Fare Basis Code	Character	1		G
7th Airport Code	Character	3	*7th Airport Code is the 3 letter code for the sixth destination airport and in this example, the final destination for this ticket*	BOS
8th Airport Code	Character	3	*8th Airport Code is the 3 letter code for the seventh destination airport, and in this example, the final destination for this ticket*	DCA
8th Operating Carrier	Character	2	**If 23 coupons have to be recorded, then the format continues as follows:**	EV
8th Ticketed Carrier	Character	2		DL
8th Fare Basis Code	Character	1		X
9th Airport Code	Character	3	*9th Airport Code is the 3 letter code for the eighth destination airport, and in this example, the final destination for this ticket*	CLT
9th Operating Carrier	Character	2		YV
9th Ticketed Carrier	Character	2		YV
9th Fare Basis Code	Character	1		X
10th Airport Code	Character	3	*10th Airport Code is the 3 letter code for the ninth destination airport, and in this example, the final destination for this ticket*	ATL
10th Operating Carrier	Character	2		FL
10th Ticketed Carrier	Character	2		FL
10th Fare Basis Code	Character	1		Y
11th Airport Code	Character	3	*11th Airport Code is the 3 letter code for the tenth destination airport, and in this example, the final destination for this ticket*	MIA
11th Operating Carrier	Character	2		MQ
11th Ticketed Carrier	Character	2		AA
11th Fare Basis Code	Character	1		G
12th Airport Code	Character	3	*12th Airport Code is the 3 letter code for the eleventh destination airport, and in this example, the final destination for this ticket*	FLL
12th Operating Carrier	Character	2		NK
12th Ticketed Carrier	Character	2		NK
12th Fare Basis Code	Character	1		X
13th Airport Code	Character	3	*13th Airport Code is the 3 letter code for the twelfth destination airport, and in this example, the final destination for this ticket*	FMY
13th Operating Carrier	Character	2		NK
13th Ticketed Carrier	Character	2		NK
13th Fare Basis Code	Character	1		X
14th Airport Code	Character	3	*14th Airport Code is the 3 letter code for the thirteenth destination airport, and in this example, the final destination for this ticket*	ATL
14th Operating Carrier	Character	2		EV
14th Ticketed Carrier	Character	2		DL
14th Fare Basis Code	Character	1		Y
15th Airport Code	Character	3	*15th Airport Code is the 3 letter code for the fourteenth destination airport, and in this example, the final destination for this ticket*	LAS
15th Operating Carrier	Character	2		SY
15th Ticketed Carrier	Character	2		SY
15th Fare Basis Code	Character	1		Y
16th Airport Code	Character	3	*16th Airport Code is the 3 letter code for the fifteenth destination airport, and in this example, the final destination for this ticket*	SAN
16th Operating Carrier	Character	2		XE
16th Ticketed Carrier	Character	2		CO
16th Fare Basis Code	Character	1		y
17th Airport Code	Character	3	*17th Airport Code is the 3 letter code for the sixteenth destination airport, and in this example, the final destination for this ticket*	MEX
17th Operating Carrier	Character	2		AM
17th Ticketed	Character	2		MX
17th Fare Basis Code	Character	1		Y

Field description	Data type	Length	Comments	Sample data
18th Airport Code	Character	3	*18th Airport Code is the 3 letter code for the seventeenth destination airport, and in this example, the final destination for this ticket*	LIM
18th Operating Carrier	Character	2		AA
18th Ticketed Carrier	Character	2		AA
18th Fare Basis Code	Character	1		y
19th Airport Code	Character	3	*19th Airport Code is the 3 letter code for the eighteenth destination airport, and in this example, the final destination for this ticket*	MEX
19th Operating Carrier	Character	2		MX
19th Ticketed Carrier	Character	2		MX
19th Fare Basis Code	Character	1		Y
20th Airport Code	Character	3	*20th Airport Code is the 3 letter code for the nineteenth destination airport, and in this example, the final destination for this ticket*	LAX
20th Operating Carrier	Character	2		AA
20th Ticketed Carrier	Character	2		AA
20th Fare Basis Code	Character	1		G
21st Airport Code	Character	3	*21st Airport Code is the 3 letter code for the twentieth destination airport, and in this example, the final destination for this ticket*	PDX
21st Operating Carrier	Character	2		QX
21st Ticketed Carrier	Character	2		AS
21st Fare Basis Code	Character	1		G
22nd Airport Code	Character	3	*22nd Airport Code is the 3 letter code for the twenty-first destination airport, and in this example, the final destination for this ticket*	ANC
22nd Operating Carrier	Character	2		NW
22nd Ticketed Carrier	Character	2		AS
22nd Fare Basis Code	Character	1		Y
23rd Airport Code	Character	3	*23rd Airport Code is the 3 letter code for the twenty-second destination airport, and in this example, the final destination for this ticket*	BNE
23rd Operating Carrier	Character	2		VA
23rd Ticketed Carrier	Character	2		VA
23rd Fare Basis Code	Character	1		G
24th Airport Code	Character	3	*24th Airport Code is the 3 letter code for the twenty-third destination airport, and in this example, the final destination for this ticket*	SYD

RECORD FORMAT:

The Origin-Destination Survey reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file with file extension [CSV] or [csv] following the file name.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003–FOND.csv

Sample Record Format:

XX,94,1234,1,BOS,IO,XX,G,LAX,VA, VA,G,SYD,—,—,,CNS,DJ,VA,G,BNE, VA,VA,G,LAX,IO,IO,G,BOS

NOTE:

The second itinerary in the sample record format above indicates a surface segment between SYD and CNS. The —,—,, indicate the positions where the ticketing carrier, the operating carrier, and the fare basis code information would have been entered had there been air transportation between the two airports.

PART 234—ASQP—On-Time Data

REQUIREMENTS

RECORD DESCRIPTION: ASQP—Monthly On-Time Data

Field description	Data type	Length	Comments	Sample data
Carrier code	Character	2	IATA code	XX
Flight number	Character	4		1234
Origin airport code	Character	3	Airport code	DFW
Destination airport code	Character	3	Airport code	BNA
Date of flight operation	DATE	ccyymmdd	Year (CCYY)	20100301
Day of the week of flight operation	Numeric	1	Mon = 1, Sun = 7	1
Scheduled departure time as shown in Official Airline Guide (OAG)	Numeric	4	24 hour clock	0735
Scheduled departure time as shown in CRS	Numeric	4	24 hour clock	0735
Gate departure time (actual)	Numeric	4	24 hour clock	0737
Scheduled arrival time	Numeric	4	24 hour clock	0915

Field description	Data type	Length	Comments	Sample data
Scheduled arrival time per CRS	Numeric	4	24 hour clock	0915
Gate arrival time (actual)	Numeric	4	24 hour clock	1148
Difference between OAG and CRS scheduled departure times	Numeric	4	In minutes—G minus H (2 hours = 120 min)	0
Difference between OAG and CRS scheduled arrival times	Numeric	4	In minutes—J minus K	0
Scheduled elapsed time	Numeric	4	In minutes—K minus H	100
Gate-to-Gate Time	Numeric	4	In minutes—L minus I	251
Departure delay time (actual minutes CRS)	Numeric	4	In minutes—I minus H	2
Arrival delay time (actual minutes CRS)	Numeric	4	In minutes—L minus K	153
Elapsed time difference (actual minutes CRS)	Numeric	4	In minutes—P minus O	151
Wheels-off time (actual)	Numeric	4	24 hour clock	0753
Wheels-on time (actual)	Numeric	4	24 hour clock	1141
Aircraft tail number	Character	6		N123XX
Cancellation code	Character	1	Values are A, B, C, D	
Minutes late for Delay Code E—Carrier Caused	Numeric	4	In minutes	
Minutes late for Delay Code F—Weather	Numeric	4	In minutes	
Minutes late for Delay Code G—National Aviation System (NAS)	Numeric	4	In minutes	
Minutes late for Delay Code H—Security	Numeric	4	In minutes	
Minutes late for Delay Code I—Late Arriving Flight (Initial)	Numeric	4	In minutes	
First gate departure time (actual)	Numeric	4	24 hour clock	
Total ground time away from gate	Numeric	4	In minutes	
Longest ground time away from gate	Numeric	4	In minutes	
Number of landings at diverted airports	Numeric	1	1 to 5 for diversions, 9 designates a fly return canceled flight	1
Diverted airport code 1	Character	3	Airport code	MEM
Wheels-on time at diverted airport	Numeric	4	24 hour clock	1005
Total ground time away from gate at diverted airport	Numeric	4	In minutes	69
Longest ground time away from gate at diverted airport	Numeric	4	In minutes	69
Wheels-off time (actual) at diverted airport	Numeric	4	24 hour clock	1114
Aircraft tail number	Character	6		N234XX
Diverted airport code 2	Character	3	Airport code	
Wheels-on time at diverted airport	Numeric	4	24 hour clock	
Total ground time away from gate at diverted airport	Numeric	4	In minutes	
Longest ground time away from gate at diverted airport	Numeric	4	In minutes	
Wheels-off time (actual) at diverted airport	Numeric	4	24 hour clock	
Aircraft tail number	Character	6		
Diverted airport code 3	Character	3	Airport code	
Wheels-on Time at Diverted Airport	Numeric	4	24 hour clock	
Total ground time away from gate at diverted airport	Numeric	4	In minutes	
Longest ground time away from gate at diverted airport	Numeric	4	In minutes	
Wheels-off time (actual) at diverted airport	Numeric	4	24 hour clock	
Aircraft tail number	Character	6		
Diverted airport code 4	Character	3	Airport code	
Wheels-on time at diverted airport	Numeric	4	24 hour clock	
Total ground time away from gate at diverted airport	Numeric	4	In minutes	

Field description	Data type	Length	Comments	Sample data
Longest ground time away from gate at diverted airport	Numeric	4	In minutes	
Wheels-off time (actual) at diverted airport	Numeric	4	24 hour clock	
Aircraft tail number	Character	6		
Diverted airport code 5	Character	3	Airport code	
Wheels-on time at diverted airport	Numeric	4	24 hour clock	
Total ground time away from gate at diverted airport	Numeric	4	In minutes	
Longest ground time away from gate at diverted airport	Numeric	4	In minutes	
Wheels-off time (actual) at diverted airport	Numeric	4	24 hour clock	
Aircraft tail number	Character	6		

RECORD FORMAT:

The **ASQP—On Time Data** reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003–234ontime.csv

Sample Record Format:

XX,1234,DFW,BNA,20100301,1,0735,0735,0737,0915,0915,1148,0,0,100,251,2,153,151,0753,1141,N123XX,,,,,,,,,,1,MEM,1005,69,69,1114,N234XX,,,,,,,,,,,,,,,,,,,,,,,,

PART 234—ASQP—On-Time Data Transmittal

REQUIREMENTS

RECORD DESCRIPTION/INSTRUCTIONS: ASQP—On-Time Data Transmittal Letter

The transmittal letter must identify the carrier and month and year for which the **On-Time Data** are being submitted, and contain the following information:

A certification statement identifying an appropriate official of the reporting carrier. The certification statement will read:

I, (Name) and (Title), of the above-named air carrier, certify that the BTS Form 234 "On-Time Flight Performance Report" is to the best of my knowledge and belief, true, correct, and a complete report for the period stated.

Date:

Signature:

Name (Please Print or Type):

The name(s) and telephone number(s) of the carrier's staff who can be contacted to resolve problems regarding both carrier data and technical matters.

For control purposes, a statement indicating the total number of flight operations and unique flight numbers in the Form 234 submission.

For the initial submission, a description of the data submitted, specifying whether the eSubmit file includes data for only reportable airports or for all domestic scheduled nonstop flight operations.

For the initial submission and for subsequent changes, a statement identifying the source of the scheduled arrival and departure times used in the report: (1) Official Airline Guide in effect on (date) and (2) the name of the computer reservation system used for reporting purposes, pursuant to § 234.4(f).

RECORD FORMAT:

Once signed, the **On-Time Data Transmittal Letter** must be published as an electronic "portable document format" file format, for uploading to the eSubmit application.

The portable document format file MUST BE indicated when naming the file, by using the letters [PDF] or [pdf] following the file name, as the file name extension. You must have Adobe Reader software downloaded on your computer in order to "save as/print" your document as a 'pdf' file.

While the file name is flexible and may be determined by the individual air carrier, the portable document format (pdf) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

Suggested file name: XX201003–234transmittal.pdf

PART 234—ASQP—Mishandled Baggage Report

REQUIREMENTS

RECORD DESCRIPTION: ASQP—Mishandled Baggage Report

Field description	Data type	Length	Comments	Sample data
Carrier code	Character	2	Two letter IATA code	XX
Year of Data	Numeric	4	Year (CCYY)	2010
Month of Data	Numeric	2	Month (MM)	03
Number of Domestic Scheduled Passengers Enplaned	Numeric	Varies		8004000
Number of Mishandled Baggage Reports Filed with Carrier	Numeric	Varies		35000

RECORD FORMAT:

The ASQP—Mishandled Baggage reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003–234mbr.csv

Sample Record Format:

XX,2010,03,8004000,35000

PART 234—Mishandled Baggage Report Certification

REQUIREMENTS

RECORD DESCRIPTION/INSTRUCTIONS: ASQP—Mishandled Baggage Report Certification

A certification statement for the Mishandled Baggage Report is required identifying an appropriate official of the reporting carrier. The certification statement will read:

I, (Name) and (Title), of the above named carrier, certify that the Mishandled Baggage Report file is to the best of my knowledge and belief, true, correct and a complete report for the period stated.

Date:

Signature:

Name (Please Print or Type):

RECORD FORMAT:

Once signed, the Mishandled Baggage Report Certification must be published as an electronic "portable document format" file format, for uploading to the eSubmit application.

The portable document format file MUST BE indicated when naming the file, by using the letters [PDF] or [pdf] following the file name, as the file name extension. You must have Adobe Reader software downloaded on your computer in order to "save as/print" your document as a 'pdf' file.

While the file name is flexible and may be determined by the individual air carrier, the portable document format (pdf) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

Suggested file name: XX201003–234mbrCert.pdf

PART 251—Report of Passengers Denied Confirmed Space Report

REQUIREMENTS

RECORD DESCRIPTION: 251—Report of Passengers Denied Confirmed Space Report

Field description	Data type	Length	Comments	Sample data
Carrier Name	Character	30		Atlantic Southeast
OAG Carrier Code	Character	2	Two Letter Code	EV
Quarter Ended	Character	6	Quarter/Year	3Q2010
Number of passengers who were denied boarding involuntarily who qualified for denied boarding compensation and: (a) were given alternate transportation within the meaning of § 250.5.	Numeric	Varies		1177
(b) were not given such alternate transportation.	Numeric	Varies		1358
Number of passengers denied boarding involuntarily who did not qualify for denied boarding compensation due to: (a) accommodation on another flight that arrived within 1 hour after the scheduled arrival time of the original flight.	Numeric	Varies		0
(b) substitution of smaller capacity equipment.	Numeric	Varies		0
(c) failure of passenger to comply with ticketing, check-in, or reconfirmation procedures, or to be acceptable for transportation under carrier's tariff or contract of carriage.	Numeric	Varies		746
TOTAL NUMBER DENIED BOARDING INVOLUNTARILY	Numeric	Varies		3281
Number of passengers denied boarding involuntarily who actually received compensation.*	Numeric	Varies	*If any passengers qualified for denied boarding compensation but were not offered compensation, attach a pdf statement as to the number of such passengers and an explanation of why the offer was not made.	2535
Number of passengers who volunteered to give up reserved space in exchange for a payment of the carrier's choosing.	Numeric	Varies		28566
Number of passengers accommodated in another section of the aircraft: (a) Upgrades.	Numeric	Varies		0
(b) Downgrades.	Numeric	Varies		0
Total Boardings.	Numeric	Varies		25450773
Amount of compensation paid to passengers who: (a) were denied boarding involuntarily and were given alternate transportation within the meaning of § 250.5.	Currency	Varies		407092

Field description	Data type	Length	Comments	Sample data
(b) were denied boarding involuntarily and were not given alternate transportation.	Currency	Varies		480726
(c) volunteered for denied boarding.	Currency	Varies		0

RECORD FORMAT:

The 251—Report of Passengers Denied Confirmed Space Report reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003-Form251.csv

Sample Record Format:

Atlantic Southeast Airlines, EV,3Q2010, 1177,1358,0,0,746,3281,2535,28566,0,0, 25450773,407092,480726,0

Part 241—Form 41 P–1a Interim Operations Report

REQUIREMENTS

RECORD DESCRIPTION: P–1a Interim Operations Report—Group I+, II & III

Field description	Data type	Length	Comments	Sample data
Schedule Item	Character	4		P01A
Carrier Code	Character	3		3Z
Entity Region	Character	1		D
Aircraft Type	Character	4	P–5.1, P–5.2	0000, 9999
Account Code	Character	5		0014A, 10100
Frequency	Numeric	1		2
Year	Character	4		2010
Month	Character	2		12
Gain or Loss	Numeric			2282243, −5645

RECORD FORMAT:

The P–1a Interim Operations reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003–F41–P–1a.csv

Sample Record Format:

P01A,YV,S,0000,39010,1,2010,06,–68401383

Part 241—Form 41 P–12a Fuel Cost and Consumption

REQUIREMENTS

RECORD DESCRIPTION: P–12a—Fuel Cost and Consumption Report—Group I+, II & III

Field description	Data type	Length	Comments	Sample data
Schedule Item	Character	4		P12A
Carrier Code	Character	3		3Z
Entity Region	Character	1		D
Aircraft Type	Character	4	Reported on P–5.1, P–5.2 only	0000
Account Code	Character	5		0014A, 10100
Frequency	Numeric	1		2
Year	Character	4		2010
Month	Character	2		12
Gain or Loss	Numeric			2282243, −5645

RECORD FORMAT:

The P–12a—Fuel Cost and Consumption reports must be created as an electronic "comma separated values" file, using ASCII text character encoding, for uploading via the "eSubmit" application.

The comma separated values file MUST BE indicated when naming the file, by using the letters [CSV] or [csv] following the file name, as the file name extension.

The file name is flexible and may be determined by the individual air carrier, but the comma separated values (csv) file format is required, as outlined in the rule entitled, *Submitting Airline Data via the Internet.*

The fields in the sample record shown below follow the same order as the above record description, separated by commas, and saved with the file name extension of .csv.

Suggested file name: XX201003–F41–P–12A.csv

Sample Record Format:

P–12a Fuel Cost and Consumption

P12A,3Z,S,0000,0008**A**,1,2010,06,213786

P12A,3Z,S,0000,0008**B**,1,2010,06,2208410

P12A,3Z,S,0000,0008**C**,1,2010,06,820818

Account Code

A = Gallons

B = Cost

C = Gallons not Paid for

[FR Doc. 2010–16637 Filed 7–15–10; 8:45 am]

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Federal Register

Friday,
July 16, 2010

Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure; Interim Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AB08

Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Interim final rule with request for comments.

SUMMARY: This document contains an interim final regulation under the Employee Retirement Income Security Act of 1974 (ERISA or the Act) requiring that certain service providers to employee pension benefit plans disclose information to assist plan fiduciaries in assessing the reasonableness of contracts or arrangements, including the reasonableness of the service providers' compensation and potential conflicts of interest that may affect the service providers' performance. These disclosure requirements are established as part of a statutory exemption from ERISA's prohibited transaction provisions. This regulation will affect employee pension benefit plan sponsors and fiduciaries and certain service providers to such plans. Interested persons are invited to submit comments on the interim final regulation for consideration by the Department of Labor.

DATES: *Effective date.* This interim final rule is effective on July 16, 2011.

Comment date. Written comments on the interim final rule must be received by August 30, 2010.

ADDRESSES: To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically to *e-ORI@dol.gov,* or by using the Federal eRulemaking portal *http://www.regulations.gov* (following instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (preferably three copies) to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: 408(b)(2) Interim Final Rule. All comments will be available to the public, without charge, online at *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: For further information on the interim final regulation, contact Allison Wielobob or Fil Williams, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

1. General

In recent years, there have been a number of changes in the way services are provided to employee benefit plans and in the way service providers are compensated. Many of these changes may have improved efficiency and reduced the costs of administrative services and benefits for plans and their participants. However, the complexity resulting from these changes also has made it more difficult for plan sponsors and fiduciaries to understand what service providers actually are paid for the specific services rendered.

Despite these complexities, section 404(a)(1) of ERISA requires plan fiduciaries, when selecting or monitoring service providers and plan investments, to act prudently and solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. Fundamental to a plan fiduciary's ability to discharge these obligations is the availability of information sufficient to enable the plan fiduciary to make informed decisions about the services, the costs, and the service provider. Although the Department of Labor (Department) has issued technical guidance and compliance assistance materials relating to the obligations of plan fiduciaries in selecting and monitoring service providers,[1] the Department continues to believe that, given plan fiduciaries' need for complete and accurate information about compensation and revenue sharing, both plan fiduciaries and service providers would benefit from regulatory guidance in this area. For this reason, the Department published a notice of proposed rulemaking in the **Federal Register** (72 FR 70988) on December 13, 2007. On the same day, the Department also published a proposed class exemption from the restrictions of section 406(a)(1)(C) of ERISA in the **Federal Register** (72 FR 70893). The Department proposed the exemption on its own motion pursuant to section 408(a) of the Act, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990).

2. Public Comments on Proposed Regulation and Class Exemption

The Department's proposal required that reasonable contracts and arrangements between employee benefit plans and certain providers of services to such plans include specified information to assist plan fiduciaries in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider's performance of services. The proposal also was designed to assist plan fiduciaries and administrators in obtaining the information they need from service providers to satisfy their reporting and disclosure obligations.[2] Interested persons were invited to submit comments on the proposal. In response to this invitation, the Department received over 100 written comments on the proposed regulation and class exemption from a variety of parties, including plan sponsors and fiduciaries, plan service providers, financial institutions, and employee benefit plan and participant industry representatives. These comments are available for review under "Public Comments" on the "Laws & Regulations" page of the Department's Employee Benefits Security Administration Web site at *http://www.dol.gov/ebsa.*

Due to the large number of public comments received, the importance of this regulatory initiative, and its potentially significant effects on the provision of services to employee benefit plans, the Department held a public hearing on March 31 and April 1, 2008, in order to further develop the public record and the Department's understanding of the issues raised in the

[1] *See, e.g.,* Field Assistance Bulletin 2002–3 (November 5, 2002), Advisory Opinions 97–16A (May 22, 1997) and 97–15A (May 22, 1997), *http://www.dol.gov/ebsa/publications/undrstndgrtrmnt.html,* and *http://www.dol.gov/ebsa/newsroom/fs053105.html.*

[2] The Department also implemented changes to the information required to be reported concerning service provider compensation as part of the Form 5500 Annual Report. These changes to Schedule C of the Form 5500 complement the interim final rule under ERISA section 408(b)(2) in assuring that plan fiduciaries have the information they need to monitor their service providers consistent with their duties under ERISA section 404(a)(1). *See* 72 FR 64731; *see also* frequently asked questions on Schedule C, at *http://www.dol.gov/ebsa/faqs/faq-sch-C-supplement.html* and *http://www.dol.gov/ebsa/faqs/faq_scheduleC.html.*

public comments. As a result of the public hearing, the Department received a significant number of additional comments to supplement the public record for this regulatory initiative. These supplemental materials also are available for review on the Department's Web site.

Set forth below is an overview of the interim final regulation and the public comments received on the proposal and during the Department's public hearing.

B. Overview of Interim Final Regulation Under ERISA Section 408(b)(2) and Public Comments

The Department's interim final regulation (for simplicity, the interim final regulation also is referred to herein as the final regulation) retains the basic structure of the proposal by requiring that covered service providers satisfy certain disclosure requirements in order to qualify for the statutory exemption for services under ERISA section 408(b)(2). The furnishing of goods, services, or facilities between a plan and a party in interest to the plan generally is prohibited under section 406(a)(1)(C) of ERISA. As a result, a service relationship between a plan and a service provider would constitute a prohibited transaction, because any person providing services to the plan is defined by ERISA to be a "party in interest" to the plan. However, section 408(b)(2) of ERISA exempts certain arrangements between plans and service providers that otherwise would be prohibited transactions under section 406 of ERISA. Specifically, section 408(b)(2) provides relief from ERISA's prohibited transaction rules for service contracts or arrangements between a plan and a party in interest if the contract or arrangement is reasonable, the services are necessary for the establishment or operation of the plan, and no more than reasonable compensation is paid for the services. Regulations issued by the Department clarify each of these conditions to the exemption.[3]

This rule amends the regulation under ERISA section 408(b)(2) to clarify the meaning of a "reasonable" contract or arrangement for covered plans. Currently, the regulation at 29 CFR 2550.408b-2(c) states only that a contract or arrangement is not reasonable unless it permits the plan to terminate without penalty on reasonably short notice. The final regulation establishes a requirement under section 408(b)(2) that, in order for certain contracts or arrangements for services to be reasonable, the covered service provider must disclose specified information to a responsible plan fiduciary, defined as a fiduciary with authority to cause the plan to enter into, or extend or renew, a contract or arrangement for the provision of services to the plan. The specific disclosure requirements are described in more detail below.

The final regulation differs from the proposal in a number of significant respects, each discussed in this rule. First, unlike the proposal, the final rule does not require a formal written contract or arrangement delineating the disclosure obligations, even though the disclosures must be made in writing. The final rule focuses instead on the substance of the disclosure that must be provided. Second, the final rule treats separately pension and welfare plans. Paragraph (c)(1) of the rule published today provides disclosure requirements applicable to contracts or arrangements with pension plans. The Department reserves paragraph (c)(2) of the rule for future guidance on disclosure with respect to welfare plans.

Third, the final rule modifies the categories of service providers that must comply with the disclosure requirements, including fiduciaries, investment advisers, and recordkeepers or brokers who make investment alternatives available to a plan. It also applies to providers of other specified services who receive either "indirect compensation" (generally from sources other than the plan or plan sponsor) or certain types of payments from affiliates and subcontractors. The final rule includes in its definition of "covered service providers" fiduciaries to investment vehicles that hold plan assets and in which a covered plan has a direct equity investment. However, the definition makes clear that furnishing non-fiduciary services to such vehicles, or services to vehicles that do not hold plan assets will not cause a person to be a covered service provider. In addition, the regulation requires fiduciaries to plan asset investment vehicles in which plans make direct equity investments, as well as parties that offer designated investment alternatives to a participant-directed individual account plan as part of a platform, to furnish investment-related compensation information.

Fourth, the final rule, unlike the proposal, does not contain specific narrative conflict of interest disclosure provisions, but rather relies on full disclosure of the circumstances under which the covered service provider will be receiving compensation from parties other than the plan (or plan sponsor), the identification of such parties, and the compensation that is expected to be received. As discussed below, the Department is persuaded that plan fiduciaries will be in a better position to assess potential conflicts of interest by reviewing these specific parties and the actual or expected compensation to be received from such parties. Fifth, the final rule includes a new provision requiring that certain providers of multiple services disclose separately the cost to the covered plan of recordkeeping services. Sixth, the final rule specifically addresses the application of the requirements of the regulation to section 4975 of the Internal Revenue Code (the Code). And, lastly, the exemptive relief for plan sponsors or other responsible plan fiduciaries, originally proposed as a separate exemption, is now incorporated into the final rule for ease of reference and consideration by interested parties. A more detailed discussion of the final rule, including these changes, is set forth below.

As required by Executive Order 12866, the Department evaluated the benefits and costs of this final rule. The Department believes that mandatory proactive disclosure will reduce sponsor information costs, discourage harmful conflicts, and enhance service value. Additional benefits will flow from the Department's enhanced ability to redress abuse. Although the benefits are difficult to quantify, the Department is confident they more than justify the cost. The Department estimated costs for the rule over a ten-year time frame for purposes of this analysis and used information from the quantitative characterization of the service provider market presented below as a basis for these cost estimates. This characterization did not account for all service providers, but it does provide information on the segments of the service provider industry that are likely to be most affected by the rule (*i.e.,* those with contracts listed on the Form 5500). In addition to the costs to service providers, the Department also considered, and discusses below, the potential costs to plans.

In accordance with OMB Circular A–4,[4] Table 1 below depicts an accounting statement showing the Department's assessment of the benefits and costs associated with this regulatory action.

[3] *See* 29 CFR 2550.408b–2.

[4] Available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

TABLE 1—ACCOUNTING TABLE

Category	Primary estimate	Year dollar	Discount rate	Period covered
Benefits				
Annualized Monetized ($millions/year)	Not Quantified.			
Qualitative: The final regulation will increase the amount of information that service providers disclose to plan fiduciaries. Non-quantified benefits include information cost savings, discouraging harmful conflicts of interest, service value improvements through improved decisions and value, better enforcement tools to redress abuse, and harmonization with other EBSA rules and programs.				
Costs				
Annualized Monetized ($millions/year)	58.7	2010	7%	2011–2020
	54.3	2010	3%	2011–2020
Qualitative: Costs include costs for service providers to perform compliance review and implementation, for disclosure of general, investment-related, and additional requested information, for responsible plan fiduciaries to request additional information from service providers to comply with the exemption and to prepare notices to DOL if the service provider fails to comply with the request.				
Transfers	Not Applicable.			

A more detailed discussion of the need for this regulatory action, consideration of regulatory alternatives, and assessment of benefits and costs are included in Section K—"Regulatory Impact Analysis" below.

1. General

The final regulation, like the proposal, amends paragraph (c) of § 2550.408b–2 by moving, without change, the current provisions of paragraph (c) to a newly designated paragraph (c)(3) and adding new paragraphs (c)(1) and (2) to address the disclosure requirements applicable to a "reasonable contract or arrangement." Paragraph (c)(1) describes the disclosure requirements for pension plans. Paragraph (c)(2) has been reserved for future guidance concerning the disclosure requirements for welfare plans.

The general paragraph of the final rule, paragraph (c)(1)(i), provides that no contract or arrangement for services between a covered plan and a covered service provider, nor any extension or renewal, is reasonable within the meaning of ERISA section 408(b)(2) and this regulation unless the requirements of the regulation are satisfied. The terms "covered plan" and "covered service provider" are defined in paragraph (c)(1)(ii) and (iii), respectively. The general paragraph also provides that the regulation's disclosure requirements are independent of a fiduciary's obligations under section 404 of ERISA.

2. Scope—Covered Plans

Paragraph (c)(1)(ii) defines a "covered plan" to mean an employee pension benefit plan or a pension plan within the meaning of ERISA section 3(2)(A) (and not described in ERISA section 4(b)), except that such term shall not include a "simplified employee pension" described in section 408(k) of the Code, a "simple retirement account" described in section 408(p) of the Code, an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code.

Under the proposal, all employee benefit plans subject to Title I of ERISA, including employee pension benefit plans and welfare benefit plans, were subject to the regulation's disclosure requirements. The Department received many comments and heard testimony from parties concerned about the implications of subjecting defined benefit plans, welfare benefit plans, and individual retirement accounts (IRAs) to the regulation.[5]

Commenters questioned the proposal's application to defined benefit plans for a variety of reasons, suggesting that the Department consider separate guidance for defined benefit plans. Commenters argued that sponsors of defined benefit plans and their service providers have only recently joined the public policy discussion regarding fee disclosure for retirement plans. They believe that a thorough examination of the issues that affect defined benefit plans is warranted before disclosure rules apply with respect to their service providers.

In advocating for separate rules for defined benefit plans, some commenters focused on the differences in the legal structures of defined benefit plans and defined contribution plans. In addition, commenters noted that services are provided to defined benefit plans in ways that are materially different than they are for defined contribution plans. Other commenters noted that employers have incentives to monitor and negotiate service provider fees and expenses for defined benefit plans, because these plans primarily rely on employer contributions; excessive fees and expenses would make it more expensive for the employer to fund promised benefits. In contrast, defined contribution plans are funded primarily by employee contributions, and employers may pass on up to 100 percent of plan costs to employees.

After careful review of the comments, the Department is not persuaded that the information fiduciaries of defined benefit plans need to make informed decisions about their service providers is fundamentally different from the information fiduciaries of defined contribution plans need to make informed decisions. Nor is the Department persuaded that the service provider relationships between the two types of plans are so different as to justify exclusion of defined benefit plans from the regulation's disclosure requirements. Moreover, the Department does not believe that compliance with the disclosure requirements, particularly as modified from the proposal, will present any unreasonable compliance burdens for service providers to defined benefit plans. For these reasons, the final rule, like the proposal, applies to contracts and arrangements with covered service providers to both defined contribution and defined benefit plans.

The Department also received many comments concerning the applicability of the proposal to welfare benefit plans. Many commenters recommended their exclusion from the scope of the final

[5] A few commenters suggested that the Department not extend the final rule to small plans (for example, those with less than 100 participants). The Department was not persuaded that any policy rationale exists for excluding small plans.

rule. Some commenters believe that the Department's rationales for the proposed rule apply to pension plans but not to welfare benefit plans. Other commenters maintain that, if the Department creates a disclosure regime for welfare benefit plan service providers, it should be promulgated separately.

Commenters articulated specific concerns relating to welfare benefit plans, including the potential for negative effects on the insurance industry, which, they argue, is highly regulated by State laws. Many commenters asserted that, considering the high level of State regulation, subjecting welfare benefit plans to the disclosure regulation would be unnecessary and redundant because the disclosures contemplated in the regulation are already made available to plan fiduciaries through State regulatory processes. Other commenters pointed out that most State insurance laws do not require the types of disclosures addressed under the proposed rule and even where such State laws exist, they are loosely enforced. Still others asserted that there are "transparency problems" in general in the health and welfare industry.

Some commenters expressed views relating to prohibited transaction exemption (PTE) 84–24,[6] which they indicated is often misinterpreted and improperly utilized by service providers to suit their purposes. Those in favor of subjecting welfare benefit plans to the regulation said that it would eliminate the limitations of PTE 84–24. Other commenters asserted that PTE 84–24 has worked well and that welfare benefit plans should be allowed to continue without the impact of new disclosure obligations under the proposal.

Still other commenters addressed specific concerns of pharmacy benefit managers (PBMs), which are intermediaries between drug manufacturers and health insurance plans. They believe that the reasons for disclosure discussed in the preamble to the proposed rule are inapplicable to PBMs. According to some commenters, the Federal Trade Commission has thoroughly evaluated the industry, finding that market forces provide sufficient information to plan fiduciaries and that excessive mandatory disclosure could weaken competition, such that the proposed regulation would negatively affect the delivery of prescription drugs to plan beneficiaries. Other commenters disputed the idea that PBMs should not be subject to the regulation, arguing that the discounts and rebates they received from drug companies were examples of undisclosed indirect compensation. Commenters offering this point of view did not present any further official comment or testimony at the public hearing.

In spite of these arguments, the Department believes that fiduciaries and service providers to welfare benefit plans would benefit from regulatory guidance in this area for the same reasons that apply to defined contribution plans and defined benefit plans. However, the Department is persuaded, based on the public comment and hearing testimony, that there are significant differences between service and compensation arrangements of welfare plans and those involving pension plans and that the Department should develop separate, and more specifically tailored, disclosure requirements under ERISA section 408(b)(2) for welfare benefit plans. Accordingly, the interim final rule published today includes a new paragraph (c)(2), which has been reserved for a comprehensive disclosure framework applicable to "reasonable" contracts or arrangements for services to welfare plans to be developed by the Department. The Department notes, however, that in the meantime, ERISA section 404(a) continues to obligate fiduciaries to obtain and consider information relating to the cost of plan services and potential conflicts of interest presented by such service arrangements.

Several commenters requested clarification regarding the regulation's application to IRAs or similar accounts. In some cases, commenters argued that the Department should exclude such accounts, as well as other plans that are not subject to Title I of ERISA, from the scope of the final regulation. The commenters observed that there are significant categories of arrangements that are subject to the prohibited transaction provisions of section 4975 of the Code, but not those of ERISA, and that do not have a fiduciary overseeing the plan. The comments asserted that owners of IRAs and other individual arrangements are more like individual plan participants than plan fiduciaries and that it would be inappropriate to impose the service provider-to-plan disclosure requirements in the context of non-ERISA arrangements. In contrast to participant-directed individual account plans, which typically offer a limited number of investment options, many IRAs offer a large number of investment options, such as brokerage accounts with essentially unlimited choices. Providing the disclosures set forth in the proposal could be quite burdensome and costly as a result. These costs, commenters argue, may drive service providers to limit the number of investment choices available in IRAs. In addition, some commenters pointed out that, under securities laws, the IRA accountholder is treated as the actual owner of the securities held in his or her IRA and is entitled to all securities law disclosures in the same manner as if the accountholder owned those securities directly. In contrast, with ERISA-covered plans, disclosure obligations under the securities laws extend only to the plan itself, not to individual plan participants.

The Department does not believe that IRAs should be subject to the final rule, which is designed with fiduciaries of employee benefit plans in mind. An IRA account-holder is responsible only for his or her own plan's security and asset accumulation. They should not be held to the same fiduciary duties to scrutinize and monitor plan service providers and their total compensation as are plan sponsors and other fiduciaries of pension plans under Title I of ERISA, who are responsible for protecting the retirement security of greater numbers of plan participants. Moreover, IRAs generally are marketed alongside other personal investment vehicles. Imposing the regulation's disclosure regime on IRAs could increase the costs associated with IRAs relative to similar vehicles that are not covered by the regulation. Therefore, although the final rule cross references the parallel provisions of section 4975 of the Code, paragraph (c)(1)(ii) provides explicitly that IRAs and certain other accounts and plans are not covered plans for purposes of the rule.

3. Scope—Covered Service Providers

The categories of service providers covered by the final rule, in paragraph (c)(1)(iii), vary slightly from those described in the proposal. The proposed regulation generally included service providers falling into one of the following categories: (1) Fiduciary service providers, whether under ERISA or under the Investment Advisers Act of 1940; (2) service providers that will perform banking, consulting, custodial, insurance, investment advisory, investment management, recordkeeping,

[6] 49 FR 13208 (Apr. 3, 1984); amended at 71 FR 5887 (Feb. 3, 2006) (providing prohibited transaction relief for service arrangements and related plan transactions involving insurance agents and brokers, pension consultants, insurance and investment companies, and investment company principal underwriters; for example, PTE 84–24 permits these parties to place insurance products with plans when they are fiduciaries, or affiliated with fiduciaries, to the plans if certain conditions are met).

or third party administration services for the plan; or (3) service providers that will receive indirect compensation in connection with providing accounting, actuarial, appraisal, auditing, legal, or valuation services to the plan. The Department believed that these service arrangements, and their associated compensation structures, were the most likely to give rise to conflicts of interest.

The Department received a number of comments requesting clarification as to which entities were intended to be "service providers" for purposes of the proposal, both in terms of which service providers are responsible for complying with the proposal's written contract requirement, and who is considered a service provider such that their compensation and conflict of interest information must be disclosed to the responsible plan fiduciary. Some commenters argued that the proposal's disclosure requirements should be limited to service providers that deal directly with employee benefit plans, or that customarily are in contractual privity with the plan, and questioned the application of the rule to indirect service providers. These commenters were concerned that the proposed rule appears to apply, potentially without limit, to "indirect" service providers, for example a service provider to a direct service provider, or a service provider to an investment provider or mutual fund company; in some cases, they argue, the services provided by these indirect providers bear little or no relation to the particular plan service arrangement in question. For example, commenters questioned whether the proposed disclosure requirements would apply to a copy service, if a plan recordkeeper subcontracts with that copy service to perform administrative functions for both the recordkeeper and its plan clients, or to legal counsel to a registered investment company, when counsel's role is limited to ensuring that the company complies generally with applicable securities laws.

In connection with their request that the Department clarify whether providers of services to a plan service provider, or to an investment provider, are themselves service providers to the plan for purposes of the disclosure requirements of the proposed rule, some commenters note that confusion on this issue may stem from language of the proposed rule that adopted the view taken by the Department as to who is a "service provider" for purposes of reporting service provider compensation on the recent Form 5500, Schedule C, revisions. The new Schedule C reporting requirements are not limited to information concerning the compensation of persons with direct service provider relationships to a plan but also include compensation information regarding persons who provide services to investment vehicles in which plans invest. Commenters questioned whether a similar position is appropriate in the context of a prohibited transaction for which relief is obtained under section 408(b)(2).

Other commenters raised concerns about the proposal insofar as it was interpreted as raising technical issues under the Department's plan asset guidance.[7] For example, several commenters questioned whether and how the proposed disclosure requirements would apply to service providers to "non-plan asset" vehicles, an issue that often arises in the context of plan investments. For instance, commenters observed that mutual funds, real estate operating companies, venture capital operating companies, and private equity funds that do not have significant equity participation by "benefit plan investors" (*i.e.,* 25% or more of any class of equity interest held by such investors) are not plan asset vehicles, and thus managers of these entities are not ERISA fiduciaries. These commenters argued that the proposed disclosure requirements also should not apply to any person who is providing services to a non-plan asset vehicle.

The Department believes that the definition of covered service provider contained in the final rule addresses the ambiguities raised by the commenters and reflects the Department's intent to focus on contracts or arrangements between covered plans and fiduciaries, platform providers and other specified service providers dealing directly with covered plans who may receive indirect compensation or certain compensation from related parties. The Department notes that the parties that must be reported as service providers for Schedule C purposes will not necessarily be the same as the parties that will be covered service providers for purposes of this rule.

The Department continues to believe that requiring every service provider to a plan to satisfy the disclosure requirements of this regulation may not be appropriate or yield helpful information to plan fiduciaries. The Department also believes that certain service providers, because of the nature of the services that they provide to pension plans, the potential influence they have on plan fiduciaries' decisions and on the plan services that they ultimately will provide, or the complexity of their compensation arrangements, must provide comprehensive information to plan fiduciaries about the compensation that they will be paid for their services. The Department is sensitive to the technical and practical issues raised by commenters about how the scope of this rule will be applied to various parties in the employee benefit plan industry. The Department also agrees with commenters that service providers and plan fiduciaries would benefit from more certainty as to whether any particular service contract or arrangement will be required to comply with this rule. The Department believes that the interim final rule, in terms of defining the service providers covered by the rule, responds to the concerns of these commenters. However, the Department welcomes comments from interested persons who continue to have concerns about the scope of service providers covered by the interim final rule.

Paragraph (c)(1)(iii) of the final rule defines the term "covered service provider." Among other changes, the final rule establishes a $1,000 threshold for service providers otherwise coming within the definition of a covered service provider (regardless of whether the threshold is met by compensation received by the covered service provider, an affiliate, or a subcontractor that is performing one or more of the services to be provided under the contract or arrangement with the covered plan). A "covered service provider" is a service provider that enters into a contract or arrangement with the covered plan and reasonably expects to receive $1,000 or more in compensation, direct or indirect, to be received in connection with providing one or more specified services. The Department included the $1,000 threshold in response to commenters' request that the final rule exclude contracts or arrangements that involve de minimis amounts of compensation. In these circumstances, the Department is persuaded that the parties to these relatively small service contracts or arrangements may not need to provide the detailed disclosures required under this rule in order to ensure that plan fiduciaries have the information they need to make informed decisions about the services and cost of the services to be provided. Commenters did not suggest a particular minimum amount for such contracts or arrangements, but the Department believes that $1,000 is a reasonable threshold amount to address their concerns. As this is an interim final rule, the Department welcomes

[7] *See* 29 CFR 2510.3–101.

additional input from commenters on our decision.

The types of service providers covered by the final regulation fall into three categories, and each category is discussed below. A service provider may be a covered service provider under the final rule even if some or all of the services provided pursuant to the contract or arrangement are performed by affiliates of the covered service provider or subcontractors. Further, as noted in paragraph (c)(1)(iii)(D)(*1*), service providers do not become "covered service providers" solely as a result of services that they perform in their capacity as an affiliate of the covered service provider or a subcontractor.

The first category of covered service providers, in paragraph (c)(1)(iii)(A), includes those providing services as an ERISA fiduciary or as an investment adviser registered under either the Investment Advisers Act of 1940 (Advisers Act) or any State law. This category is split into three subsections. Subparagraph (*1*) includes ERISA fiduciaries providing services directly to the covered plan.

Subparagraph (*2*) includes ERISA fiduciaries providing services to an investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment. These service providers are ERISA fiduciaries by virtue of providing services to a plan asset investment vehicle, rather than providing services directly to the covered plan. The Department placed these fiduciaries of plan asset vehicles in a separate subcategory because, under the final rule, these fiduciaries have an additional obligation to disclose compensation information about the investment vehicle for which they serve as a fiduciary.

This subcategory includes fiduciaries to the initial-level investment vehicle in which the covered plan makes a direct equity investment and which holds plan assets. However, it does not include fiduciaries to that initial vehicle's underlying investments, even though such down-level investment vehicles also may hold "plan assets." The determination of whether an investment contract, product, or entity holds "plan assets" is made under sections 3(42) and 401 of ERISA and the regulation at 29 CFR 2510.3–101. The regulation uses the term "direct equity investment" to distinguish the covered plan's initial-level investment in an investment contract, product, or entity from investments made by such initial-level contract, product or entity in which the plan invests, without regard to whether the underlying, second-tier investment vehicles hold plans assets. Specifically, the regulation provides that a direct equity investment does not include investments made by the investment contract, product, or entity in which the covered plan invests.

Subparagraph (*3*) includes investment advisers providing services directly to the covered plan. This provision has been modified from the proposal to require disclosure from an investment adviser "registered" under either the Advisers Act or State law, rather than a "fiduciary" under the Advisers Act.

The Department received a number of comments concerning the requirement to identify services as "fiduciary" services under ERISA or the Advisers Act. In general, commenters argued that whether such services will be provided may be unclear, given the facts-and-circumstances nature of fiduciary status under section 3(21) of ERISA, creating an unnecessary level of uncertainty for both plan fiduciaries and service providers in terms of compliance with the regulation. Commenters also argued that by including fiduciaries under the Advisers Act, the proposal included advisers that may not be registered under the Advisers Act, thereby adding a degree of uncertainty as to which service providers might be covered by the rule. Other commenters argued that plan sponsors may be confused as to whether a particular service provider is acting as a fiduciary under ERISA or as a fiduciary under the Advisers Act. The Department believes that the modifications reflected in paragraph (c)(1)(iii)(A) of the final rule respond to these concerns. The Department continues to believe, however, that it is important for plan fiduciaries to know whether a party will be providing or reasonably expects to provide services to the plan as an ERISA fiduciary or as a registered investment adviser.[8] See paragraph (c)(1)(iv)(B) relating to the requirement that this status be disclosed to the responsible plan fiduciary.

The second category of covered service providers, in paragraph (c)(1)(iii)(B), includes providers of recordkeeping services or brokerage services to a covered plan that is an individual account plan (under ERISA section 3(34)) and that permits participants and beneficiaries to direct the investment of their accounts, if one or more designated investment alternatives will be made available (*e.g.,* through a platform or similar mechanism) in connection with such recordkeeping services or brokerage services. This category encompasses recordkeepers and brokers that offer, as part of their contract or arrangement, a platform of investment options, or a similar mechanism, to a participant-directed individual account plan. This category also encompasses service providers who provide recordkeeping or brokerage services that include designated investment alternatives independently selected by the responsible plan fiduciary and which are later added to the covered plan's platform. Under the proposal, these service providers had no disclosure obligations beyond those directly relating to the services they were providing as recordkeepers or brokers for the plan. Under the interim final rule, however, covered service providers in this category, as discussed later, must disclose to the responsible plan fiduciary compensation information regarding each of the designated investment alternatives for which they provide recordkeeping or brokerage services. See paragraphs (c)(1)(iii)(B) and (c)(1)(iv)(G). The term "designated investment alternative" is defined in paragraph (c)(1)(viii)(C), discussed below.

The third category of covered service providers, in paragraph (c)(1)(iii)(C), includes those providing specified services to the covered plan when the covered service provider (or an affiliate or a subcontractor) reasonably expects to receive "indirect" compensation or certain payments from related parties. As discussed below, the terms "affiliate", "indirect compensation," and "subcontractor" are defined in paragraph (c)(1)(viii) of the final regulation. The services included in this category are accounting, auditing, actuarial, appraisal, banking, consulting (*i.e.,* consulting related to the development or implementation of investment policies or objectives, or the selection or monitoring of service providers or plan investments), custodial, insurance, investment advisory (for plan or participants), legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services provided to the covered plan.

The services in the final rule's third category generally are the same as those in the proposal. However, whether or not these services will cause a service provider to be a covered service

[8] To the extent a service provider is a "dual registrant" (*i.e.,* an investment adviser registered under the Advisers Act and a broker-dealer registered under the Securities Exchange Act of 1934, as amended), the service provider would be a covered service provider under paragraph (c)(1)(iii)(A)(*3*) only when acting as an investment adviser to a covered plan, and not when acting merely as a broker-dealer to such plan. However, broker-dealers to covered plans may be covered service providers under paragraph (c)(1)(iii)(B) or (C), as discussed further below.

provider under the rule depends upon the expectation by the covered service provider, its affiliate, or a subcontractor of receiving certain types of compensation, namely indirect compensation or compensation paid by related parties. A few commenters asked the Department to define the types of services referenced in the proposal. Although the Department understands that there may be, in some instances, subtle differences in how employee benefits services are described and, therefore, some clarification may be helpful, the Department also is concerned that too much specificity may have the undesirable effect of narrowing the application of the regulation solely on the basis of an overly technical definition. The Department believes that the financial industry and employee benefits community have a reasonable understanding of the services referenced in the regulation and that any remaining ambiguity will not result in undue burdens attendant to compliance with the final rule.

Nonetheless, the Department, in response to commenters, has attempted to narrow the scope of the term "consulting" by adding a parenthetical clarifying that "consulting" as used in the final regulation is consulting related to the development or implementation of investment policies or objectives, or the selection or monitoring of service providers or plan investments. Also, it should be noted that investment advisory services are included in both the first and third categories of covered service providers, but the investment advisers who are covered in each category may be different. The first category includes only *registered* investment advisers, even if they receive only direct compensation from the covered plan. The third category includes investment advisers that reasonably expect to receive compensation that is indirect or paid from related parties, whether or not they are registered investment advisers.

Paragraph (c)(1)(iii)(D) of the final regulation clarifies that, notwithstanding the preceding categories of "covered service providers," no person or entity is a "covered service provider" solely by providing services (1) as an affiliate or a subcontractor that is performing one or more of the services to be provided under the contract or arrangement with the covered plan (see paragraph (c)(1)(iii)(D)(*1*)), or (2) to an investment contract, product, or entity in which the covered plan invests, regardless of whether or not the investment contract, product, or entity holds assets of the covered plan, other than services as a fiduciary described in paragraph (c)(1)(iii)(A)(*2*) (see paragraph (c)(1)(iii)(D)(*2*)). In other words, paragraph (c)(1)(iii)(D)(*1*) clarifies that the concept of a "covered service provider" captures only the party directly responsible to the covered plan for the provision of services under the contract or arrangement, even though some or all of such services may be performed by an affiliate or subcontractor. In the view of the Department, the service provider directly responsible to the plan for the provision of services is the appropriate party to ensure that the required disclosures under the regulation are made. Paragraph (c)(1)(iii)(D) addresses the possibility of multiple disclosure obligations with respect to the same services.

Paragraph (c)(1)(iii)(D)(*2*) further clarifies that, other than providers of fiduciary services to an investment contract, product, or entity holding plan assets with respect to which the covered plan has a direct equity investment (described above), the term "covered service provider" does not include a mere provider of services to an investment contract, product, or entity (regardless of whether or not the investment contract, product, or entity holds assets of the covered plan).

The Department believes that these clarifications resolve much of the uncertainty raised by commenters about the intended application of the proposal in the context of plan investments. Other than a fiduciary described in paragraph (c)(1)(iii)(A)(*2*), service providers that only provide non-fiduciary administrative, legal or other services to an investment vehicle, even one holding plan assets, are not covered service providers. For example, a recordkeeper servicing a collective investment fund is not a covered service provider to a plan investing in the fund merely because the fund holds plan assets. On the other hand, if that same recordkeeper provides services directly to a covered plan and receives indirect compensation or certain compensation from related parties, then it would be a covered service provider. Its covered status, however, would derive from the services it provides directly to the plan, not to the collective investment fund. A similar analysis would apply to an investment vehicle that does not hold plan assets, such as a registered investment company.

4. Contracts or Arrangements Not Covered by Interim Final Regulation

The Department notes that some contracts or arrangements will fall outside the scope of the final regulation because they do not involve a "covered plan" and a "covered service provider." ERISA nonetheless requires such contracts or arrangements to be "reasonable" in order to satisfy the ERISA section 408(b)(2) statutory exemption. ERISA section 404(a) also obligates plan fiduciaries to obtain and carefully consider information necessary to assess the services to be provided to the plan, the reasonableness of the fees and expenses being paid for such services, and potential conflicts of interest that might affect the quality of the provided services.[9]

5. Initial Disclosure Requirements

a. Overview of Initial Disclosure Requirements; Request for Comments on Format Requirement for Initial Disclosures

The proposed regulation would have required that the terms of the contract or arrangement for services between the covered plan and the covered service provider be in writing and that the writing delineate the specific disclosure obligations of the covered service provider under the regulation. The Department received a number of comments on the requirement that contracts and arrangements, as well as the disclosure obligations thereunder, must be in writing. Many commenters argued that such written documents are not used with respect to the provision of many services and that requiring formal written contracts adds complexity and costs, as well as potentially raising concerns under State contract law, without affecting the quality of such services. For example, these points were made by providers of insurance products and services, who explained that any amendments to their contracts, which are approved and regulated by State insurance agencies, would have to be submitted to such agencies; this would be a lengthy and burdensome process with an outcome that is not within the service providers' control.

While the interim final rule continues to require that the responsible plan fiduciary be furnished the required disclosures in writing, the rule does not require that a formal contract or arrangement itself be in writing or that any representations concerning the

[9] *See, e.g.,* Field Assistance Bulletin 2002–3 (November 5, 2002), Advisory Opinion 97–15A (May 22, 1997), Advisory Opinion 97–16A (May 22, 1997), Understanding Retirement Plans Fees and Expenses, (*http://www.dol.gov/ebsa/publications/undrstndgrtrmnt.html.*), and Selection and Monitoring Pension Consultants—Tips for Plan Fiduciaries, (*http://www.dol.gov/ebsa/newsroom/fs053105.html.*)

specific obligations of the service provider be included in such written contract or arrangement. The Department is persuaded that, given the varying relationships between plans and their service providers, requiring such a formal contract or arrangement in every instance may result in unnecessary burdens, complexity, and costs. The Department continues to believe, however, that setting forth a covered service provider's disclosure obligations under the regulation in writing generally will help ensure that both the responsible plan fiduciary and the service provider clearly understand their respective responsibilities for purposes of compliance with the statutory exemption.

As discussed above, neither the proposal nor the interim final rule requires the covered service provider to make disclosures in any particular manner or format. Further, the preamble to the proposal specifically noted that the covered service provider could disclose using different documents from separate sources as long as the documents, collectively, contained all of the required information. Commenters on the proposal disagreed as to whether or not this would lead to an effective presentation to responsible plan fiduciaries, especially those for small plans. Commenters also disagreed as to the anticipated costs and burdens associated with more stringent format requirements and the extent to which those costs would be absorbed by service providers or passed through to plans, and therefore potentially to participants and beneficiaries. Some commenters encouraged the Department to retain its flexible approach, arguing that it is best left to the parties to service contracts or arrangements to determine the optimal way to fulfill the substantive disclosure requirements. Other commenters encouraged the Department to adopt a model form for disclosure or to otherwise mandate that the required information be conveyed in a summary or consolidated fashion, arguing that this would lead to more consistency in the way that information is disclosed and make it easier for responsible plan fiduciaries to review and analyze information received from plan service providers.

At this time, the Department has not determined whether it is feasible, as part of this regulation, to provide specific and meaningful standards for the format in which the required information must be disclosed, given the large variety of plan service arrangements that are covered by the interim final regulation and the variation in the way service providers currently disclose information to plan fiduciaries. The Department is persuaded that plan fiduciaries may benefit from increased uniformity in the way that information is presented to them. However, the Department does not want to unnecessarily increase the cost and burden for service providers to furnish required information, especially to the extent such cost may be passed along to plan participants and beneficiaries, unless it is clear that the benefit to plan fiduciaries outweighs such cost and burden. If the Department is convinced that the benefits would outweigh the costs, the final regulation may be revised. Specifically, the Department is considering adding a requirement that covered service providers furnish a "summary" disclosure statement, for example limited to one or two pages, that would include key information intended to provide an overview for the responsible plan fiduciary of the information required to be disclosed. The summary also would be required to include a roadmap for the plan fiduciary describing where to find the more detailed elements of the disclosures required by the regulation.

To assist the Department in its decision whether to include such a requirement in the final rule, interested persons are encouraged to submit comments on three issues: first, the likely cost and burden to covered service providers, and to any other parties, of complying with such a requirement; second, the anticipated benefits to responsible plan fiduciaries, whether due to time savings, cost savings, or other factors, of including a summary disclosure statement; and third, how to most effectively construct the requirement for a summary disclosure statement to ensure both its feasibility and its usefulness in helping the Department achieve its objectives.

As to the substance of the information required to be disclosed, the proposal generally required the disclosure of information intended to assist plan fiduciaries in understanding the services that will be furnished and in assessing the reasonableness of the compensation, direct and indirect, that the service provider would receive in connection with the provision of such services. The proposal also required the disclosure of specific information intended to assist plan fiduciaries in assessing any real or potential conflicts of interest that may affect the quality of the services to be provided. As discussed above, the proposal did not require that the information be furnished in any particular format. While the proposal did require that the required disclosures be furnished in advance of entering into a contract or arrangement, along with a representation that all of the required disclosures had been furnished to the responsible fiduciary, the proposal did not designate any specific time period for making such advance disclosure.

The proposal broadly defined compensation or fees [10] to include money and any other thing of monetary value received by the service provider or its affiliates in connection with the services provided to the plan or the financial products in which assets are invested. As noted, the proposal required the disclosure of both direct and indirect compensation, the latter including fees that the service provider receives from parties other than the plan, the plan sponsor, or the service provider. Service providers also would have been required to disclose compensation received by their affiliates from third parties. The proposal also addressed the manner in which compensation could be disclosed, permitting the use of formulas, references to a percentage of the plan's assets, or per capita charges.

With regard to the disclosure of compensation generally, the proposal contained a special rule for providers of multiple services (commonly referred to as "bundles" of services). In the case of bundled service arrangements, the proposal required only that the provider of the bundle make the prescribed disclosures. In such instances, the bundled service provider would be required to disclose information concerning all of the services to be provided in the bundle, regardless of who actually performs the service. Further, the bundled provider would be required to disclose the aggregate direct compensation that will be paid for the bundle, as well as all indirect compensation that will be received by the service provider, or its affiliates or subcontractors within the bundle, from third parties. The preamble explained that generally the bundled provider would be required to break down the aggregate compensation among the individual services comprising the bundle only when the compensation was separately charged against the plan's investment (such as management fees and 12b–1 fees) or was set on a

[10] For ease of reference, the interim final regulation refers only to "compensation" and not "compensation or fees" or "compensation and fees." Given the broad definition of "compensation" contained in the final regulation, the Department does not intend any substantive distinction by changing from the phrase "compensation or fees" or "compensation and fees" to the term "compensation."

transaction basis (such as finder's fees and brokerage commissions).

While the Department retained many of the disclosure concepts of the proposal, the interim final rule contains a number of changes made in response to issues raised by commenters. Paragraph (c)(1)(iv) of the final rule describes the initial disclosure requirements that must be satisfied, in writing, by the covered service provider; paragraph (c)(1)(v) describes the timing requirements applicable to the initial disclosures and when changes to the initial disclosures must be furnished; paragraph (c)(1)(vi) describes the requirement that a covered service provider disclose information requested by the responsible plan fiduciary or covered plan administrator to comply with ERISA's reporting and disclosure requirements; and paragraph (c)(1)(vii) addresses inadvertent errors and omissions in disclosing the required information.

b. Description of Services

Paragraph (c)(1)(iv)(A) requires a description of the services to be provided to the covered plan pursuant to the contract or arrangement, but not including non-fiduciary services described in paragraph (c)(1)(iii)(D)(*2*). In other words, for purposes of this disclosure, "services" to the covered plan do not include services described in paragraph (c)(1)(iii)(D)(*2*), *e.g.,* services provided by non-fiduciary service providers to investment vehicles holding plan assets. Thus, in the case of a person that is a covered service provider by reason of paragraph (c)(1)(iii)(A)(*2*), paragraph (c)(1)(iv) would require a description of services provided as a fiduciary to the investment vehicle that holds plan assets and in which the covered plan has a direct equity investment.

Some commenters requested guidance as to the level of detail necessary when describing the services. For example, commenters asked whether general descriptions of the services would be acceptable, or whether detailed and itemized descriptions must be provided. It is the view of the Department that the level of detail required to adequately describe the services to be provided pursuant to a contract or arrangement will vary depending on the needs of the responsible plan fiduciary.

In certain instances, it may be well understood that a particular service necessarily encompasses, among other things, a variety of sub-services such that a description of the sub-services is unnecessary. For example, plan fiduciaries may understand that the execution of securities transactions includes, but is not limited to, valuation, safekeeping, posting of income, clearing and settling transactions, and reporting transactions, thereby eliminating the need to describe such sub-services. In an effort to clarify the flexibility inherent in this disclosure requirement, the final rule omits the word "all" from the required description of services.

Ultimately, though, the responsible plan fiduciary must, under sections 404 and 408(b)(2) of ERISA, decide whether it has enough information about the services to be provided pursuant to the contract or arrangement to determine whether the cost of such services to the plan is reasonable. Accordingly, if a particular description of services provided by a covered service provider lacks sufficient detail to enable the responsible plan fiduciary to determine whether the compensation to be received for such services is reasonable, the responsible plan fiduciary must request additional information concerning those services.

There is one provision of the interim final rule that includes a more specific standard for the level of detail that must be furnished when describing the provision of recordkeeping services in specified circumstances. See section (c)(1)(iv)(D)(*2*), discussed below.

c. Status of Covered Service Providers, Affiliates, and Subcontractors

Paragraph (c)(1)(iv)(B) of the regulation requires, if applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan (or to an investment vehicle that holds plan assets and in which the covered plan has a direct equity investment) as a fiduciary; and, if applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan as an investment adviser registered under either the Advisers Act or any State law. Thus, if a service provider will, or reasonably expects to, provide services as both a fiduciary and a registered investment adviser, the statement must reflect both of these roles. While the proposal contained a similar disclosure requirement, the requirement contained in the final rule reflects changes that are intended to address concerns raised by commenters.

Commenters on the proposal expressed concern that, given the factual nature of fiduciary status under ERISA, this requirement added a level of uncertainty to the statutory exemption. Commenters also expressed concern that disclosing fiduciary status by virtue of being an investment adviser involved similar uncertainties and, in addition, would only serve to confuse plan fiduciaries regarding the nature of the services that the plan would receive. As discussed above, the Department continues to believe that plan fiduciaries should understand whether a service provider will provide, or reasonably expects to provide, services as an ERISA fiduciary or services as a registered investment adviser in light of their heightened level of responsibility under ERISA and the Advisers Act, respectively. The Department, however, believes that the final disclosure provision addresses the concerns of the commenters. First, the final provision only requires disclosure if the provider will or *reasonably expects* to be providing services as a fiduciary or registered investment adviser. Service providers do not have to indicate that they will not be providing such services. Second, the disclosure with respect to services as an investment adviser is required only for investment advisers who are registered under the Advisers Act or any State law, thereby providing a degree of certainty as to who must make the required disclosure. The final provision does not require investment advisers to identify their services as "fiduciary services."

d. Disclosure of Compensation

The Department received a number of comments on the compensation disclosure requirements of the proposal. Many of the commenters expressed concern about the parties for whom compensation might have to be reported under the proposal, such as providers of services to mutual funds and other investment products in which a plan might invest, and the increased level of complexity attendant to more detailed levels of disclosure generally. The Department believes that many of the issues raised by commenters in this area have been addressed in the final regulation by more specifically defining the parties that would be treated as "covered service providers" for purposes of the disclosure requirements.

The compensation disclosure requirements of the final rule are set forth at paragraph (c)(1)(iv)(C). While structured differently than the proposal, the final rule retains many of the same concepts of the proposal with respect to what types of compensation have to be disclosed for purposes of a reasonable contract or arrangement. The compensation disclosure requirement of

the final rule is divided into four subparagraphs to more clearly describe the compensation information that must be disclosed.

Paragraph (c)(1)(iv)(C)(*1*) requires a description of all *direct* compensation, as defined in paragraph (c)(1)(viii)(B)(*1*), either in the aggregate or by service, that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described in paragraph (c)(1)(iv)(A). For purposes of the regulation, "direct" compensation is compensation received directly from the covered plan.[11]

This requirement to disclose direct compensation generally follows the requirement of the proposal, with a clarifying change. A number of commenters on the proposal questioned whether the proposal's definition of compensation, which referred to payments received "directly from the plan or plan sponsor" was intended to subject to ERISA section 408(b)(2) payments for services made solely by the plan sponsor and not out of plan assets,. The proposal's reference to payments received from plan sponsors was intended to distinguish direct compensation from indirect compensation. As reflected above, the final regulation omits the reference to the plan sponsor, so as to avoid the confusion raised by commenters. The final rule also clarifies that a covered service provider generally may disclose the direct compensation received from the plan either as a total for all services (*i.e.,* in the aggregate) or on an itemized, service-by-service basis. The Department continues to believe as a general matter that a fiduciary who understands the services the covered service provider is providing pursuant to the contract or arrangement and their aggregate cost is in a position to compare services and costs consistent with its obligations under sections 404 and 408(b)(2) of ERISA, and to determine the reasonableness of compensation paid for such services in the aggregate. There is one exception to this rule, discussed below, for the disclosure of certain compensation received in connection with recordkeeping services. See section (c)(1)(iv)(D) of the final rule.

Finally, in response to the concerns of some commenters about whether a failure to disclose unexpected compensation would result in a prohibited transaction by reason of losing relief under section 408(b)(2), the final rule requires disclosure only of compensation that the service provider, an affiliate, or a subcontractor "reasonably expects" to receive in connection with the services.

Paragraph (c)(1)(iv)(C)(*2*) of the final regulation provides for the disclosure of *indirect* compensation. Specifically, it requires a description of all indirect compensation (as defined in paragraph (c)(1)(viii)(B)(*2*)) that the covered service provider (or an affiliate or a subcontractor) reasonably expects to receive in connection with the services to be provided pursuant to the contract or arrangement. The rule also requires the covered service provider to identify the services for which the indirect compensation will be received and the payer of the indirect compensation. For purposes of the final regulation, "indirect" compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor (if the subcontractor receives such compensation in connection with services performed under the subcontractor's contract or arrangement with the covered service provider). See section (c)(1)(viii)(B)(*2*) of the final rule.

The proposal defined compensation or fees as "indirect" if received from any source other than the plan, the plan sponsor, or the covered service provider. The substance of the final rule with regard to disclosure of indirect compensation is similar to the proposed rule, but has been expanded to require disclosure of not only the indirect compensation that a covered service provider expects to receive, as proposed, but also identification of the services for which the indirect compensation will be received and identification of the payer of the indirect compensation.

Paragraph (c)(1)(iv)(C)(*3*) of the final rule provides specific guidance for when compensation paid among related parties, *i.e.,* among the covered service provider, its affiliates, and subcontractors, must be disclosed. The covered service provider must separately disclose such compensation if it is set on a transaction basis (*e.g.,* commissions, soft dollars, finder's fees or other similar incentive compensation based on business placed or retained) or is charged directly against the covered plan's investment and reflected in the net value of the investment (*e.g.,* Rule 12b–1 fees). The final rule also requires the covered service provider to identify the services for which such compensation will be paid, the payers and recipients of such compensation, and the status of each payer or recipient as an affiliate or a subcontractor. Under this paragraph (c)(1)(iv)(C)(*3*) of the final rule, compensation must be disclosed regardless of whether such compensation also is disclosed under paragraph (c)(1)(iv)(C)(*1*) or (*2*) (direct and indirect compensation) or (c)(1)(iv)(F) or (G) (investment disclosures). This provision does not apply to compensation received by an employee from his or her employer on account of work performed by the employee. Unless described in paragraph (c)(1)(iv)(C)(*3*) or elsewhere in the final rule, compensation paid among these related parties need not be disclosed. Such payments affect only how compensation is allocated among the parties and generally do not affect the total costs of services to the plan. Thus, the final rule responds to commenters' concerns that when services are provided by multiple parties and priced as a package, the covered service provider is not required to create an artificial allocation of compensation for services among the parties. However, if compensation is paid among related parties in the specific circumstances described in this paragraph (c)(1)(iv)(C)(*3*), the Department does not consider such compensation to be based on artificial methods, such as would be the case when allocations are driven by bookkeeping, tax, or other considerations of the related parties.

The disclosure of indirect compensation and certain compensation paid among related parties serves two purposes. First, the disclosures are intended to enable plan fiduciaries to better assess the reasonableness of the compensation paid for services to the plan by taking into account all of the compensation being received in connection with such services. Second, the disclosures are intended to enable plan fiduciaries to assess actual or potential conflicts of interest that may impact the quality of services provided to the plan.

The proposed rule required the covered service provider to furnish to plan fiduciaries specific information relating to conflicts of interest (see § 2550.408b–2(c)(1)(iii)(C) through (F), at 72 FR 71005). These provisions would have required disclosure of, among other things, information concerning: whether the service provider expects to participate in any transactions entered into with the plan; material financial relationships with certain parties related to the provision of services to the plan; whether the service provider will be able to unilaterally affect its own compensation

[11] This definition, therefore, excludes from the term "direct" compensation any compensation received from a plan asset vehicle in which the covered plan has a direct equity investment.

in connection with its provision of services; whether the service provider has policies or procedures that address actual or potential conflicts and, if so, an explanation of such policies and procedures.

A number of commenters expressed concern about the scope of the proposal's conflict of interest disclosures and the ultimate usefulness of the information to responsible plan fiduciaries in evaluating potential conflicts. Specifically, commenters asserted that the requirements, as proposed, were too broad, pointing out that having to disclose, in addition to actual conflicts, all potential conflicts, would create a potentially limitless, and therefore extraordinarily burdensome, requirement for service providers. Without a clear definition of what kinds of relationships may constitute a conflict and without knowing what other parties a covered plan may be engaging for other services, commenters argued such disclosure would be nearly impossible. Further, commenters pointed out that service providers likely would over-disclose in order to avoid a prohibited transaction, thus inundating plan fiduciaries with excessive, potentially confusing, and ultimately meaningless information. Commenters also requested additional guidance as to what would be a "material" relationship and argued that ambiguity surrounding this term would lead to inconsistent disclosures among various service providers.

Finally, the proposal required a covered service provider to disclose its ability to affect its own compensation. Commenters pointed out that ERISA's prohibited transaction rules preclude fiduciary service providers from engaging in such activity. They also noted that, to the extent that a service provider is not a fiduciary, exercising such discretion over its compensation likely would constitute a fiduciary act resulting in a separate prohibited transaction.

As an alternative to the disclosure regime of the proposed regulation, some commenters suggested that a better indicator of the existence and significance of a conflict of interest is information about the amounts and sources of compensation that service providers expect to receive in connection with the services provided to the plan. After careful consideration of the comments regarding the proposed requirement for narrative descriptions of conflicts of interest, the Department agrees that the final regulation's more detailed disclosure of compensation arrangements, particularly the additional information concerning the receipt of indirect compensation and compensation paid among related parties, will provide clearer and more meaningful information to the responsible plan fiduciaries about potential conflicts of interest than the narrative description of such conflicts required by the proposal. Accordingly, the final rule does not require the narrative disclosures about potential conflicts that were contained in the proposed regulation. Rather, the final rule requires that in conjunction with the description of the indirect compensation being received by the covered service provider (or an affiliate or subcontractor) in connection with the services provided to the plan, the covered service provider must disclose the services to which the indirect compensation relates and the payer of the compensation. Covered service providers similarly must identify the source and recipient of certain compensation paid among related parties, and the services to which such compensation relates. The Department believes that compliance with these disclosure requirements will ensure that fiduciaries have meaningful information with which to assess potential conflicts of interest on the part of their service providers.

Paragraph (c)(1)(iv)(C)(*4*), also consistent with the proposal, requires the covered service provider to describe compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination. This provision, however, has been modified slightly from the proposal in an effort to clarify the requirement. Some commenters on the proposal expressed a general concern that fees and charges associated with contract terminations are not currently disclosed, as well as a specific concern that the proposed regulation was not clear as to whether disclosure of these fees and charges was required. In an effort to eliminate any ambiguity concerning the requirement to disclose such information, the requirement has been set forth in a separate paragraph of the final regulation.

e. Disclosures Regarding Recordkeeping Services

The final rule also includes a requirement concerning specific disclosures for recordkeeping services, which was not included in the proposal. Paragraph (c)(1)(iv)(D) provides that, if recordkeeping services will be provided to the covered plan, the covered service provider must furnish a description of all direct and indirect compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with such recordkeeping services. In addition, if the covered service provider reasonably expects recordkeeping services to be provided, in whole or in part, without explicit compensation for such recordkeeping services, or when compensation for recordkeeping services is offset or rebated based on other compensation received by the covered service provider, an affiliate, or a subcontractor, the covered service provider must furnish a reasonable and good faith estimate of the cost to the covered plan of such recordkeeping services. The covered service provider must explain the methodology and assumptions used to prepare the estimate and describe in detail the recordkeeping services that will be provided to the covered plan. The estimate shall take into account, as applicable, the rates that the covered service provider, an affiliate, or a subcontractor would charge to, or be paid by, third parties, or the prevailing market rates charged, for similar recordkeeping services for a similar plan with a similar number of covered participants and beneficiaries.

The addition of this provision to the final rule reflects the Department's belief that information relating to recordkeeping services and the costs to covered plans of those services should be disclosed to responsible plan fiduciaries in a meaningful way. The availability of information sufficient to enable the plan fiduciary to make informed decisions about the costs of recordkeeping is fundamental to a responsible plan fiduciary's ability to satisfy its ERISA obligations. Especially in complicated service arrangements when a variety of services, including recordkeeping services, are provided to the covered plan and may be paid for through charges at the plan investment level or through revenue sharing, it is sometimes difficult for a plan fiduciary to determine the portion of aggregate charges that will be applied to recordkeeping services. The Department believes that requiring such information to be separately disclosed will better enable fiduciaries to make informed evaluations of a covered plan's recordkeeping costs. To the extent recordkeeping costs will not be covered by relatively straightforward direct or indirect compensation received by plan service providers, and to accommodate industry variation in how recordkeeping costs are otherwise absorbed by plan

service providers and investment-level charges, the Department included a standard for estimating recordkeeping costs in paragraph (c)(1)(iv)(D)(*2*). A covered service provider cannot avoid providing an estimate required by paragraph (c)(1)(iv)(D)(*2*) merely by disclosing a de minimis amount of direct or indirect compensation for recordkeeping under paragraph (c)(1)(iv)(D)(*1*) when such amount has no relationship to the cost of such services. In such instances, a covered service provider would be required under the final rule to provide an estimate pursuant to paragraph (c)(1)(iv)(D)(*2*) to reasonably reflect the cost to the covered plan of recordkeeping services. The Department believes these estimates, which must be reasonable and made in good faith by the covered service provider, will help responsible plan fiduciaries compare recordkeeping costs among a variety of service providers and service arrangements.

f. Manner of Receipt of Compensation

Paragraph (c)(1)(iv)(E) of the final rule, consistent with the proposal, requires a description of the manner in which the compensation described in paragraphs (c)(1)(iv)(C) and (D) will be received, such as whether the covered plan will be billed or the compensation will be deducted directly from the covered plan's account(s) or investments.

g. Investment Disclosure—Fiduciary Services and Recordkeeping and Brokerage Services

The definition of compensation under the proposal was very broad and encompassed not only the compensation and fees received by service providers, but also compensation attendant to plan investments and investment options. Disclosures concerning investment-related compensation (*i.e.,* investment management and similar fees charged against investment returns) are particularly significant in that they typically constitute a large portion of the total expenses incurred by a plan and its participants. These disclosures may directly impact the cost of plan services as a result of revenue sharing and similar arrangements between the issuer of a particular investment product and plan service providers. Understanding the fees and expenses attendant to plan investments is particularly significant for fiduciaries of individual account plans that permit participant and beneficiaries to direct their own investments, because it is those fiduciaries who ultimately select the plan's investment options and upon whom the participants and beneficiaries depend to make informed choices concerning their investments. Because investment-related fees and expenses can dramatically reduce the retirement savings of participants and beneficiaries, plan fiduciaries must carefully assess investment fees and expenses, among other factors, in selecting investment options to be made available in participant-directed individual account plans.

The Department received a number of comments concerning the disclosure of investment-related compensation. Most of the comments focused on what information should be disclosed and by whom it should be disclosed. The final regulation addresses the major issues raised by commenters through changes to the scope of the term "covered service provider." For example, the concerns relating to uncertainty as to whether issuers of investment products, and certain service providers to those issuers or products, are themselves covered service providers for purposes of the regulation have been addressed by clarifying who does not constitute a "covered service provider" in the final rule. See above discussion relating to paragraph (c)(1)(iii)(D) of the final rule. Other comments expressed concern about some of the terminology used in the proposal. For example, one commenter expressed the view that the proposal left unclear whether a component of a charge called an "investment management fee" that actually pays recordkeeping or other non-management costs is required to be separately disclosed. The commenter explained that some service providers construe "revenue sharing" which would be required to be disclosed to include only the items specified in the preamble to the proposal, notwithstanding that there may be components of an expense ratio that actually pay for non-investment management services. Other commenters favorably characterized the proposal's definition of fees and expenses as comprehensive. Again, many of these commenters' concerns are addressed by the revisions reflected in the final rule concerning who does (and who does not) constitute a "covered service provider." The Department also believes that the final rule's requirements, discussed below, establish clear standards as to what information concerning plan investments must be disclosed and by whom such information must be disclosed.

As discussed above, the final rule defines the term "covered service provider" to include fiduciaries to certain investment vehicles holding plan assets (paragraph (c)(1)(iii)(A)(*2*)) and providers of recordkeeping and brokerage services to a participant-directed individual account plan if they make available one or more designated investment alternatives for the covered plan (paragraph (c)(1)(iii)(B)). In addition to imposing an obligation to disclose compensation information concerning the services they provide (*i.e.,* as a fiduciary or as a recordkeeper or broker), the final rule requires these covered service providers to disclose compensation information concerning the investments with respect to which they are a fiduciary or provide recordkeeping or brokerage services pursuant to the contract or arrangement with the covered plan. After careful consideration of all of the comments, the Department concluded that these service providers, because they have a relationship with both the investment vehicles and the covered plan, are in the best position to ensure that responsible plan fiduciaries have the information they need about the investments represented by the covered service provider. These investment-related disclosures are described in paragraphs (c)(1)(iv)(F) and (G) of the final rule and are not limited as to who will receive such investment-related compensation. The Department also notes that ERISA section 404(a) obligates plan fiduciaries who invest in vehicles holding plan assets (paragraph (c)(1)(iii)(A)(*2*)) to consider the effect on the plan's rate of return of fees and expenses associated with that vehicle's underlying investments, including any lower tiered entity in which the plan asset vehicle invests.

Paragraph (c)(1)(iv)(F) sets forth the investment-related disclosure obligations of fiduciaries to investment vehicles holding plan assets. These covered service providers (as described in paragraph (c)(1)(iii)(A)(*2*)) must provide, with respect to each investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment, the following information, unless such information is disclosed to the responsible plan fiduciary by a covered service provider described in paragraph (c)(1)(iii)(B) (recordkeeping and brokerage services): (*i*) a description of any compensation that will be charged directly against the amount invested in connection with the acquisition, sale, transfer of, or withdrawal from the investment contract, product, or entity (*e.g.,* sales loads, sales charges, deferred sales

charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees); (*ii*) a description of the annual operating expenses (*e.g.,* expense ratio) if the return is not fixed; and (*iii*) a description of any ongoing expenses in addition to annual operating expenses (*e.g.,* wrap fees, mortality and expense fees).

Paragraph (c)(1)(iv)(G) requires disclosure of the same investment-related compensation information described above from recordkeepers and brokers that make available investment alternatives for participant-directed individual account plans. This information must be provided with respect to each designated investment alternative for which recordkeeping or brokerage services will be provided pursuant to the contract or arrangement with the covered plan. Paragraph (c)(1)(viii)(C), discussed below, defines the term "designated investment alternative" for purposes of the final rule.

The Department recognizes that recordkeepers and brokers, unlike fiduciaries to investment vehicles holding plan assets, are not directly involved in the day-to-day management of the investment vehicles they represent, but rather, merely serve as intermediaries between plans and the issuers of these investment vehicles for purposes of furnishing such information; the final rule limits their liability under the regulation for the completeness and accuracy of the disclosed information. Specifically, paragraph (c)(1)(iv)(G)(*2*) of the final rule provides that a covered service provider may comply with this investment-related disclosure requirement if the covered service provider provides to the responsible plan fiduciary current disclosure materials of the issuer of the designated investment alternative that include the information described in this paragraph, provided that such issuer is not an affiliate, the disclosure materials are regulated by a State or federal agency, and the covered service provider does not know that the materials are incomplete or inaccurate.

h. Timing of Initial Disclosure Requirements; Changes

With regard to the timing of the required disclosures, the proposed regulation required that service contracts or arrangements include a representation by the service provider that all required information was provided to the responsible plan fiduciary before the contract or arrangement was entered into. This requirement was intended to ensure that the responsible plan fiduciary had the opportunity to consider all required disclosures before entering into a contract or arrangement with a service provider. The Department did not specify any time frame for this disclosure, believing it was best left to the responsible plan fiduciary and its potential service providers to work out the amount of time, prior to entering into the contract or arrangement, that the responsible plan fiduciary would need to review the disclosures. Some commenters suggested that the final regulation provide a more specific timeframe for the disclosures. However, the Department continues to believe that the flexibility described in the proposed regulation is appropriate and that the parties to the contract or arrangement can determine what is reasonable; accordingly, the Department did not adopt the suggestion.

Consistent with the proposal, the final rule, at paragraph (c)(1)(v), requires that a covered service provider provide the initial disclosures required by paragraph (c)(1)(iv), discussed above, to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, extended or renewed. The final rule, however, contains an exception for certain persons who become covered service providers within the meaning of paragraph (c)(1)(iii)(A)(*2*) of the final rule subsequent to a plan's investment in an investment vehicle. This situation would arise when a plan invests in an investment vehicle that, at the time of the plan's investment, does not hold plan assets, but that subsequently, for reasons such as another plan's investment in the vehicle, is determined to hold plan assets, thereby causing a fiduciary to such vehicle to be a covered service provider pursuant to paragraph (c)(1)(iii)(A)(*2*). To accommodate such instances, the final rule provides that such a fiduciary service provider must disclose the information required by paragraph (c)(1)(iv) as soon as practicable, but not later than 30 days from the date on which the service provider knows that such investment contract, product or entity holds plan assets.

The final rule also includes a special timing provision for disclosure related to recordkeeping and brokerage services pursuant to paragraph (c)(1)(iv)(G). Information described in paragraph (c)(1)(iv)(G) relating to any investment alternative that is not designated at the time the contract or arrangement is entered into must be disclosed as soon as practicable, but not later than the date on which the investment alternative is designated by the responsible plan fiduciary.

In addition to requiring that certain information be disclosed to responsible plan fiduciaries before the parties enter into, or extend or renew, a contract or arrangement, the proposal included an ongoing obligation for the service provider to disclose to the responsible plan fiduciary any material change to the required information not later than 30 days from the date on which the service provider acquired knowledge of the change. A number of commenters requested additional guidance on what would be considered a "material" change. Some of the commenters' concerns related to the potential breadth of disclosures required by the proposal, with commenters expressing concern as to whether 30 days would provide sufficient time to identify material changes, especially in the context of packaged or bundled services that may involve parties other than the contracting service provider. Some commenters, especially large institutions with multiple affiliations, argued that 30 days was not enough time to discover changes to information relating to all of their business units or affiliates. Commenters also asserted that this requirement would result in voluminous, costly, and inefficient monitoring of disclosures, as well as potential "over-disclosure" of all changes to the extent it is not clear whether a particular change is material. Finally, commenters argued that disputes may result between various parties as to the beginning date for the 30-day compliance period, which may be subjective. Commenters suggested alternative approaches, for example defining materiality for this purpose, extending the 30-day period, or requiring an annual updating of all information in lieu of periodic disclosure of material changes. In response to these comments, the Department has made a number of changes.

Specifically, paragraph (c)(1)(v)(B) of the final rule requires that a covered service provider disclose a change (as opposed to a "material" change) to the initial information required to be disclosed pursuant to paragraphs (c)(1)(iv) as soon as practicable, but not later than 60 days from the date on which the covered service provider is informed of such change, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable. The Department was persuaded by commenters' concerns that it may take

more than 30 days to accurately identify and disclose changes to information that previously was disclosed, especially in the context of large institutions with multiple affiliates. However, the Department does not believe that a covered service provider should have an unlimited period of time to disclose changes to the responsible plan fiduciary; a certain level of timeliness and efficiency is expected in the marketplace, and covered service providers should be in a position to ensure that the information they disclose to responsible plan fiduciaries about the services they are providing and the compensation they are receiving continues to be accurate. Therefore, disclosure of changes must be made as soon as practicable, but not later than 60 days from the date on which the covered service provider knows of such change unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable.

The Department also eliminated the concept of materiality, persuaded by commenters that, without more specific definition, this standard would not add to a covered service provider's understanding of what types of changes must be disclosed. Accordingly, if information previously disclosed to a responsible plan fiduciary changes, the responsible plan fiduciary must be notified. The Department believes that a responsible plan fiduciary should be made aware if any change occurs, for example, in the services that the covered service provider will be providing for the plan, the fiduciary status of the service provider, or the compensation that the service provider will be paid.[12]

i. Reporting and Disclosure Information; Timing

Paragraph (c)(1)(vi) of the final rule addresses the obligations of the covered service provider to provide, upon request of the responsible plan fiduciary or plan administrator, any other information relating to the compensation received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued thereunder. This provision is very similar to the proposal. A few commenters asked the Department to provide that only "reasonable" requests from the responsible plan fiduciary or plan administrator must be accommodated under this provision. The Department did not include this concept in the final rule, because it did not want to create issues as to the "reasonableness" of a particular request. The Department believes that the final rule minimizes the potential for abuse by restricting covered service provider's disclosure obligation to information that is "required" for the covered plan to comply with its reporting and disclosure obligations. Commenters also requested guidance from the Department that the responsible plan fiduciary or plan administrator may not request that this information be disclosed or presented in any particular format. The Department expects that the covered service provider will furnish the information in a manner that enables effective use of the information to satisfy ERISA's Title I reporting and disclosure requirements; no further obligation should be inferred from this requirement.

Finally, a few commenters asked that the Department clarify that this disclosure obligation was limited to information specifically required by a responsible plan fiduciary or plan administrator to complete a Form 5500 annual report. The Department declined to accept this suggestion; the Department expects that this provision will require service providers to disclose information that is necessary in order to comply with ERISA's reporting and disclosure obligations in circumstances other than the Form 5500 annual report, for example in making required disclosures concerning plan and investment fees and expenses to participants and beneficiaries. The Department notes that this is not a limitless obligation; the rule limits this provision to information relating to the contract or arrangement, and the compensation received thereunder, that is "required" for the covered plan to comply with the reporting and disclosure obligations of Title I.

The proposal required that the service provider disclose information requested by the responsible plan fiduciary or plan administrator in order to comply with ERISA's reporting and disclosure obligations, but did not specify any time frame for the service provider to respond to such a request. Some commenters requested additional guidance concerning when the covered service provider would be obligated to provide such information. In response, the Department added a new timing requirement in paragraph (c)(1)(vi)(B) of the final rule. A covered service provider must disclose the requested information not later than 30 days following receipt of a written request from the responsible plan fiduciary or covered plan administrator, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable. The Department believes that this provision will provide more specificity to the parties in complying with this disclosure requirement, but also accommodate the practical reality that a covered service provider may, because of extraordinary matters beyond its control, be unable to satisfy the general standard.

j. Disclosure Errors

The proposed regulation did not provide specific relief for disclosure errors or omissions by service providers. As a result, many commenters argued that the final regulation should be revised to include such relief for service providers in certain circumstances. Many commenters argued that inadvertent mistakes are inevitable, in spite of the best efforts of all involved, and that it would be inappropriate for a service provider to be subject to a prohibited transaction in these circumstances. These commenters believed that, under the proposal, a prohibited transaction would result if any error, no matter how small, existed in the detailed disclosures required by the rule. Commenters felt this risk was especially significant in the case of a package of services involving multiple service providers. These commenters asserted that, with required information coming from different, and in some cases unrelated, parties, the likelihood of "innocent" mistakes increases. Commenters were not comforted by the proposal's limitation that information must be provided "to the best of the service provider's knowledge," because in some cases, such as a typographical error, the service provider may "know" that the information is inaccurate. Further, commenters argued that these errors would not be covered by the material change provision in the proposal, because many minor errors would not be material. Finally, commenters noted that the material

[12] Nothing in the final rule or this preamble relieves a service provider from other obligations or limitations under ERISA, for example other prohibited transactions or, in the case of service providers that are ERISA fiduciaries, the restrictions of ERISA sections 404 or 406(b). *See, e.g.,* Advisory Opinion 97–16A (May 22, 1997) (the Department stated that, in the context of a service provider who retains some authority over the investment options selected by plans by deleting or substituting, in its own discretion, certain unrelated mutual funds, a plan fiduciary must be provided advance notice of the change, including disclosure of fee information, and must be afforded a reasonable amount of time in which to accept or reject the change).

change provision focused on disclosing information when changes occur during the term of the contract and not on information that was incorrect at the time the contract was entered into. Commenters proposed various solutions, such as providing a cure period to allow for correction of minor or inadvertent errors or, alternatively, revising the rule to require only "reasonable" or "good faith" compliance with its disclosure obligations. Other commenters suggested that a correction mechanism could be permitted through the Department's Voluntary Fiduciary Correction (VFC) Program [13] or that relief could be provided through an expansion of the proposed class exemption.

The Department was persuaded by commenters that relief should be provided so that certain inadvertent errors and omissions do not result in a prohibited transaction. Accordingly, paragraph (c)(1)(vii) of the final rule provides that no contract or arrangement will fail to be reasonable under the regulation solely because the covered service provider, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information required by the regulation. However, the covered service provider must disclose the correct information as soon as practicable, but not later than 30 days from the date on which the covered service provider knows of such error or omission.

The Department notes that the class exemption, included as part of this regulation (paragraph (c)(1)(ix)), is meant to address situations in which a responsible plan fiduciary discovers an error or other deficiency in the disclosure. Paragraph (c)(1)(vii) is meant to provide the parties an opportunity to avoid a prohibited transaction by addressing errors up front. Once a prohibited transaction has occurred, the responsible plan fiduciary will need to rely on the relief provided by the class exemption, discussed below.

6. Definitions

Paragraph (c)(1)(viii) of the final rule defines the terms "affiliate," "compensation," "designated investment alternative," "recordkeeping services," "responsible plan fiduciary," and "subcontractor."

Specifically, paragraph (c)(1)(viii)(A) provides that a person's or entity's "affiliate" directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity. The rule also provides that unless otherwise specified, an "affiliate" in paragraph (c)(1) refers to an affiliate of the covered service provider. This definition essentially is unchanged from the proposal, except that the definition no longer includes the concept of an "agent" of the covered service provider. The Department was persuaded by commenters that the notion of an "agent" of the covered service provider is unclear, overly broad, and not consistent with commonly understood "affiliate" arrangements. To the extent some commenters were concerned that this term might pull subcontractors of a covered service provider into affiliated status, the Department notes that the final rule specifically addresses the role of a covered service provider's subcontractors elsewhere.

Paragraph (c)(1)(viii)(B) defines "compensation" for purposes of the final rule as anything of monetary value (such as money, gifts, awards, and trips), but does not include non-monetary compensation valued at $250 or less, in the aggregate, during the term of the contract or arrangement. This is slightly different from the proposal, which did not include the $250 de minimis rule. The Department added this provision in response to suggestions from a number of comments concerning the cost and burden of tracking insignificant non-monetary gifts.

The definition of "compensation" includes descriptions of both "direct" and "indirect" compensation. Subparagraph (*1*) defines "direct" compensation as compensation received directly from the covered plan. Subparagraph (*2*) defines "indirect" compensation as compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor, if the subcontractor receives such compensation in connection with services performed under the subcontractor's contract or arrangement described in the definition of subcontractor contained in paragraph (c)(1)(viii)(F).

Subparagraph (*3*) provides that, for purposes of the regulation, a description or an estimate of compensation may be expressed as a monetary amount, formula, percentage of the covered plan's assets, or a per capita charge for each participant or beneficiary or, if the compensation cannot reasonably be expressed in such terms, by any other reasonable method.[14] In this regard, any description or estimate must contain sufficient information to permit evaluation of the reasonableness of the compensation. This provision is slightly modified from the proposal, because the final rule also provides that when compensation cannot reasonably be expressed in terms of amounts, formulae or percentages, any other reasonable method may be used (subject to the general requirement that the description of compensation must contain sufficient information to permit evaluation of the reasonableness of such compensation). This standard was modified in part in response to commenters' concern that some types of compensation could not necessarily be expressed in a monetary amount, formula, percentage of the plan's assets, or a per capita charge. The Department continues to prefer disclosure in terms of a monetary amount, formula, percentage of the plan's assets, or a per capita charge; however, the Department is persuaded that in situations when it is not feasible to disclose compensation in such terms, covered service providers should be able to use another reasonable method to do so.

Paragraph (c)(1)(viii)(C) defines a "designated investment alternative" as any investment alternative designated by a fiduciary into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term "designated investment alternative" does not include brokerage windows, self-directed brokerage accounts, or similar plan arrangements that enable participants and beneficiaries to select investments beyond those specifically designated. This definition is consistent with the definition used by the Department for purposes of defining "designated investment alternative" in its proposed participant-level fee disclosure regulation (see proposed § 2550.404a–5(h)(1), 73 FR 43041).

Paragraph (c)(1)(viii)(D) defines "recordkeeping services" as including services related to plan administration and monitoring of plan and participant and beneficiary transactions such as enrollment, payroll deductions and

[13] *See* Voluntary Fiduciary Correction Program Under the Employee Retirement Income Security Act of 1974, Adoption of Updated Program, 71 FR 20262 (April 19, 2006).

[14] Some commenters raised concerns with language in the preamble to the proposed regulation which seemed to imply that formulas, percentages, or per capita charges could be used only if it was not possible to disclose in terms of a monetary amount. The Department did not intend this interpretation; as stated in the final rule, there are alternatively acceptable formats for disclosing compensation to a responsible plan fiduciary, so long as the description sufficiently permits evaluation of the reasonableness of such compensation.

contributions, offering designated investment alternatives and other covered plan investments, loans, withdrawals and distributions. It also provides that "recordkeeping services" includes the maintenance of covered plan and participant and beneficiary accounts, records, and statements. This broad definition of recordkeeping is intended to provide basic parameters to ensure that providers of recordkeeping services understand when they will be covered by paragraph (c)(1)(iii)(B) when they also make designated investment alternatives available to the covered plan.

Paragraph (c)(1)(viii)(E) defines a "responsible plan fiduciary" as a fiduciary with authority to cause the covered plan to enter into, or extend or renew, the contact or arrangement. This is consistent with use of the phrase "responsible plan fiduciary" in the Department's proposal, except that for ease of reference it has been separately included in the definitions section.

Paragraph (c)(1)(viii)(F) defines a "subcontractor" as any person or entity (or an affiliate of such person or entity) that is not an affiliate of the covered service provider and that, pursuant to a contract or arrangement with the covered service provider or an affiliate, reasonably expects to receive $1,000 or more in compensation for performing one or more services described in paragraph (c)(1)(iii)(A) through (C) of the regulation provided for by the contract or arrangement with the covered plan. The Department added this concept to the final rule in order to clarify that, in certain instances, a covered service provider will be required to report compensation received by a subcontractor to the covered service provider or an affiliate. For example, if a "covered service provider" that contracts with a plan to provide recordkeeping in turn subcontracts to outsource all or part of those services to another party, then that party is a "subcontractor," because it is carrying out some or all of the covered service provider's obligations under the contract or arrangement with the covered plan. In certain cases, the covered service provider may have to disclose compensation received by this subcontractor.

C. Class Exemption

The class exemption from the restrictions of ERISA section 406(a)(1)(C) was proposed by the Department separately from the proposed regulation. It was intended to relieve a responsible plan fiduciary from engaging in a prohibited transaction under certain circumstances when the requirements of the regulation have not been met. The Department received five separate public comments in response to the invitation for comments contained in the notice of pendency relating to the proposed class exemption, in addition to comments that were made as part of information received from the public on the proposed regulation. This section discusses these comments and modifications that have been made to the final class exemption, which now is being granted and included as section (c)(1)(ix) of the final rule.

1. Comments on Proposed Class Exemption

A few commenters requested that the proposed class exemption be expanded to protect service providers from potential excise taxes under the Code. Specifically, these commenters wanted the class exemption to cover service providers that are responsible for making the rule's required disclosures in certain circumstances: For example, when disclosure is made on behalf of a third party, and the service provider, acting as a conduit, either does not receive the requested information from the third party, or it is later discovered that the information received from the third party was erroneous; when an inadvertent error is made in providing the responsible plan fiduciary with the detailed information required by the proposal, for example, some of the narrative information about conflicts of interest, commenters argued, was vaguely described or overly broad; or when a responsible plan fiduciary fails to execute a service contract or arrangement. The Department has determined not to extend specific prohibited transaction exemption relief from the prohibitions of section 406(a) to covered service providers in the same way that the final class exemption covers responsible plan fiduciaries who attempt to address a service provider's disclosure failure. However, the Department notes that the final rule clarifies that execution of a formal "contract" is not required, and gives covered service providers more opportunities to address disclosure failures, such as errors and omissions. The final rule also provides covered service providers with relief for "passing through" certain regulated disclosure materials that include information concerning plan-designated investment alternatives.

One commenter suggested that the proposed class exemption be expanded to cover prohibited transactions described under section 406(a)(1)(D) of ERISA. Section 406(a)(1)(D) prohibits the transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan. The commenter stated that if the statutory exemption under section 408(b)(2) is temporarily unavailable for a particular service arrangement, but the covered service provider continues to be engaged by the plan to provide necessary services and receives payments, section 406(a)(1)(D) would be violated if plan assets are used to compensate the covered service provider during such time. The Department modified the operative language of the final class exemption to provide relief from section 406(a)(1)(D) to cover, among other things, situations when a responsible plan fiduciary decides to continue a service arrangement with a covered service provider, and to continue paying such covered service provider's fees, during periods when the parties are attempting to cure a disclosure failure by the covered service provider pursuant to the conditions of this exemption.

Other commenters observed that the proposed class exemption would apply if the responsible plan fiduciary unknowingly enters into a service contract that does not satisfy the disclosure obligations of the regulation, provided that certain conditions are met. The proposal required the responsible plan fiduciary to request the missing information, in writing, from the service provider, and the covered service provider would have been deemed to have failed to satisfy its disclosure obligations if it did not provide the information requested by the responsible plan fiduciary within 90 days. In this regard, the commenters requested that a satisfactory and timely service provider response to the 90-day request be deemed to satisfy the disclosure requirements and that the proposed class exemption be revised to provide relief in such instances. One commenter stated that a service provider should not be treated as failing to comply with a responsible plan fiduciary's request for information, for purposes of the exemption, merely because the covered service provider is unable to complete a response within 90 days of the request, despite good faith efforts on the part of the service provider to obtain such information.

The Department has determined that, under the exemption, a responsible plan fiduciary should not be permitted to give a covered service provider an unlimited amount of time to address a disclosure failure. Like the proposal, the final exemption requires that disclosure failures be addressed by the parties within specific timeframes. Under the final exemption, if the covered service

provider fails to comply with a responsible plan fiduciary's written request within 90 days of the date of that request, the fiduciary must notify the Department of the service provider's disclosure failure within a specified time period (*i.e.,* 30 days). At such time, the responsible plan fiduciary will be covered by the exemption. The covered service provider will continue to be engaging in a non-exempt prohibited transaction until such time as the service arrangement is terminated or the disclosure failure is cured. Once a service provider's disclosure failure has been cured and the contract or arrangement complies with all of the other conditions of the Department's regulations at 29 CFR 2550.408b–2, or the contract or arrangement is terminated, it is the view of the Department that the prohibited transaction will cease. Thus, covered service providers will not be liable for excise taxes under Code section 4975 for any period following the date on which the disclosure failure is cured or the contract or arrangement is terminated.

Further, some commenters requested that the Department extend the proposed 30-day time period for a responsible plan fiduciary to notify the Department of a covered service provider's failure to disclose. One commenter argued that many plan fiduciary committees do not meet on a monthly basis, and it may be difficult for responsible plan fiduciaries to make final determinations about retention of covered service providers within a 30-day period. The Department did not extend this time period in the final class exemption, which continues to require that notice to the Department be made not later than 30 days following the earlier of the covered service provider's refusal to furnish the requested information or end of the 90-day period following the responsible plan fiduciary's written request.

Finally, one commenter suggested that the exemption should only require responsible plan fiduciaries to notify the Department of a disclosure failure in specific instances, such as when a disclosure failure is made by plan service providers who are ERISA fiduciaries, or when the disclosure failure relates specifically to information about a service provider's fees or other compensation. This approach has not been adopted. The Department believes that all disclosures required under the final regulation by all covered service providers are relevant for purposes of a responsible plan fiduciary's duty to provide notice to the Department of a service provider's failure to correct or address such failures in a timely fashion.

2. Description of the Final Class Exemption

The class exemption is set forth in the final regulation in paragraph (c)(1)(ix). The Department incorporated the exemptive relief into the final regulation in order to facilitate reference by interested persons. The specific conditions applicable to covered transactions are described in this paragraph. These conditions require, among other things, a responsible plan fiduciary to notify the Department under certain circumstances of a covered service provider's failure to comply with its disclosure obligations. These conditions also set forth the timing, content and other requirements applicable to the notice required to be filed with the Department by the responsible plan fiduciary.[15]

The exemption provides relief from the restrictions of section 406(a)(1)(C) and (D) of ERISA to a responsible plan fiduciary, notwithstanding any failure by a covered service provider to comply with its disclosure obligations, provided that the conditions set forth in paragraph (c)(1)(ix)(A) through (G) are met.

Paragraph (c)(1)(ix)(A) of the regulation requires that the responsible plan fiduciary did not know that the covered service provider failed or would fail to make required disclosures and reasonably believed that the covered service provider disclosed the information required by the final rule. This condition is intended to reinforce the principle that the plan fiduciary must have entered into, and thereafter continued, an arrangement for services with a reasonable belief that the covered service provider met, and would continue to meet, the requirements of the final rule and without knowing of the covered service provider's disclosure failures.

Paragraph (c)(1)(ix)(B) of the regulation requires that, upon discovering that the covered service provider failed to disclose the required information, the responsible plan fiduciary must request in writing that the covered service provider furnish such information. If the covered service provider fails to comply with the responsible plan fiduciary's written request within 90 days, paragraph (c)(1)(ix)(C) requires that the responsible plan fiduciary notify the Department. The Department believes that this condition, along with a covered service provider's exposure to excise tax liability under the Code, will provide covered service providers with a sufficient incentive to address disclosure failures within a reasonable time.[16]

Paragraph (c)(1)(ix)(D) through (F) of the regulation sets forth the content, timing, and other requirements applicable to notifying the Department of a covered service provider's failure to meet its disclosure obligations. Paragraph (c)(1)(ix)(D) states that the notice to the Department must contain the following information: (*1*) The name of the covered plan; (*2*) the plan number used for the plan's Annual Report; (*3*) the plan sponsor's name, address, and EIN; (*4*) the name, address and telephone number of the responsible plan fiduciary; (*5*) the name, address, phone number, and, if known, EIN of the covered service provider; (*6*) a description of the services provided to the covered plan; (*7*) a description of the information that the covered service provider failed to disclose; (*8*) the date on which such information was requested in writing from the covered service provider; and (*9*) a statement as to whether the covered service provider continues to provide services to the covered plan.

Paragraph (c)(1)(ix)(E) provides that the responsible plan fiduciary shall file a notice with the Department not later than 30 days following the earlier of: (*1*) the covered service provider's refusal to furnish the requested information; or (*2*) the date which is 90 days after the date the written request referred to in paragraph (c)(1)(ix)(B)(*1*) is made. In this context, a covered service provider's refusal to provide information to the responsible plan fiduciary, following such fiduciary's written request, would constitute a covered service provider's failure to meet its disclosure obligations prior to the end of the 90-day period.

Paragraph (c)(1)(ix)(F) provides that the notice should be sent to the U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave., NW., Suite 600, Washington, DC 20210. Such a notice may also be sent electronically to: *OE-DelinquentSPnotice@dol.gov*. The Department has developed a sample

[15] As with any exemption from ERISA's prohibited transaction provisions, the party seeking to avail itself of the relief provided by the exemption has the burden of demonstrating compliance with the conditions of the exemption.

[16] The notice requirement does not relieve a plan administrator of the obligation to report a prohibited transaction in accordance with the instructions to the Annual Report Form 5500 Series, without regard to whether the covered service provider furnishes information in response to the fiduciary's request.

notice that will facilitate compliance with the notification requirement; this sample notice will be available on the Department's Web site at: *http://www.dol.gov/ebsa/DelinquentServiceProviderDisclosureNotice.doc.*

Finally, paragraph (c)(1)(ix)(G) of the regulation provides that, following the responsible plan fiduciary's discovery that the covered service provider failed to disclose required information, the fiduciary shall determine whether to terminate or continue the contract or arrangement with such service provider. In making such a determination, the responsible plan fiduciary shall evaluate the nature of the failure, the availability, qualifications and costs of potential replacement service providers, and the covered service provider's response to notification of the failure. However, the provisions contained in paragraph (c)(1)(ix)(G) do not abrogate or supersede the duties imposed upon a responsible plan fiduciary by section 404(a) of ERISA, which would also require the fiduciary to consider what steps to take in response to the covered service provider's nondisclosure.

D. Preemption of State Law

Paragraph (c)(1)(x) of the regulation states that the regulation does not supersede any State law that governs disclosures by parties that provide services to covered plans, except to the extent that such law prevents application of the regulation. The Department understands that the service provider relationship with the plan may be subject to a variety of State laws, such as contract, tax, consumer protection, and other laws. The Department's regulation is not intended to supersede any of these State laws, which may require disclosures by parties that provide services described in the regulation, except to the extent that compliance with such State law would make compliance with this regulation impossible or would otherwise conflict with one of the regulation's protections.

Paragraph (c)(1)(x) of the regulation addresses only the preemptive effect of the regulation itself, and does not speak to any preemptive effect that ERISA Title I generally, or ERISA section 514 specifically, may have on State laws that regulate parties that provide services to employee benefit plans. A State law that requires disclosures in connection with services or service provider contract or arrangements, regardless of whether the services are provided directly to an ERISA plan or other entity, generally would not be viewed by the Department as "relating to" employee benefit plans within the meaning of ERISA section 514 or as otherwise preempted by Title I of ERISA.

E. Application of Section 4975 of the Internal Revenue Code

Code section 4975(d)(2) contains a provision that is parallel to ERISA section 408(b)(2). Several commenters questioned the interplay of the proposal and section 4975 of the Code. These commenters explained that this interplay was unclear, because the proposal did not explicitly include corresponding amendments to the regulations under Code section 4975. Commenters generally sought clarification in this regard, asserting their belief that the Department has authority to issue guidance under Code section 4975(d)(2) and should confirm that compliance with the regulation will be required for a covered service provider to avoid the excise taxes imposed by Code section 4975.

The Department added paragraph (c)(1)(xi) of the interim final regulation to clarify this issue. This paragraph provides that, in accordance with the transfer of authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor, pursuant to section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 214 (2000 ed.), which was effective December 31, 1978, under the final regulation, all references to section 408(b)(2) of the ERISA and the regulations thereunder should be read to include reference to the parallel provisions of section 4975(d)(2) of the Code and the regulations thereunder.

If a covered service provider to a covered plan fails to disclose the information required by the final rule, then the contract or arrangement will not be "reasonable." Therefore, the service contract or arrangement will not qualify for the relief from ERISA's prohibited transaction rules provided by section 408(b)(2). The resulting prohibited transaction will have consequences for both the responsible plan fiduciary and the service provider. The responsible plan fiduciary, by causing the transaction, will have violated ERISA section 406(a)(1)(C) and (D). The service provider, as a "disqualified person" under the Code's prohibited transaction rules, will be subject to the excise taxes that result from the service provider's participation in a prohibited transaction under Code section 4975.[17]

The Department continues to believe that the application of an excise tax will provide incentives for all parties to service contracts or arrangements to cooperate in exchanging the disclosures required by the final regulation. However, as noted above, the Department does not believe that an otherwise diligent plan fiduciary should be penalized as a result of a failure on the part of service provider to make the required disclosure, thus the final regulation includes the exemptive relief described above (see paragraph (c)(1)(ix) of the interim final rule).

F. Effective Date

Many commenters expressed concern with the Department's proposal that the final regulation and class exemption would be effective 90 days after their publication in the **Federal Register**. Commenters suggested that these effective dates should be extended to as much as 12 months or longer following publication to allow service providers sufficient time re-negotiate with their clients, to make appropriate amendments to their service contracts and disclosure materials, and to make other necessary changes to their business practices, for example, revising any recordkeeping or other systems to ensure that the appropriate information is captured. Otherwise, commenters stated, there may be many compliance failures in the first year following the effective date of the regulation and class exemption. Commenters also suggested that the Department clarify whether the rule's disclosure obligations will apply only to contracts entered into (or extended or renewed) after the effective date of the final regulation.

In response to these concerns, the Department revised the date by which the interim final rule will apply to the disclosures required for a compliant contract or arrangement. Specifically, the rule will be effective one year after the date of its publication in the **Federal Register**. This modification is intended to accommodate concerns raised by commenters as to the cost and burden associated with transitioning current and future service contracts or arrangements to satisfy the requirements of the interim final rule. As of the effective date, all contracts or arrangements for services that fall within the scope of the interim final rule must comply with the interim final rule. Thus, the disclosures for new contracts or arrangements that are entered into on or after the effective date must satisfy the rule. In addition, contracts or arrangements that were entered into prior to that date must comply with the rule as of the effective date. The Department believes that interested persons will have sufficient

[17] The Code also includes rules relating to statutory relief applicable to transactions between a plan and a service provider. *See generally* Code section 4975.

time to address the requirements of the interim final rule and establish procedures to ensure compliance with both the regulation and, if necessary, the class exemption.

G. Welfare Plan Disclosure—Reserved

As explained above in the section entitled "Scope—Covered Plans," the Department is reserving paragraph (c)(2) of the interim final rule for a comprehensive disclosure framework applicable to "reasonable" contracts or arrangements for welfare plans to be developed by the Department. The Department believes that fiduciaries and service providers to welfare benefit plans would benefit from regulatory guidance in this area for the same reasons that apply to defined contribution plans and defined benefit plans. However, the Department is persuaded that there are significant differences between service and compensation arrangements of welfare plans and those involving pension plans and that the Department should develop separate, and more specifically tailored, disclosure requirements under ERISA section 408(b)(2) for welfare benefit plans.

H. Existing Requirement Concerning Termination of Contract or Arrangement

The Department did not propose any changes to the existing requirements addressing termination of contracts or arrangements for purposes of section 408(b)(2) (*see* 29 CFR 2550.408b–2(c)); however, the Department did invite comments from the public as to any issues relating to this requirement. In response to this invitation, one commenter suggested that the Department more definitively delineate time frames for service contracts or notice provisions, for example, by requiring that contracts be no more than one year in length or requiring at least 60 days notice for termination. The Department did not accept this suggestion, because the Department believes that such specific judgments are best left to the responsible plan fiduciaries contracting for services to ascertain the most appropriate term for their contracts and an appropriate notice period for termination. An acceptable time frame in one set of circumstances would not necessarily work in another, and the Department does not believe a mandate in this context is appropriate.

Other commenters raised questions as to whether certain fees and market value adjustments, generally associated with insurance or insurance-type services and investments, constitute "penalties" for purposes of this paragraph of the regulation. The regulation provides specifically that "a minimal fee in a service contract which is charged to allow recoupment of reasonable start-up costs is not a penalty." The Department believes that questions as to whether, for any particular contract, the charges for contract termination are in fact "penalties," rather than a service provider's recoupment of reasonable start-up costs, are inherently factual questions; accordingly, the Department did not amend the rule in response to these comments. After consideration of all of the comments on paragraph (c)(2) of the proposal, the Department has determined to adopt that paragraph, without change, in the interim final rule, except that this provision has been moved to a new paragraph (c)(3) of the interim final rule.

I. Effect on Other Statutory and Administrative Exemptions

A number of commenters requested clarification of the effect of the Department's proposed regulation on statutory and administrative exemptions that already are in place. Comments on these issues were received from industry groups that represent banks, insurance companies and broker-dealers for securities and other financial instruments, as well as from financial institutions. According to the commenters, the affected financial firms provide services to all types of plans, including many large plans, and that prohibited transaction issues are raised not only with service arrangements but with specific financial transactions occurring in the ordinary course of their business. These transactions often require reliance upon one or more prohibited transaction exemptions, some of which are periodically amended to reflect current industry practices. Commenters generally did not address how the proposal would affect plan service arrangements that rely on existing statutory exemptions. However, a few commenters asserted that they would not be subject to the disclosure requirements under the regulation because they are relying on other statutory exemptions to avoid prohibited transactions under ERISA section 406.

The Department is expressing no view at this time on the relationship of this interim final rule to existing statutory and administrative exemptions. The Department will, however, be reviewing these issues in the future on a case-by-case and exemption-by-exemption basis.

J. Justification for Interim Final Rulemaking; Request for Comments

Following the Department's careful review of the extensive public record on this regulatory initiative, including over 100 comments on the proposal and many supplemental materials furnished in connection with the Department's public hearing on this initiative, the regulation published today in this Notice contains a number of provisions that differ significantly from the proposal. The Department believes that this regulation addresses the many technical concerns raised with respect to the proposal and clarifies with sufficient specificity the nature of the required disclosure obligations and the parties that must comply with such obligations. However, in view of the importance of this initiative, and the potentially significant effects that the final regulation and class exemption may have on plan fiduciaries and service providers, the Department decided to publish this regulation as an interim final regulation.

The Department invites comments from interested persons on all aspects of the interim final regulation, in accordance with the instructions for submitting comments described above in the **ADDRESSES** section of this Notice.

K. Regulatory Impact Analysis

1. Background

Compensation arrangements in the market for retirement plan services are complex. Payments from third parties and among service providers can create conflicts of interest between providers and their clients. For example, a 401(k) plan vendor may receive "revenue sharing" from a mutual fund that it makes available to clients. A consultant may receive a "finder's fee" from an investment adviser it recommends to clients. Such compensation arrangements and the conflicts they create are myriad and largely hidden from view. Their opacity obscures the true cost of plan services and allows harmful conflicts to persist in the market. Plans may pay more than they realize for products and services that unbeknownst to them are tainted by conflicts. Meanwhile service providers may reap excess profits.

Under ERISA, fiduciaries have a duty to consider a service provider's compensation from all sources, but service providers are not obligated to disclose compensation from other sources. This interim final rule would require service providers to proactively disclose such arrangements to plan clients.

2. The Need for Regulatory Action

To the extent that plan fiduciaries are unable to obtain relevant compensation information, or unable to use it to choose among service providers in a manner that upholds their fiduciary duty, a failure exists in the market for services for employee benefit plans. The market for retirement plan services is characterized by acute information asymmetry. The information costs of plan service providers are far lower than their clients'. Vendors are specialists in the design of their products, services, and compensation arrangements, and are continually engaged in marketing to plan sponsors. Plan sponsors often lack this degree of specialization. Even very large, relatively sophisticated plan sponsors shop for services only periodically, generally once every three to five years. Smaller, less sophisticated plan sponsors face still higher information costs. As a result, vendors are able to maintain an information advantage over their plan sponsor clients.

Vendors have a strong incentive to use their information advantage to distort market outcomes in their own favor. Current ERISA rules hold plan sponsors rather than vendors accountable for evaluating the cost and quality of plan services. And vendors can reap excess profit by concealing indirect compensation (and attendant conflicts of interest) from clients, thereby making their prices appear lower and their product quality higher. Consider one typical arrangement: A pension consultant receives a finder's fee from an investment adviser when he recommends that adviser to a plan sponsor. The plan sponsor does not know that the consultant is receiving the finder's fee—an expense the plan bears indirectly. The plan sponsor relies on the consultant to evaluate the quality of the adviser's services, but does not know that the consultant's recommendation and evaluation are subject to a conflict of interest.

The Department has identified evidence that information gaps exist in certain circumstances and that these gaps may distort market results. For example:

- An Advisory Council established under ERISA to advise the Secretary of Labor found that "the lack of transparency in this area has led to an inefficient market where it is extremely difficult for the plan sponsor to determine either the absolute level of fees, or the flow of fees, *i.e.,* who is getting paid what." [18]
- The Securities and Exchange Commission found that pension consultants "typically" do not disclose to clients that they receive compensation from the same money managers that they may recommend, and recommended that pension consultants adopt "policies and procedures to ensure that all disclosures required to fulfill fiduciary obligations are provided to prospective and existing advisory clients, particularly regarding material conflicts of interest [which should] ensure adequate disclosure regarding the consultant's compensation." [19]
- According to GAO, "[s]pecific fees that are 'hidden' may mask the existence of a conflict of interest * * * If the plan sponsors do not know that a third party is receiving these fees, they cannot monitor them, evaluate the worthiness of the compensation in view of services rendered, and take action as needed." [20] GAO found that defined benefit (DB) pension plans using consultants with SEC-identified undisclosed conflicts earned returns 130 basis points lower than the others.[21] GAO recommended that Congress "consider amending ERISA to explicitly require that 401(k) service providers disclose to plan sponsors the compensation that providers receive from other service providers." [22]
- Many DC retirement plan sponsors have "difficulty" obtaining a clear understanding of total administrative fees charged (13 percent), a clear explanation of the normal fund operating expenses of the funds in the plan (9 percent), a clear description of all the revenue sharing arrangements that the recordkeeper has with the mutual funds included in the plan (13 percent), and what it costs the provider to administer the plan (20 percent).[23] Many are "dissatisfied" with the degree to which fees are transparent (18 percent) and the degree to which revenue sharing is disclosed (22 percent); 23 percent feel that their retirement plan provider(s)' current level of fee disclosure does not meet their needs as a plan sponsor.[24] While most fiduciaries may think they have all the information they need, there could be information they are lacking and are not aware of. This disclosure will make sure fiduciaries are receiving the information the Department believes they need to fulfill their fiduciary duty under ERISA.
- One comment [25] received by DOL on the proposed 408(b)(2) regulation notes "the difficulty that plan sponsors encounter in the defined contribution plan marketplace in obtaining comparable information on the charges to be incurred for the same or similar services." Another commented that "Sponsors * * * must expend significant time and effort comparing fees among providers because of varying formats and service models as well as unique fee structures associated with different investment vehicles. By moving toward a more uniform standard of fee disclosure, the Department's initiative * * * will reduce the time and effort spent by plan sponsors assembling and comparing price information, and * * * will help facilitate apples-to-apples comparisons of different service models and investment products." A third commenter stated that "plan expense and fee information is often scattered, difficult to access, or nonexistent * * * Plan fiduciaries should know whether their plan's service providers have potential conflicts of interest."

Under current rules, a large, sophisticated plan sponsor may be able to uncover adequate information to optimize his purchase, if the value he expects to reap is sufficient to offset his information cost. The sophisticated plan sponsor's cost to uncover the information is likely to be far higher than would be the vendor's cost to disclose it. A smaller or less sophisticated plan sponsor cannot economically uncover such information—the value he stands to gain will not offset his information cost. A regulatory action to mandate proactive disclosure will lower information costs for plan sponsors who currently actively seek this information. In addition, to the extent the information provided is

[18] *See e.g.,* ERISA Advisory Council on Employee Welfare and Pension Benefit Plans, *Report of The Working Group on Plan Fees and Reporting on Form 5500* (Nov. 10, 2004), *at http://www.dol.gov/ebsa/publications/AC_111804_report.html.*

[19] *See e.g.,* U.S. Securities and Exchange Commission, Office of Compliance Inspections and Examinations, *Staff Report Concerning Examinations of Select Pension Consultants* (May 2005).

[20] *See e.g.,* GAO, *Increased Reliance on 401(k) Plans Calls for Better Information on Fees,* Private Pensions Report (March 6, 2007), *at http://www.gao.gov/new.items/d07530t.pdf.*

[21] *See e.g.,* GAO, *Conflicts of Interest Involving High Risk of Terminated Plans Pose Enforcement Challenges,* Defined Benefit Pension Report (June 2007), *at http://www.gao.gov/new.items/d07703.pdf.*

[22] *See e.g.,* GAO, *Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees,* Private Pensions Report (Nov. 2006), *at http://www.gao.gov/new.items/d0721.pdf.*

[23] *See e.g.,* Deloitte, *401(k) Benchmarking Survey 2008 Edition.*

[24] *See e.g.,* Chatham Partners, *Looking Beneath the Surface: Plan Sponsor Perspectives on Fee Disclosure* (February 2008).

[25] Public comments on the proposed rule may be found at: *http://www.dol.gov/ebsa/regs/cmt-408(b)(2)-combined.html.*

readily usable the disclosure will help facilitate more informed, optimal purchases.

3. Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) Having an effect on the economy of $100 million or more in any one year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Department has determined that this action is "economically significant" under section 3(f)(1) because it is likely to have an effect on the economy of $100 million or more in any one year.

4. Regulatory Alternatives

Executive Order 12866 requires an economically significant regulation to include an assessment of the costs and benefits of potentially effective and reasonably feasible alternatives to a planned regulation, and an explanation of why the planned regulatory action is preferable to the identified potential alternatives. The Department considered but rejected a number of alternative approaches to correct the market failure and redress abuses.

Covering Welfare Benefit Plans: The Department considered applying the interim final rule to welfare benefit plans, because it believes fiduciaries and service providers to such plans would benefit from regulatory guidance in this area. However, the Department is persuaded, based on the public comment and hearing testimony, that there are significant differences between service and compensation arrangements of welfare plans and those involving pension plans and that the Department should develop separate, and more specifically tailored, disclosure requirements under ERISA section 408(b)(2) for welfare benefit plans. Accordingly, the interim final rule includes a new paragraph (c)(2), which has been reserved for a comprehensive disclosure framework applicable to "reasonable" contracts or arrangements for welfare plans to be developed by the Department.

Covering IRAs: The IRA and employment-based retirement plan markets are very different from one another. In the IRA market, decisions are made by consumers rather than plan sponsors acting in a fiduciary capacity, and the disclosures appropriate for the latter may not be appropriate for the former.

More Extensive Disclosure: Applying disclosure requirements to arrangements where compensation is less than $1,000, requiring a comprehensive line-item breakdown of the price of bundled services, or requiring disclosures to be part of formal written contracts might not produce benefits that would justify the associated cost.

Directing Mandate at Fiduciaries: A mandate directed solely at fiduciaries would diverge little from current law. Such a mandate would merely create a brighter line of obligation for the fiduciary without empowering him to satisfy that obligation; perpetuate the information asymmetry, therefore not correcting the market failure; and would not equip the Department to redress service provider abuses.

Requiring Disclosure only on Demand: Requiring disclosure only on demand rather than proactively might correct the current market failure and equip the Department to redress abuse. However, disclosure-on-demand would have serious unintended adverse consequences, particularly for plan fiduciaries:

- Once fiduciaries are legally empowered to obtain full disclosure of indirect compensation arrangements, failure to do so would almost certainly constitute a fiduciary breach. This sets a trap for the unwary fiduciary. The unsophisticated fiduciary is better served by a proactive disclosure that serves as both a notice of his duty and a means to discharge his obligation.
- The cost of disclosure-on-demand could turn out to be higher than the cost of proactive disclosure. For example, it would now include the cost to plan sponsors of making the requests—as well as their cost of determining what to ask. Also the number of disclosures might be higher under a disclosure-on-demand system than under a proactive disclosure system. All fiduciaries would have a duty to request disclosure, so perhaps nearly all would, and many fiduciaries might ask in increments for information that would have been consolidated into a single proactive disclosure under a proactive disclosure system, therefore multiplying the total number of disclosures. The Department has not developed a cost estimate for disclosure-on-demand, but it is likely that such an estimate would be as high as, or higher than, the Department's estimate for proactive disclosure.
- Disclosure-on-demand would also fail to educate unsophisticated fiduciaries who might not request full disclosure. Proactive disclosure might raise awareness for some unsophisticated fiduciaries.

Requiring a Summary Disclosure: The Department is persuaded that plan fiduciaries may benefit from increased uniformity in the way that information is presented to them. The Department considered adding a requirement that covered service providers furnish a "summary" disclosure statement, for example limited to one or two pages, that would include key information intended to provide an overview for the responsible plan fiduciary of the information required to be disclosed. The summary also would be required to include a roadmap for the plan fiduciary describing where to find the more detailed elements of the disclosures required by the regulation. However, the Department did not implement this requirement as part of the interim final rule, because it did not want to unnecessarily increase the cost and burden for service providers to furnish required information, especially to the extent such cost may be passed along to plan participants and beneficiaries, unless it is clear that the benefit to plan fiduciaries outweighs such cost and burden.

As stated earlier in this preamble, the Department is considering amending the rule in the future to include a summary disclosure requirement. To assist the Department in its decision regarding whether to include such a requirement in the final rule, interested persons are encouraged to submit comments regarding the potential costs and time burden necessary for covered service providers, and any other parties, to comply with such a requirement, the anticipated benefits to responsible plan fiduciaries of including a summary disclosure requirement (such as time and cost savings), and how to most effectively design a summary disclosure statement to ensure both its feasibility and usefulness in helping the Department achieve its objectives. If the Department is convinced that the benefits would outweigh the costs, the final regulation may be revised.

Chosen Alternative: The Department considered, and ultimately has adopted, a rule requiring that, in order for a contract or arrangement to be reasonable, certain categories of service providers must disclose specified information to responsible plan fiduciaries. The rule generally covers typical plan service providers including fiduciary service providers and providers furnishing accounting, actuarial, appraisal, auditing, banking, consulting, custodial, insurance, investment advisory, legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services. The Department believes this framework will yield the information that plan fiduciaries need in order to assess the reasonableness of compensation paid for services from these service providers and their potential conflicts of interest. Absent the regulation, such information may be difficult to obtain. The Department believes that the interim final rule provides the largest benefit among the alternatives, while also limiting costs.

5. Affected Entities and Other Assumptions

According to 2006 Form 5500 filings, there exist nearly 49,000 defined benefit pension plans with over 42 million participants and almost 646,000 defined contribution pension plans with approximately 80 million participants. Out of these pension plans, about 37,000 are small defined benefit plans and 576,000 small individual account plans.[26] Most of the pension plans, approximately 462,000, are participant directed individual account plans.

The interim final regulation applies to contracts or arrangements between plan fiduciaries and service providers as fully discussed in Section B., 1., above.[27] In order to estimate the number of covered service providers and the number of service provider-plan arrangements, the Department has used data from plan year 2006 submissions of the Form 5500 and its Schedule C.

In general, only plans with 100 or more participants that have made payments to a service provider of at least $5,000 are required to file the Form 5500 Schedule C. These plans are also required to report the type of services provided by each service provider. The Department counted the service providers most likely to provide the covered services.[28] In total, there were nearly 9,900 unique covered service providers reported in the Form 5500 Schedule C data, almost 1,000 of which reported receiving $1 million or more in compensation.

The Department acknowledges that this estimate may be imprecise. On the one hand, some of these service providers may not be covered service providers if they do not meet all the above specified requirements, but with the limited Schedule C data it is not possible to further refine this group. On the other hand, small plans generally do not have to fill out Schedule C which would underestimate the number of covered service providers if a substantial number of them service only small plans. However, the Department believes that most small plans use the same service providers as large plans and therefore the estimate based on the Schedule C filings by large plans is acceptable.[29]

Schedule C data was also used to count the number of covered plan-service provider arrangements. On average, defined benefit plans employ more covered service providers per plan than defined contribution plans, and large plans use more covered service providers per plan than small plans. In total, the Department estimates that defined benefit plans have over 119,000 arrangements with covered service providers, while defined contribution plans have over 780,000 arrangements.

A substantial part of the cost of the final regulation depends on the means of disclosures between covered service providers and plan fiduciaries. Paper disclosures involve much higher costs than electronic disclosures. Thus, as at least one trade group commented, the industry is interested in taking advantage of electronic disclosure, if at all possible.[30] This conclusion seems plausible as most covered service providers are sophisticated entities and by the nature of their services are electronically savvy, as are most plan fiduciaries. Unaware of any contrary comments, the Department assumes that about 50 percent of disclosures between service providers and plan fiduciaries are delivered only in electronic format.

6. Benefits

Mandatory proactive disclosure will reduce sponsor information costs, discourage harmful conflicts, and enhance service value. Additional benefits will flow from the Department's enhanced ability to redress abuse. Although the benefits are difficult to quantify, the Department is confident they more than justify the cost. In accordance with OMB Circular A–4,[31] Table 2 below depicts an accounting statement showing the Department's assessment of the benefits and costs associated with this regulatory action.

TABLE 2—ACCOUNTING TABLE

Category	Primary estimate	Year dollar	Discount rate	Period covered
Benefits				
Annualized Monetized ($millions/year)	Not Quantified.			
Qualitative: The final regulation will increase the amount of information that service providers disclose to plan fiduciaries. Non-quantified benefits include information cost savings, discouraging harmful conflicts of interest, service value improvements through improved decisions and value, better enforcement tools to redress abuse, and harmonization with other EBSA rules and programs.				
Costs				
Annualized Monetized ($millions/year)	58.7	2010	7%	2011–2020

[26] Small pension plans are plans with generally less than 100 participants, as specified in the Form 5500 instructions.

[27] Plan sponsors and/or plan participants may also be indirectly affected.

[28] In order to provide a reasonable estimate, service providers with reported type codes corresponding to contract administrator, administration, brokerage (real estate), brokerage (stocks, bonds, commodities), consulting (general), custodial (securities), insurance agents and brokers, investment management, recordkeeping, trustee (individual), trustee (corporate) and investment evaluations were assumed to provide covered services.

[29] While in general small plans are not required to file a Schedule C, some voluntarily file. Looking at Schedule C filings by small plans, the Department verified that most small plans reporting data on Schedule C used the same group of service providers as larger plans.

[30] *See http://www.dol.gov/ebsa/regs/cmt-408(b)(2)-combined.html.*

[31] *Available at http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf.*

TABLE 2—ACCOUNTING TABLE—Continued

Category	Primary estimate	Year dollar	Discount rate	Period covered
	54.3	2010	3%	2011–2020
Qualitative: Costs include costs for service providers to perform compliance review and implementation, for disclosure of general, investment-related, and additional requested information, for responsible plan fiduciaries to request additional information from service providers to comply with the exemption and to prepare notices to DOL if the service provider fails to comply with the request.				
Transfers	Not Applicable.			

a. Information Cost Savings

The record establishing the need for this regulatory action (see above) documents that plan sponsors' information cost is higher than vendors', and that many sponsors now expend substantial resources to acquire information. Mandatory proactive disclosure will make the information fiduciaries need available to them at lower acquisition cost.

For sponsors in these circumstances, mandatory, proactive, comprehensive disclosure will reduce the difficulty in obtaining the needed information. These sponsors will have the same information as before but will acquire it less expensively. For example, if 13 percent [32] of estimated 695,000 pension plans had a plan fiduciary that experienced a one hour drop in the time needed to obtain the needed information at an hourly labor rate [33] of $107 the value of time saved annually could be $9.7 million.

b. Acquisition of Critical Information

As discussed above, many surveyed DC retirement plan sponsors are "dissatisfied" with the level of transparency—23 percent flatly say the current level of fee disclosure does not meet their needs. These sponsors will now acquire critical information that was previously inaccessible or too costly to obtain. Currently, some plan sponsors may simply fail to seek critical information. Mandatory, proactive disclosure will help these sponsors understand and satisfy their fiduciary obligations. For those who otherwise would not know what questions to ask, or what information to consider, the disclosure provides the map. This additional information will help facilitate better decisions as discussed in the next two sections.

c. Discouraging Harmful Conflicts

Indirect compensation arrangements can be either harmful or beneficial. Transparency will help drive harmful conflicts from the marketplace while sustaining arrangements that are beneficial for plans.

Harmful arrangements generally are those that are tainted by unmitigated conflicts. A plan's service providers may strike deals that profit one another at the plan's expense. Such arrangements may thrive in the shadows, but tend to wither in sunlight. These arrangements exist today in the market for plan services precisely because information asymmetries obscure them. Mandatory proactive disclosure will reduce the asymmetry, creating a sunnier climate that is less friendly to harmful arrangements.

Beneficial arrangements generally are those in which a plan's service providers, in competition to provide the best value to the plan, enter into transactions among themselves that leverage their respective comparative advantages to deliver higher quality or lower cost for the plan. Such arrangements are now evident in the segment of the plan services that works best—namely, the very large plan segment. There are numerous examples where large plan sponsors, after thoroughly evaluating the quality and compensation structures of competing vendors, choose service arrangements that involve indirect compensation. Transparency is a bedrock of such arrangements. For example, some arrangements establish formulas whereby the fees the sponsor pays to a service provider will be reduced as a function of the indirect compensation the provider receives. Mandatory, proactive disclosure will be friendly to such arrangements because sunlight will reveal their superiority to harmful arrangements.

d. Service Value Improvements

Fiduciaries armed with more complete information can make informed purchases and thereby derive better value for plans. More complete information is a benefit of mandatory disclosure that will depend sequentially on three variables: The extent of gaps in critical information, the extent to which closing these gaps will improve fiduciary decisions, and the degree to which improved decisions will improve value.

Information Gaps: Plan sponsors need comprehensive information on service provider compensation in order to discharge their fiduciary duty and secure good value for their plans and participants. However, only 57 percent of sponsors report that their service provider discloses revenue sharing agreements and investment offsets with both alliances and their own proprietary funds.[34] About one-quarter of sponsors are not familiar with revenue sharing arrangements between their investment managers and retirement plan providers (26 percent) and compensation arrangements between retirement plan providers and the intermediary involved in the plan (25 percent) (familiarity was lower among sponsors of smaller plans).[35] These findings suggest that gaps in critical information are large and widespread. Some sponsors who lack critical information are aware of the problem and poised to use the information effectively once it is more accessible. Others are less aware, but proactive disclosure will raise awareness for some of these sponsors.

Improved Decisions: To secure better value, fiduciaries must factor newly available critical information appropriately into their purchasing decisions. Eighty-four percent of sponsors say they will use fee related information supplied by their retirement plan provider(s) to fulfill their fiduciary responsibilities. Sixty-four percent say

[32] As discussed above, many surveyed DC retirement plan sponsors (13%) have "difficulty" obtaining key information. This percent is used as a proxy for the percent of plan fiduciaries that would experience time savings from mandatory disclosure. We do not have concrete data regarding whether the plan sponsors obtained the information or the time/resources expended, because the survey did not collect this information. However, ERISA requires fiduciaries to obtain the information.

[33] This estimate uses the average labor rate of a financial manager as a proxy for a plan fiduciary's labor rate.

[34] *See e.g.,* Deloitte, *401(k) Benchmarking Survey 2008 Edition.*

[35] *See e.g.,* Chatham Partners, *Looking Beneath the Surface: Plan Sponsor Perspectives on Fee Disclosure* (2008).

they will use it to examine their existing fee structure. Commonly cited top concerns regarding fee disclosures include that a lack of disclosure causes higher plan expenses (45 percent) and may lead to legal action by participants (46 percent).[36] Eighty-two percent of sponsors are very (55 percent) or somewhat (27 percent) likely to review DC fund expenses and revenue sharing in 2008.[37] These findings suggest that many fiduciaries are prepared to factor newly available information on service provider compensation into their decisions.

Improved Value: The value of decisions fiduciaries make can improve only if the current decisions made produce value that is less than optimal. Research literature provides evidence that the current value of decisions fiduciaries make is often less than optimal, and that the suboptimal value is associated with undisclosed compensation arrangements that may pose conflicts. As noted above, a recent GAO study links undisclosed conflicts with 130 basis points of underperformance in DB plans. Seventeen percent of DC plan sponsors negotiate and receive fee credits for revenue sharing or investment offsets that exceed their service providers' costs.[38] Many others may use this information to negotiate lower direct fee payments. A variety of academic studies further support the hypothesis that conflicts often erode the value provided to DC plans by mutual funds and their distribution channels.[39]

Overall, the evidence suggests that the value of fiduciary decision-making will improve once fiduciaries are apprised of and consider service providers' indirect compensation sources.

While the improvement in the value of fiduciary decision-making is difficult to quantify, the Department believes that it has the potential to be very large. If just 16 percent of all plan assets realize a fall of just 0.6 basis point (0.006 percent of plan assets), the savings would exceed the costs of the rule, which is estimated at $408 million over 10 years.[40] As noted above, substantially more than 10 percent of fiduciaries report difficulty or dissatisfaction with current fee disclosure. At the same time, one basis point is a very small fraction of a typical plan's expenses—for example, according to the Investment Company Institute, more than one-half of 401(k) stock mutual fund assets are in funds with expense ratios between 50 and 100 basis points, nearly one-fourth are in funds with higher expenses.[41] In addition, GAO's study linking undisclosed conflicts with 130 basis points of underperformance suggests that value can be improved via service quality as well as price.[42] Viewed in this context, the Department is confident that the potential for improved value of fiduciary decision-making from mandatory proactive disclosure is substantial.

e. Preventing and Redressing Abuse

As previously stated, the Department believes that the application of an excise tax will provide incentives for all parties to service contracts or arrangements to cooperate in exchanging the disclosures required by the final regulation. However, if there continues to be abusive conduct by rogue service providers such as misrepresentation of compensation arrangements and attendant conflicts, this rule mandating disclosure will equip the Department to better redress such abuse. Enhanced enforcement will deter abuse, thereby directly benefiting potential victims, and will promote confidence and thereby encourage sponsors to offer plans.

The regulation requiring proactive disclosure encourages compliance in three related ways:

- If the service provider fails to provide the specific information required by the regulation, it is subject to the imposition of an excise tax by the Internal Revenue Service. Thus, there is a direct sanction against the service provider for giving false, misleading, or insufficient statements to plan fiduciaries.
- The regulation specifies the disclosure that fiduciaries must obtain to avoid a prohibited transaction, and ensures that they will receive the information because of the consequences to the service provider of non-disclosure (imposition of the excise tax).
- Because the regulation creates a roadmap for disclosure, it will be much easier for the courts, the Department, and regulated parties to determine whether they have complied with the law. In the event of non-compliance, there are clear enforcement consequences for both the plan fiduciary and the service provider.

7. Harmonization With Other Rules and Programs

The Department pursues a comprehensive program of enforcement and compliance assistance (including outreach and education) to ensure that fiduciaries understand and properly discharge their duties under ERISA, at reasonable cost.

- The Department educates plan fiduciaries about their obligations under ERISA by conducting numerous educational and outreach activities, such as a nationwide series of 33 seminars presented to date as part of the Department's campaign entitled "Getting It Right—Know Your Fiduciary Responsibilities," which includes a discussion of the importance of selecting plan service providers and the role of fee and compensation considerations.
- The Department also makes a variety of materials available on its Web site to educate plan fiduciaries about service provider fees and relationships, including its 401(k) Plan Fee Disclosure worksheet, a publication entitled "Understanding Retirement Plan Fees and Expenses," and, in coordination with the Securities and Exchange Commission, a series of tips concerning fees and conflicts of interest for plan fiduciaries to use when selecting pension consultants.

ERISA's standards of fiduciary conduct already obligate fiduciaries to obtain and consider adequate information. They are liable for any plan losses attributable to their failure to do so. This rule harmonizes the prohibited transaction rules with the fiduciary rules, so fiduciaries, in addition to being obligated to obtain and consider such information, are also equipped to do so at minimum cost.

8. Costs

The Department estimated costs for the rule over the ten-year time frame for purposes of this analysis and used information from the quantitative characterization of the service provider market presented above as a basis for these cost estimates. This characterization did not account for all service providers, but it does provide

[36] *See id.*

[37] *See e.g.,* Hewitt, *Hot Topics in Retirement,* 2008.

[38] *See e.g.,* Deloitte, *401(k) Benchmarking Survey 2008 Edition.*

[39] Examples include: Daniel B. Bergstresser et al., Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry, Social Science Research Network Abstract 616981 (Sept. 2007). Mercer Bullard *et al.,* Investor Timing and Fund Distribution Channels, Social Science Research Network Abstract 1070545 (Dec. 2007). Xinge Zhao, The Role of Brokers and Financial Advisors Behind Investment Into Load Funds, China Europe International Business School Working Paper (Dec. 2005), at *http://www.ceibs.edu/faculty/zxinge/brokerrole-zhao.pdf.*

[40] For a more detailed explanation see the discussion in Section 9 "Uncertainty".

[41] Investment Company Institute. Research Fundamentals, Vol. 16, No. 4, September 2007.

[42] GAO report, "Private Pensions: Conflicts of Interest Can Affect Defined Benefit and Defined Contribution Plans", GAO–090–503T, March 24, 2009.

information on the segments of the service provider industry that are likely to be most affected by the rule (*i.e.,* those who service pension plans). In addition to the costs to service providers, the Department also considered, and discusses below, the potential costs to plans.

a. Costs for Service Providers

Compliance Review and Implementation: Most of the cost of the rule will be imposed on plan service providers. Covered service providers will need to review the rule, evaluate whether their current disclosure practices comply with its requirements, and, if not, determine how their disclosure practices must be changed to be compliant. The Department projected this as a cost incurred in 2011, the year in which the rule takes effect.

Although all affected service providers are assumed to incur these initial costs, it is likely that service providers with complex fee arrangements and conflicts of interest would require more time to comply. The Department assumes that the number of service providers with more complex arrangements can be approximated by the number of unique service providers who are reported on the Schedule C as having received $1 million or more in compensation (nearly 1,000 service providers).

The Department assumes that covered service providers with complex arrangements will require on average 24 hours of legal professional time at a cost of approximately $119 per hour and on average 80 hours of financial professional time at a cost of almost $63 per hour to comply with the rule. Non-complex service providers would require only three hours of legal professional time and 13 hours of financial professional time. Using the number of unique service providers identified in the quantitative analysis presented above (nearly 10,000 service providers), this cost is estimated to be about $17.9 million.

The Department also has estimated the initial compliance review and implementation costs for service providers newly entering the market ("new service providers") to provide services to plans (either for the first time or by re-entry) beginning in 2012 and each year thereafter. Based on data from the 2005 and 2006 Form 5500, the Department assumes that about eight percent of all service providers will be new in each year subsequent to 2011, and that these service providers will incur the same compliance review and implementation costs as existing service providers. Based on the foregoing, the Department estimates that new service providers will incur costs of approximately $1.5 million in 2012 and thereafter. Estimates are reported in Table 3.

TABLE 3—COMPLIANCE REVIEW AND IMPLEMENTATION

Year		Number of entities (A)	Legal professional hours required (B)	Hourly labor cost for legal professional (in 2010 dollars) (C)	Financial professional hours required (D)	Hourly labor cost for financial professional (in 2010 dollars) (E)	Yearly undiscounted costs A*(B*C+D*E)
2011	Plans	695,000		$119	1	$63	$43,625,000
	Non-Complex Service Providers.	9,000	3	119	13	63	10,403,000
	Complex Service Providers.	1,000	24	119	80	63	7,511,000
2012	Plans	94,000		119	1	63	5,911,000
	Non-Complex Service Providers.	700	3	119	13	63	867,000
	Complex Service Providers.	100	24	119	80	63	626,000
Total for 2011							61,539,000
Total for 2012							7,404,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

Initial Disclosure: As discussed above, covered service providers also must develop or update their current disclosure materials to comply with the regulatory requirements. Paragraph (c)(1)(iv)(A) through (E) of the rule requires service providers to provide an initial disclosure to a responsible plan fiduciary. Generally, under paragraph (c)(1)(v)(A) of the rule, this disclosure must be made reasonably in advance of when a contract is entered into, extended, or renewed. The Department assumes that service providers will create an initial disclosure that can be used for all plans and customize this document by adding individualized information for each plan. This activity includes developing formulae and algorithms to present or estimate direct and indirect compensation that will be applied in a pro forma projection for each plan with which the provider will contract. It also includes making a reasonable and good faith estimate of the cost to provide recordkeeping services to a covered plan if the covered service provider reasonably expects to provide recordkeeping services without explicit compensation or when compensation for recordkeeping is subject to an offset or rebate for such services as required by paragraph (c)(1)(iv)(D)(*2*). The Department assumes that the majority of this cost would be incurred by service providers in 2011 and that one hour of a legal professional's time and 45 minutes of a financial professional's time will be required to prepare the general disclosure for each plan. Based on the foregoing, the Department estimates that the cost to develop the general disclosure in 2011 will be almost $75 million.

In 2012 and subsequent years, the regulation will cause additional disclosures to be made between covered

plans and service providers for any new contracts and arrangements. The Department does not have information on the number of new arrangements in a year; therefore, the Department used the percentage of plans that are new plans, about 14 percent, as a proxy for the percentage of new arrangements in a year. This results in almost 122,000 new arrangements every year. The Department assumes that half of the responsible plan fiduciaries in these arrangements would receive the required information even without the regulation enacted. The Department estimates that preparing the disclosures for new arrangements will require one hour of a legal professional's time and 45 minutes of a financial profession's time. Based on the foregoing, the cost of preparing these disclosures in year 2012 and thereafter will be almost $23 million.

Paragraph (c)(1)(vi) requires service providers to provide any other information relating to compensation received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms, and schedules issued thereunder upon the request of responsible plan fiduciaries or plan administrators of covered plans. The Department is not aware of a basis for determining the number of requests that responsible plan fiduciaries or plan administrators will make; therefore, it assumes that approximately ten percent (almost 45,000) of responsible plan fiduciaries will request additional information annually. The Department further assumes that service providers will already have this information available, as it is required to comply with other legal requirements. Therefore, the Department estimates that it will take clerical staff two minutes per request at an hourly labor cost of approximately $26 to prepare the information. Based on the foregoing, the Department estimates that the annual cost to disclose information upon request will total almost $39,000 as shown in Table 3.

Paragraph (c)(1)(v)(B) generally requires service providers to disclose any changes to the general information as soon as practicable, but no later than 60 days from the date the covered service provider is informed of such change. The Department assumes that one-half hour of legal professional time and one-third hour of a financial professional time will be required to update the disclosures. The Department also assumes that changes in plan disclosures will occur at least once every three years, because plans normally conduct requests for proposal (RFPs) from service providers at least once every three to five years. If it is assumed that an equal number of plans conduct an RFP in any given year, then approximately 35 percent of arrangements will require an updated disclosure every year. In addition, half of these plans would already have updated the information without the regulation for a total of approximately 157,000 updates to the general information. Based on the foregoing, the Department estimates that the cost of updating the disclosure of general information will total about $13 million a year as shown in Table 4.

In total, the cost of the disclosure of the general information will be almost $75 million in 2011 and almost $23 million in each subsequent year as shown in Table 4.

TABLE 4—DISCLOSURE OF GENERAL INFORMATION

Year	Number of arrangements (A)	Professional hours (B)	Professional hourly labor cost (C)	Professional hours (D)	Total yearly cost A*B*C
2011:					
Initial Disclosure: Legal	450,000	1	$119	450,000	$53,539,000
Initial Disclosure: Financial	450,000	0.75	63	337,000	21,189,000
2012:					
Initial Disclosure: Legal	61,000	1.00	119	61,000	7,254,000
Initial Disclosure: Financial	61,000	0.75	63	46,000	2,871,000
Disclosure of Changes: Legal	157,000	0.50	119	79,000	9,369,000
Disclosure of Changes: Financial	157,000	0.33	63	52,000	3,296,000
All Years:					
Information Upon Request	45,000	0.03	26	1,500	39,000
Total for 2011					74,767,000
Total for 2012					22,830,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

Investment Disclosure: As discussed in section B.,5.,g., above, paragraphs (c)(1)(iv)(F) and (G) generally require fiduciaries of certain investment vehicles holding plan assets (described in paragraph (c)(1)(iii)(A)(*2*)) and providers of recordkeeping and brokerage services to a participant-directed individual account plan (without regard to whether they expect to receive indirect compensation), if they make available one or more designated investment alternatives for the covered plan (described in paragraph (c)(1)(iii)(B) ("platform providers")), to disclose investment-related fee and expense information. This information generally must be disclosed to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, extended or renewed.[43] Paragraph (c)(1)(iv)(G)(*2*) allows covered platform providers to satisfy this disclosure requirement by providing current disclosure materials of the issuer of the designated investment alternative to the responsible plan fiduciary that include the required information, provided that the issuer is not an affiliate of the platform provider, the disclosure materials are regulated by a State or Federal agency, and the covered service provider does not know that the materials are incomplete or inaccurate.

The cost of disclosing investment-related compensation information will be attributable primarily to time spent gathering the required information.

[43] Generally, service providers are required to disclose any change to investment-related information as soon as practicable, but not later than 60 days from the date on which the covered service provider is informed of such change.

However, much of this cost will be reduced because, as discussed above, the rule allows platform providers to satisfy this requirement by passing through information to the responsible plan fiduciary. Based on the foregoing, the Department assumes that preparation of investment-related compensation and fee information will require one-half hour of financial professional time for each of the individual account plans. As mentioned above, it is assumed that 50 percent of these disclosures already occur; therefore, the costs for approximately 231,000 disclosures are calculated, resulting in costs of approximately $7.3 million (see Table 5).

In addition, service providers must disclose changes to investment information. The Department assumes that service providers will have to disclose investment information changes to each responsible plan fiduciary at least once per year due to the regulation, resulting in about 200,000 disclosures. This notification is expected to require one-half hour of financial professional time to prepare. Further, it is assumed that 14 percent (over 31,000) of arrangements will be new in a year and require the initial investment disclosure. Based on the foregoing, the Department estimates that reporting the required investment related information in years 2012 and later will cost approximately $7.3 million annually as shown in Table 5.

TABLE 5—PREPARATION OF DISCLOSURE OF INVESTMENT INFORMATION

	Number of plans (A)	Professional hours (B)	Professional hourly labor cost (C)	Total professional hours (D)	Total yearly cost A*B*C
2011 Initial Disclosure	231,000	0.5	$63	116,000	$7,255,000
2012 Initial Disclosure	31,000	0.5	63	116,000	983,000
Disclosure of Changes	200,000	0.5	63	100,000	6,272,000
Total for 2011					7,255,000
Total for 2012					7,255,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

b. Costs to Plans

ERISA requires plan fiduciaries, when selecting or monitoring service providers, to act prudently and solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. Fundamental to a fiduciary's ability to discharge these obligations is the availability of information sufficient to enable the plan fiduciary to make informed decisions about the services, the costs, and the service provider. The rule will assist plan fiduciaries in this area by requiring service providers to make specified complete and accurate disclosures in order to benefit from the section 408(b)(2) statutory exemption.

The Department estimates the responsible plan fiduciaries will need one hour to ensure compliance with the rule; therefore, the cost of the review is expected to be approximately $43.6 million in 2011 as reported in Table 3.

Starting in 2012 and each year thereafter, responsible plan fiduciaries of new plans will have to familiarize themselves with the rule to ensure their compliance . Based on data from the 2005 and 2006 Form 5500, the Department estimates that 14 percent of plans will be new each year. The Department assumes that responsible plan fiduciaries of new plans will have the same costs as fiduciaries of existing plans. Therefore, the cost of the review for fiduciaries of new plans is estimated to be $5.9 million annually for years 2012 and thereafter as shown in Table 2.

c. Cost of Exemption for Responsible Plan Fiduciary

The final class exemption contained in paragraph of (c)(1)(ix) of the rule provides relief from the restrictions of ERISA section 406(a)(1)(C) and (D) for plan fiduciaries that enter into a contract with service providers upon a mistaken belief that they have received all of the disclosures required by the interim final rule. Upon discovering that a covered service provider failed to disclose all of the required information, the responsible plan fiduciary must take reasonable steps to obtain such information, including requesting in writing that the covered service provider furnish the information in order to rely on the exemption and notify the Department if the service provider fails to comply with the written request within 90 days.

While the Department has no basis for estimating the percentage of arrangements where a responsible plan fiduciary will not receive all of the required disclosures from a covered service provider, the Department assumes that 10 percent of arrangements (approximately 69,000) may experience a failure that will require the responsible plan fiduciary to send a notice to the service provider in 2011. In 2012 and thereafter, the number of requests for missing information is expected to decrease to 5 percent of arrangements (about 35,000). The Department estimates that one-half hour of a financial professional's time will be required to prepare the request for the undisclosed information. Table 6 reports the cost of preparing the disclosure to be almost $2.2 million in 2011 and approximately $1.1 million annually in the subsequent years.

TABLE 6—NOTICE TO SERVICE PROVIDERS

Year	Requests for additional information (A)	Hours per request (B)	Hourly labor cost (C)	Total hours (D)	Total cost A*B*C
2011	69,000	0.5	$63	35,000	$2,181,000
2012	35,000	0.5	63	17,000	1,091,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

The Department further assumes that service providers may not respond to 10 percent of the requests for undisclosed information within 90 days, which will result in the responsible plan fiduciary preparing and sending a notice to the Department. The Department estimates that one-half hour of a financial professional's time will be required to prepare the notice. As shown in Table 7 below, almost 7,000 notices will be sent in 2011 at a cost of approximately $218,000, and in the subsequent years, over 3,400 notices will be sent annually at a cost of approximately $109,000.

TABLE 7—NOTICE TO DOL

Year	Number of notices to DOL (A)	Hours per notice (B)	Hourly labor cost (C)	Total hours (D)	Total cost A*B*C
2011	7,000	0.5	$63	3,500	$218,000
2012	3,500	0.5	63	1,700	109,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

d. Paper and Mailing Costs

The Department assumes that clerical staff will prepare all of the required notices and disclosures for distribution and that 50 percent of the disclosures will be sent electronically at no cost. Table 8 displays for each type of disclosure the number of notices that will be sent, the required amount of clerical time, and the annual cost of preparation.

TABLE 8—PREPARATION COSTS

	Number of notices (A)	Percent not sent electronically (B)	Clerical hours (C)	Clerical hourly labor cost (D)	Total cost A*B*C*D
Initial Disclosure: 2011	450,000	50	1/30	$26	$196,000
Initial Disclosure: 2012	61,000	50	1/30	26	27,000
Information Upon Request	45,000	50	1/30	26	20,000
Disclosure of Changes to Initial Disclosure	157,000	50	1/30	26	69,000
Investment Disclosure: 2011*	231,000	50	17/30	26	1,711,000
Investment Disclosure: 2012*	31,000	50	17/30	26	232,000
Disclosure of Changes to Investment Disclosure	200,000	50	1/30	26	87,000
Request for Additional Information for Exemption: 2011	69,000	50	1/60	26	15,000
Request for Additional Information for Exemption: 2012	35,000	50	1/60	26	8,000
Prepare Notice to DOL: 2011	7,000	50	1/60	26	1,500
Prepare Notice to DOL: 2012	3,500	50	1/60	26	800

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.
* The estimate assumes 2 minutes per investment to prepare the disclosure. Plans have on average 17 investments.

Table 9 reports the printing and postage costs associated with each required notice and disclosure. The Department assumes that 50 percent of the disclosures will be sent electronically at no cost, and that the cost of printing and paper for the remaining 50 percent of documents is 5 cents per page.

TABLE 9—MAILING COSTS

	Number of notices (A)	Percent not sent electronically (percent) (B)	Pages (C)	Cost per page (D)	Postage (E)	Total costs A*B*(C*D+E)
Initial Disclosure: 2011	450,000	50	8	$0.05	0.44	$189,000
Initial Disclosure: 2012	61,000	50	8	0.05	0.44	26,000
Information Upon Request	45,000	50	10	0.05	0.44	21,000
Disclosure of Changes to Initial Disclosure	157,000	50	4	0.05	0.44	50,000
Investment Disclosure: 2011*	231,000	50	510	0.05	10.35	4,141,000
Investment Disclosure: 2012*	31,000	50	510	0.05	10.35	561,000
Disclosure of Changes to Investment Disclosure	200,000	50	2	0.05	0.44	54,000
Request for Additional Information for Exemption: 2011	69,000	50	2	0.05	0.44	19,000
Request for Additional Information for Exemption: 2012	35,000	50	2	0.05	0.44	9,000
Prepare Notice to DOL: 2011	7,000	50	2	0.05	0.44	2,000
Prepare Notice to DOL: 2012	3,000	50	2	0.05	0.44	1,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.
* The number of pages is 17*30, which is the average number of investments in a plan times 30 pages per investment disclosure.

As shown in Table 10, total costs for service providers and plan sponsors add up to about $152.5 million for the year 2011.

TABLE 10—TOTAL DISCOUNTED COSTS OF PROPOSAL

Year	Cost of legal review (A)	Cost of general information disclosure (B)	Cost of investment information disclosure (C)	Cost of qualifying for exemption (D)	Total costs A+B+C+D
2011	$61,539,000	$75,312,000	$13,248,000	$2,437,000	$152,535,000
2012	6,919,000	21,534,000	7,653,000	1,139,000	37,245,000
2013	6,467,000	20,125,000	7,152,000	1,064,000	34,808,000
2014	6,044,000	18,809,000	6,685,000	995,000	32,531,000
2015	5,648,000	17,578,000	6,247,000	929,000	30,403,000
2016	5,279,000	16,428,000	5,839,000	869,000	28,414,000
2017	4,933,000	15,354,000	5,457,000	812,000	26,555,000
2018	4,611,000	14,349,000	5,100,000	759,000	24,818,000
2019	4,309,000	13,410,000	4,766,000	709,000	23,194,000
2020	4,027,000	12,533,000	4,454,000	663,000	21,677,000
Total with 7% Discounting					412,183,000
Total with 3% Discounting					462,827,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

e. Comments and Revisions

The Department received several comments suggesting that it had underestimated the costs of the proposal and questioning various assumptions on which the estimates were based. In response to these comments, the Department increased its estimate of the amount of legal and financial professionals' time service providers would require to become compliant with the regulation. It also reevaluated its estimates of the number of affected service providers. (The Department also revised some of the proposal's provisions in light of these comments to ease compliance burdens, as explained earlier in this preamble.)

In addition to revisions made in response to comments, the Department updated its estimates of service providers, plans, participants, assets and labor costs, as well as its estimates of the preparation, distribution and mailing costs of the required disclosures, to reflect more current data.

f. Summary

In summary, the Department has calculated total costs of approximately $412 million for the ten-year period 2011 to 2020.

9. Uncertainty

The Department's estimates of the effects of this regulation are subject to uncertainty. While the Department is confident that improved fee disclosures can reduce the time fiduciaries spend searching for needed information, discourage harmful conflicts of interest, reduce gaps in information received by plan fiduciaries, improve fiduciary decisions relating to purchases of plan services leading to reduced plan fees and provide better enforcement tools to redress abuses by service providers, it is uncertain about the magnitude of these effects. The uncertainty is attributable to gaps in available data and empirical evidence. Some key areas of uncertainty are elaborated below.

Reduction in fees—By making information more readily available, this regulation may increase the amount of information that is considered, along with the effort devoted to and efficiency of such consideration. This in turn could reduce fees paid to service providers relative to value derived for participants in either or both of two ways. First, fiduciaries might more accurately optimize the levels and types of services purchased, for example by downgrading from a premium service level, whose price exceeds the benefit to participants, to an economy service level whose price is smaller than the benefit. This would represent a gain in welfare equal to the cost savings reduced by any diminishment in benefits attendant to the service downgrade. Second, fiduciaries might identify and take advantage of opportunities to purchase equivalent services at a lower price (or superior services at the same price) from a different vendor. If this savings is attributable to the service being produced more efficiently by the competing vendor it would reflect a welfare gain; if it is attributable to a shifting of existing surplus from the service producers to consumers with no improvement in production efficiency, it would reflect a transfer.

The Department attempted to consider the potential amount by which fees might be reduced. A review of literature on dispersion of mutual fund fee levels and the value of services purchased with such fees suggests that at least some fiduciaries and participants of individual account plans, by making different and more optimal choices about which services to purchase or what vendors to purchase from, might reduce fees by perhaps 11 basis points per year on average.[44] There is evidence for potential savings to defined benefit plans as well. A recent GAO report found that defined benefit plans whose consultants have undisclosed conflicts of interest have between 1.2 and 1.3 percentage points lower rates of return. The report acknowledges that this finding does not

[44] This assumption was developed in light of evidence presented in Brad M. Barber et al., *Out of Sight, Out of Mind, The Effects of Expenses on Mutual Fund Flows,* Journal of Business, Volume 79, Number 6 2095, 2095–2119 (2005); James J. Choi et al., *Why Does the Law of One Price Fail? An Experiment on Index Mutual Funds,* National Bureau of Economic Research Working Paper W12261 (May 2006); Deloitte Financial Advisory Services LLP, *Fees and Revenue Sharing in Defined Contribution Retirement Plans* (Dec. 6, 2007) (unpublished, on file with the Department of Labor); Edwin J. Elton et al., *Are Investors Rational? Choices Among Index Funds,* Social Science Research Network Abstract 340482 (June 2002); and Sarah Holden & Michael Hadley, *The Economics of Providing 401(k) Plans: Services, Fees and Expenses 2006,* Investment Company Institute Research Fundamentals, Volume 16, Number 4 (Sept. 2007). This estimate of excess expense does not take into account less visible expenses such as mutual funds' internal transaction costs (including explicit brokerage commissions and implicit trading costs), which are sometimes larger than funds' expense ratios. *See, e.g.,* Jason Karceski *et al., Portfolio Transactions Costs at U.S. Equity Mutual Funds,* University of Florida Working Paper (2004), *at http://thefloat.typepad.com/the_float/files/2004_zag_study_on_mutual_fund_trading_costs.pdf.*

necessarily imply a causal arrangement, but it references "expert" opinions that such undisclosed conflicts of interest could result in lower returns.[45]

In light of the foregoing evidence, the Department believes it is highly possible that this regulation could fill gaps in critical information, thus improving fiduciary decisions, and will reduce service costs relative to value derived to yield benefits that exceed costs. Table 11 below provides a break-even analysis to illustrate this point. Previously cited studies suggest that perhaps a quarter of sponsors currently lack critical information[46] and as many as 65 percent would use additional information to change existing fee structures.[47] Given the total amount of assets in plans, if the sponsors are able to reduce fees by 0.6 basis point per year on average, the benefits of the mandatory disclosure requirements would exceed the costs. Due to uncertainty about the size of the reduction in fees, and uncertainty about what fraction of the fee reduction would reflect welfare gains, the Department did not include the reduction in fees in its calculation of the benefits of the regulation.

TABLE 11—REDUCTION IN FEES NECESSARY FOR BENEFITS TO EXCEED COSTS (2011)

Total amount of assets in plans (in millions of 2010 dollars)	Percent of sponsors currently lacking critical information	Percent of sponsor who will use the information to change existing fee structures	Total 10–Year compliance costs annualized at 7% (in millions of 2010 dollars)	Percent correction due to disclosure necessary for benefits to exceed costs
(A)	(B)	(C)	(D)	D/(A*B*C)
$6,390,000	25%	65%	$58.7	0.006%

Other areas of uncertainty—Also subject to substantial uncertainty are the Department's estimates of: The fraction of plan fiduciaries already receiving the required disclosure information (both benefits and costs would vary negatively); the time required for legal professionals, financial professionals and clerical professionals to perform compliance tasks pursuant to the regulation (costs would vary positively); and the extent to which disclosures will be made electronically rather than on paper (costs would vary negatively). In developing its assumptions regarding these and other variables, the Department took into account both relevant comments received on the proposed regulation and differences between the requirements of the proposed and those of the final regulations. The Department believes its assumptions are reasonable and that the uncertainty attendant to them does not cast serious doubt on the Department's conclusion that the regulation's benefits justify its costs.

10. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposal is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis (FRFA) describing the rule's impact on small entities and explaining how the agency made its decisions with respect to the application of the rule to small entities. Small entities include small businesses, organizations and governmental jurisdictions.

a. Need for and Objectives of the Rule

Service providers to pension plans increasingly have complex compensation arrangements that may present conflicts of interest. Thus, small plan fiduciaries face increasing difficulty in carrying out their duty to assess whether the compensation paid to their service providers is reasonable. As supported by public commenters on the proposal and witnesses at the Department's hearing, this rule is necessary to help such fiduciaries get the information they need to negotiate with and select service providers who offer high quality services at reasonable rates.

b. Public Comments

Public comments on the proposed rule raised a number of issues with respect to its application to and impact on small entities. Several commenters affirmed the Department's view, articulated in the preamble to the proposed rule, that the number of small service providers to plans is large and that the cost of complying with the proposed rule might be proportionately higher for smaller service providers. However, some comments suggested that the Department had underestimated the cost to small service providers to comply with the proposed rule.

Many of the comments expressed uncertainty about the scope of the proposed rule's application, attributing complexity and cost to that uncertainty and to the possibility that the scope might be very broad (for example, that it might encompass a broad array of indirect service providers). The Department has refined the proposed rule to clarify that the interim final rule encompasses only those service providers and compensation arrangements that are likely to require close consideration by plan fiduciaries. Small service providers generally fall within the scope of the interim final rule only if they are plan fiduciaries, provide plan services as a registered investment adviser, provide certain other services directly to a plan and receive indirect compensation in connection with such services, or provide an investment platform through which investment options are made available to participants and beneficiaries in participant-directed individual account plans. A potentially large number of small, indirect service providers will not be subject to the interim final rule, even if they perform services for a plan under subcontract to another (direct) service provider. The Department lacks data on how many such indirect service arrangements exist, because such arrangements are not required to be identified in plans' annual reports.

Some comments suggested that the cost of rigorous disclosure is not

[45] *See Conflicts of Interest Involving High Risk or Terminated Plans Pose Enforcement Challenges,* U.S. Government Accountability Office (June 2007).

[46] *See e.g.,* Chatham Partners, *Looking Beneath the Surface: Plan Sponsor Perspectives on Fee Disclosure* (2008).

[47] *See e.g.,* Hewitt, *Hot Topics in Retirement,* 2008.

justified in the case of very small service arrangements. The interim final rule generally excepts from its requirements contracts or arrangements where compensation or fees are less than $1,000. It is likely that a large number of small service provider arrangements fall into this category. Some portion of compliance costs, including the most recurring costs (as opposed to start-up costs), are variable: they grow with the number of covered arrangements the service provider maintains. Therefore, this exception will be especially helpful to small service providers whose business consists of a large number of small contracts or arrangements, which will be excepted from coverage if they result in less than $1,000 in compensation or fees.

Some comments stated that many arrangements are not established under a formal contract and that requiring all arrangements to be so established would be costly. The Department believes such a requirement might be disproportionately costly for small service providers, whose arrangements might be small relative to the partially fixed cost of entering into a contract and who might lack in-house expertise in contract law. The interim final rule includes no such requirement, but instead allows all required disclosures to be provided by other means so long as they are provided in writing.

c. Affected Small Entities

The Department estimates that the interim final rule will apply to approximately 9,600 small service providers (generally, those with revenue less than $6.5 million per year). These service providers generally consist of professional service enterprises that provide a wide range of services to plans, such as investment management or advisory services for plans or plan participants, and accounting, auditing, actuarial, appraisal, banking, consulting, custodial, insurance, legal, recordkeeping, brokerage, administration, or valuation services. Many of these service providers have special education, training, and/or formal credentials in fields such as ERISA and benefits administration, employee compensation, taxation, actuarial science, law, accounting, or finance.

d. Compliance Requirements

The classes of small service providers subject to the interim final rule includes service providers who are plan fiduciaries (for example who manage plan investments), who provide services as registered investment advisers to plans, who receive indirect compensation in connection with provision of certain services (namely, accounting, auditing, actuarial, appraisal, banking, certain consulting, custodial, insurance, participant investment advisory, legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services) or who provide an investment platform through which investment options are made available to participants and beneficiaries in participant-directed individual account plans.

These small service providers will, in connection with covered service arrangements, be required to disclose to plan fiduciaries certain information. Such information will include what services will be included in the arrangement and what direct and indirect compensation the service will receive in connection with the arrangement. Certain service providers whose arrangements make certain investment products available to plans also will be required to disclose to fiduciaries certain information relating to expenses associated with such products. Certain specified information generally must be disclosed before the arrangement is entered into or renewed, on request from a fiduciary, and when the information changes.

Preparing compliant disclosures often will require one or more professional skills such as financial or legal expertise, and knowledge of financial products and services and related compensation and revenue sharing arrangements. Generally, small service providers will be responsible for disclosing only those types of compensation arrangements to which they (or their affiliate or subcontractor performing the services) are a party.

e. Agency Steps To Minimize Negative Impacts

As explained in (b) above in connection with public comments, the Department took a number of steps to minimize any negative impact of this interim final rule on small service providers. These include clarifying the scope of the rule's application to include only those service providers and compensation arrangements that are likely to require close consideration by plan fiduciaries, excepting from the rule's requirements contracts or arrangements where compensation or fees are less than $1,000, and omitting from the rule a requirement that all arrangements be maintained under formal contracts. The disclosure requirements included in the interim final rule are necessary to ensure that plan fiduciaries can efficiently and effectively carry out their duties in purchasing services for plans.

The policy justification for these requirements includes benefits to fiduciaries, who will realize savings in the form of reduced search costs more than commensurate to the compliance costs shouldered by service providers. Small plan fiduciaries are likely to benefit most—lacking economies of scale and negotiating power, they would otherwise face the greatest potential cost to obtain and consider the information necessary to the performance of their duty. Small service providers, while shouldering the cost of providing disclosure, will likely often pass these costs to their plan clients, who in turn will reap a net benefit on average that will more than offset this shifted compliance cost.

Major alternatives considered by the Department fell short of the approach adopted in the interim final rule of achieving policy goals at reasonable and justified cost. As discussed, the Department rejected as unnecessarily costly approaches that would have applied disclosure requirements to arrangements involving compensation or fees of less than $1,000, to indirect service arrangements where the service provider is not a plan fiduciary, or that would have required a formal, written contract or arrangement to delineate the disclosure obligations. The Department also rejected these approaches as inadequate to achieve a central policy and legal goal—namely, enabling plan fiduciaries, including especially small plan fiduciaries, to efficiently and effectively carry out their duties in connection with the purchase of plan services by easing their access to necessary information.

An alternative approach advocated by some public commenters would not have expressly conditioned the section 408(b)(2) prohibited transaction exemption on the service provider's production of such information. That approach, however, would perpetuate the information asymmetry and therefore would not allow small plan fiduciaries to efficiently and effectively carry out their fiduciary obligations when purchasing plan services and equip them to redress service provider abuses.

11. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the proposed regulation solicited comments on the information collections included therein. The Department also submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C.

3507(d), contemporaneously with the publication of the proposed regulation, for OMB's review.[48] Although no public comments were received that specifically addressed the paperwork burden analysis of the information collections, the comments that were submitted, and which are described earlier in this preamble, contained information relevant to the costs and administrative burdens attendant to the proposals. The Department took into account such public comments in connection with making changes to the proposal, analyzing the economic impact of the proposals, and developing the revised paperwork burden analysis summarized below.

In connection with publication of this interim final rule, the Department submitted an ICR to OMB for its request of a new information collection. OMB approved the ICR on May 20, 2010, under OMB Control Number 1210–0133, which will expire on May 31, 2013.

A copy of the ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov.* PRA ADDRESSEE: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

The information collection requirements of the interim final rule are contained in paragraph (c)(1)(iv), which requires service providers to disclose, in writing, specific information to responsible plan fiduciaries related to the compensation to be received under the contract or arrangement. Generally, the information must be disclosed reasonably in advance of the date the contract or arrangement is entered into, or extended or renewed. These disclosure requirements are discussed fully in section B. of this **SUPPLEMENTARY INFORMATION.**

Annual Hour Burden

In order to estimate the potential costs of the disclosure provisions of the interim final rule, the Department estimated the number of service providers, plans, and arrangements covered by the rule. Based on information from the 2006 Form 5500, the Department estimates that approximately 49,000 defined benefit pension plans (DB plans) covering more than 42 million participants and approximately 646,000 defined contribution plans (DC plans) covering almost 80 million participants are covered by the rule.[49]

The Department also estimates that based on data from the 2006 Form 5500 Annual Return/Report and Schedule C that there are almost 10,000 covered service providers. The 2006 Form 5500 Schedule C data was also used to count the number of covered plan-service provider arrangements. On average, DB plans employ more covered service providers per plan than DC plans, and large plans use more covered service providers per plan than small plans. In total, the Department estimates that DB plans have approximately 119,000 arrangements with covered service providers, while DC plans have an estimated 780,000 arrangements. For purposes of this analysis, the Department assumes that about 50 percent of disclosures between service providers and plan fiduciaries are made only electronically.

Compliance Review and Implementation: Most of the hour burden under the interim final rule will be imposed on service providers. Covered service providers will need to review the rule, evaluate whether their current disclosure practices comply with its requirements, and, if not, determine how their disclosure practices must be changed to be compliant. The Department projected this as an hour burden incurred in 2011, the year in which the rule takes effect.

Although all covered service providers are assumed to incur these initial costs, it is likely that service providers with complex fee arrangements and conflicts of interest will require more time to comply. The Department assumes that the number of service providers with more complex arrangements can be approximated by the number of unique service providers who are reported on the Schedule C as having received $1 million or more in compensation (approximately 1,000 service providers).

The Department assumes that covered service providers with complex arrangements will require 24 hours of legal professional time and 80 hours of financial professional time.[50] The non-complex service providers (approximately 9,000 service providers based on the quantitative analysis above) would require only three hours of legal professional time and 13 hours of financial professional time. Based on the foregoing, the Department estimates that in the first year service providers will incur an hour burden of approximately 241,000 hours with an equivalent cost of approximately $17.9 million.

The Department also has estimated the initial compliance review and implementation costs for service providers newly entering the market ("new service providers") to provide service to plans (either for the first time or by re-entry) beginning in 2012 and each year thereafter. Based on data from the 2005 and 2006 Form 5500, the Department assumes that about eight percent of all service providers will be new in each year subsequent to 2011, and that these service providers will incur the same compliance review and implementation costs as existing service providers. Based on the foregoing, the Department estimates that new service providers will incur an hour burden of approximately 20,000 hours with an equivalent cost of approximately $1.5 million.

Based on the foregoing, the Department estimates that the three-year average total hour burden associated with compliance review and implementation is almost 94,000 hours. The equivalent cost of these hours is $7.0 million.

Initial Disclosure: As discussed above, covered service providers also must develop or update their current disclosure materials to comply with the regulatory requirements. Paragraph (c)(1)(iv) of the rule requires service providers to disclose general information to a responsible plan fiduciary when a contract is entered into, renewed, or extended. The Department assumes that service providers will create a general disclosure that can be used for all plans and customize this document by adding individualized information for each plan. This activity includes developing formulae and algorithms to present or estimate direct and indirect compensation that will be applied in a pro forma projection for each plan with which the provider will contract. The Department assumes that the majority of

[48] On Dec. 3, 2007, OMB issued a notice (ICR Reference No. 200710–1210–001) that it would not approve the Department's request for approval of the information collection provisions until after consideration of public comment on the proposed regulation and promulgation of a final rule, describing any changes. OMB issued Control Number 1210–0133 for the collection once it approved the information collection provisions of the final rule.

[49] Out of these pension plans, about 37,000 are small DB plans and 576,000 small DC plans. Small plans generally are those with less than 100 participants.

[50] EBSA wage estimates for 2010 are based on the National Occupational Employment Survey (May 2008, Bureau of Labor Statistics) and the Employment Cost Index (June 2009, Bureau of Labor Statistics), unless otherwise noted. Total labor costs (wages plus benefits plus overhead) were estimated to average $119.03 per hour over the period for legal professional, $62.81 for financial professionals, and $26.14 per hour for clerical staff.

this cost would be incurred by service providers in 2011 and that one hour of a legal professional's and 45 minutes of a financial professional's time will be required to prepare the general disclosure for each plan. Based on the foregoing, the total hour burden to prepare these disclosures in year 2011 will be approximately 1.6 million hours and the equivalent cost of these hours will be approximately $150 million.

In 2012 and subsequent years, the regulation will cause additional disclosures to be made between covered plans and service providers for any new contracts and arrangements. The Department does not have information on the number of new arrangements in a year; therefore, the Department used the percentage of plans that are new plans, about 14 percent, as a proxy for the percentage of new arrangements in a year. This results in approximately 122,000 new arrangements every year. The Department assumes that half of the responsible plan fiduciaries in these arrangements would receive the required information even without the regulation enacted. The Department estimates that preparing the disclosures for new arrangements will require one hour of a legal professional's time at an equivalent cost of approximately $119 and 45 minutes of a financial professional's time at an equivalent cost of almost $63. Based on the foregoing, the total hour burden to prepare these disclosures in year 2012 and thereafter will be approximately 215,000 hours and the equivalent cost of these hours will be $20.3 million. The resulting three-year average burden hours is 673,000 hours with an equivalent cost of $63.5 million.

Paragraph (c)(1)(vi) requires service providers to provide any other information relating to compensation received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms, and schedules issued thereunder upon the request of responsible plans fiduciaries or plan administrators of covered plans. The Department is not aware of a basis for determining the number of requests that responsible plan fiduciaries or plan administrators will make; therefore, it assumes that approximately ten percent (approximately 90,000) of responsible plan fiduciaries will request additional information annually. The Department further assumes that service providers already will have this information available, because it is required to comply with other legal requirements. Therefore, the Department estimates that it will take clerical staff two minutes per request to prepare the information with an hourly rate of approximately $26. Based on the foregoing, the Department estimates that the yearly and three-year average total hour burden to disclose information upon request will total 4,500 hours at an equivalent cost of $118,000.

Paragraph (c)(1)(v)(B) generally requires service providers to disclose any changes to the general information as soon as reasonably practicable, but no later than 60 days from the date the covered service provider knows of such change. The Department assumes that one-half hour of legal professional time and one-third hour of a financial professional time will be required to update the disclosures. The Department also assumes that changes in plan disclosures will occur at least once every three years, because plans normally conduct requests for proposal (RFPs) from service providers at least once every three to five years. If it is assumed that an equal number of plans conduct an RFP in any given year, then approximately 35 percent of arrangements will require an updated disclosure every year and half of these would already have updated the information without the regulation for a total of approximately 315,000 updates to the general information. Based on the foregoing, the Department estimates that the annual hour burden to update the disclosure of general information will be approximately 268,000 hours with an equivalent cost of approximately $25.5 million.

In summary, the hour burden to disclose the required general information in 2011 will be almost 1.6 million hours with an equivalent cost of approximately $150 million. The hour burden in subsequent years will be approximately 483,000 hours with an equivalent cost of approximately $45.8 million. The average total hour burden to disclose general information over the three year period 2011–2013 will be 852,000 hours, and the equivalent cost of these hours will be $80.5 million.

Investment Disclosure: Paragraphs (c)(1)(iv)(F) and (G) generally require fiduciaries to certain investment vehicles holding plan assets (described in paragraph (c)(1)(iii)(A)(*2*)) and providers of recordkeeping and brokerage services to a participant-directed individual account plan (without regard to whether they expect to receive indirect compensation), if they provide access to one or more designated investment alternatives for the covered plan (described in paragraph (c)(1)(iii)(B) ("platform providers")), to disclose investment-related compensation information. This information generally must be disclosed to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, extended or renewed.[51] Paragraph (c)(1)(iv)(G)(*2*) allows covered platform providers to satisfy this disclosure requirement by passing through to the responsible plan fiduciary copies of any state or federally regulated disclosure materials (*e.g.,* prospectuses) of the issuer of the designated investment alternative, so long as such issuer is not affiliated with the platform provider, and the platform provider does not know that any of the information contained in such materials is incomplete or inaccurate.

The hour burden associated with disclosing investment-related compensation and fee information will be attributable primarily to the time spent gathering the required information. However, much of this cost will be reduced, because, as discussed above, the rule allows platform providers to satisfy this requirement by passing through information to the responsible plan fiduciary. Based on the foregoing, the Department assumes that preparation of investment-related compensation and fee information will require one-half hour of financial professional time for each of the individual account plans. There will be approximately 462,000 plan fiduciaries receiving this information in 2011. Further, it is assumed that 14 percent (approximately 63,000) of arrangements will be new in each subsequent year and require the initial investment disclosure. The Department estimates that the hour burden to disclose the required investment information will be approximately 362,000 hours with an equivalent cost of $17.9 million in 2011. In the subsequent years, the burden hours will be approximately 249,000 hours with an equivalent cost of $2.4 million. The three-year average hour burden associated with disclosing investment related information 462,000 disclosures are 286,000 hours at an equivalent cost of $7.6 million.

In addition, service providers must disclose changes to investment information. The Department assumes that service providers will have to disclose investment information changes to each responsible plan fiduciary at least once per year due to the regulation, resulting in approximately 399,000 disclosures. This

[51] Generally, service providers must disclose any change to investment-related information as soon as practicable, but not later than 60 days from the date on which the covered service provider is informed of such change.

notification is expected to require one-half hour of financial professional time to prepare. Based on the foregoing, the cost to update investment information in subsequent years is estimated to be approximately 206,000 hours with an equivalent cost of $12.7 million. The Department estimates that the three-year average burden hours associated with reporting changes to the required investment related information will be 138,000 hours at an equivalent cost of $8.5 million.

In summary, the hour burden to disclose all investment information in 2011 is estimated to be 362,000 hours with an equivalent cost of $17.9 million. The burden to disclose the required investment information in subsequent years is 455,000 hours with an equivalent cost of $15.1 million. The total three-year hour burden for service providers to disclose the required investment information is estimate to be 424,000 hours with an equivalent cost of $16.1 million.

Hour Burden Imposed on Plans: The main hour burden of the regulation that is imposed on plans is additional time spent reviewing the regulation and ensuring that the plan has received all of the required disclosures. The Department estimates the responsible plan fiduciaries will need one hour of time to review new requirements. The hour burden is estimated to be 695,000 with an equivalent cost of approximately $43.6 million in 2011.

Starting in 2012 and each year thereafter, responsible plan fiduciaries of new plans will have to review the new requirements. Based on data from the 2005 and 2006 Form 5500, the Department estimates that 14 percent of plans will be new each year. The Department assumes that responsible plan fiduciaries of new plans will have the same costs as fiduciaries of existing plans. Therefore, the hour burden associated with the review for fiduciaries of new plans is estimated to be approximately 94,000 hours at an equivalent cost of $5.9 million for years 2012 and thereafter.

Based on the foregoing, the hour burden imposed on plans to review the regulation is estimated to be 695,000 hours in 2011 with an equivalent cost of $43.6 million. The three-year average burden on plans to review the regulation is estimated to be 294,000 hours with an equivalent cost of $18.5 million.

Exemption for Responsible Plan Fiduciary: The final prohibited transaction class exemption contained in paragraph (c)(1)(ix) of the rule provides relief from the restrictions of sections 406(a)(1)(C) and (D) for plan fiduciaries that enter into contracts or arrangements with service providers upon a mistaken belief that they have received all of the disclosures required by the interim final rule. Upon discovering that a covered service provider failed to disclose all of the required information, the responsible plan fiduciary must take reasonable steps to obtain such information, including requesting in writing that the covered service provider furnish the information in order to rely on the exemption and notify the Department if the service provider fails to comply with the written request within 90 days.

While the Department has no basis for estimating the percentage of arrangements where a responsible plan fiduciary will not receive all of the required disclosures from a covered service provider, the Department assumes that 10 percent of arrangements (approximately 69,000) may experience a failure that will require the responsible plan fiduciary to send a notice to the service provider in 2011. In 2012 and thereafter, the number of requests for missing information is expected to decrease to 5 percent of arrangements (approximately 35,000). The Department estimates that one-half hour of a financial professional's time will be required to prepare the request for the undisclosed information.

The Department estimates that the burden for plans to send notice to service providers of missing information will be approximately 35,000 hours with an equivalent cost of over $2.2 million in 2011. The hour burden for subsequent years is estimated to be over 18,000 hours with an equivalent cost of $1.1 million. The three-year average burden hours for requesting missing information is estimated to be 24,000 hours with an equivalent cost of $1.5 million.

The Department further assumes that service providers may not respond to 10 percent of the requests for undisclosed information within 90 days, which will result in the responsible plan fiduciary preparing and sending a notice to the Department. The Department estimates that one-half hour of a financial professional's time will be required to prepare the notice. The Department estimates that the burden for plans to send notice to the Department of Labor will be approximately 3,500 hours with an equivalent cost of $219,600 in 2011. The hour burden for subsequent years is estimated to be approximately 1,800 hours with an equivalent cost of $110,000. The three-year average burden hours to prepare the notice to be sent to the Department are estimated to be 2,400 hours with an equivalent cost of $146,000.

Summary

Table 12 shows the total hour burden of the information collection and Table 13 shows the total equivalent cost. The total three year average hour burden for service providers and plans is estimated to be 1.4 million hours with an equivalent cost of $104 million. The total three-year average hour burden for plans is estimated to be 320,000 hours with an equivalent cost of $20.1 million. The total three-year average hour burden of the regulation is estimated to be 1.7 million hours with an equivalent cost of $124 million.

TABLE 12—HOUR BURDEN

	Year 1	Year 2	Year 3	Average
Service Providers	2,197,000	963,000	963,000	1,374,000
Plans	733,000	114,000	114,000	320,000
Total	2,930,000	1,076,000	1,076,000	1,694,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

TABLE 13—EQUIVALENT COST

	Year 1	Year 2	Year 3	Average
Service Providers	$185,811,000	$62,529,000	$62,039,000	$103,623,000

TABLE 13—EQUIVALENT COST—Continued

	Year 1	Year 2	Year 3	Average
Plans	46,041,000	7,119,000	7,119,000	20,093,000
Total	231,852,000	69,648,577	69,158,577	123,716,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

Annual Cost Burden

Table 14 reports the estimated printing and postage costs associated with each required notice and disclosure. The Department assumes that 50 percent of the disclosures will be sent electronically at no cost, and that the cost of printing and paper for the remaining 50% of documents will be 5 cents per page. The Department estimates that the total cost burden of the rule in 2010 will be $8,830,000 (approximately $8,810.000 for service providers and $21,000 for plans), and $1,435,000 (approximately $1,424,000 for service providers and $10,000 for plans in subsequent years. The three-year average cost burden is estimated to be almost $3.9 million.

TABLE 14—COST BURDEN

	Year 1	Year 2	Year 3	Average
Initial Disclosure	$378,000	$51,000	$51,000	$160,000
Update Initial Disclosure	0	101,000	101,000	67,000
Information Upon Request	42,000	42,000	42,000	42,000
General Information Total	420,000	194,000	194,000	270,000
Investment Disclosure	8,290,000	1,122,000	1,122,000	3,509,000
Update Investment Disclosure	108,000	108,000	108,000	108,000
Investment Disclosure Total	8,390,000	1,230,000	1,230,000	3,617,000
Request for Additional Information for Exemption	19,000	9,000	9,000	13,000
Notice to DOL	2000	900	900	1,000
Total	8,830,000	1,435,000	1,435,000	3,900,000

Note: The displayed numbers are rounded to the nearest thousand and therefore may not add up to the totals.

These paperwork burden estimates are summarized as follows:

Type of Review: New collection (Request for new OMB control number).

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure.

OMB Control Number: 1210–0133.

Affected Public: Business or other for-profit; not-for-profit institutions.

Estimated Number of Respondents: 79,000 (first year); 56,000 (three-year average).

Estimated Number of Responses: 1,528,000 (first year); 1,194,000 (three-year average).

Frequency of Response: Annually; occasionally.

Estimated Annual Burden Hours: 2,930,000 (first year); 1,694,000 (three-year average).

Estimated Annual Burden Cost: $8,830,000 (first year); $3,900,000 (three-year average).

Congressional Review Act

The interim final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The interim final rule is a "major rule" as that term is defined in 5 U.S.C. 804, because it is likely to result in an annual effect on the economy of $100 million or more.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the interim final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. The interim final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in the interim final rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and, as such, have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

■ For the reasons set forth in the preamble, the Department amends chapter XXV, subchapter F, part 2550 of title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550–RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 continues to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657, Pub. L. 107–16, 115 Stat. 38). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b) (1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408b–2 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. Section 2550.408b–2(c) is revised to read as follows:

§ 2550.408b–2 General statutory exemption for services or office space.

* * * * *

(c) *Reasonable contract or arrangement*—

(1) *Pension plan disclosure.*

(i) *General.* No contract or arrangement for services between a covered plan and a covered service provider, nor any extension or renewal, is reasonable within the meaning of section 408(b)(2) of the Act and paragraph (a)(2) of this section unless the requirements of this paragraph (c)(1) are satisfied. The requirements of this paragraph (c)(1) are independent of fiduciary obligations under section 404 of the Act.

(ii) *Covered plan.* For purposes of this paragraph (c)(1), a "covered plan" is an "employee pension benefit plan" or a "pension plan" within the meaning of section 3(2)(A) (and not described in section 4(b)) of the Act, except that the term "covered plan" shall not include a "simplified employee pension" described in section 408(k) of the Internal Revenue Code of 1986 (the Code), a "simple retirement account" described in section 408(p) of the Code, an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code.

(iii) *Covered service provider.* For purposes of this paragraph (c)(1), a "covered service provider" is a service provider that enters into a contract or arrangement with the covered plan and reasonably expects $1,000 or more in compensation, direct or indirect, to be received in connection with providing one or more of the services described in paragraphs (c)(1)(iii)(A), (B), or (C) of this section pursuant to the contract or arrangement, regardless of whether such services will be performed, or such compensation received, by the covered service provider, an affiliate, or a subcontractor.

(A) *Services as a fiduciary or registered investment adviser.*

(*1*) Services provided directly to the covered plan as a fiduciary (unless otherwise specified, a "fiduciary" in this paragraph (c)(1) is a fiduciary within the meaning of section 3(21) of the Act);

(*2*) Services provided as a fiduciary to an investment contract, product, or entity that holds plan assets (as determined pursuant to sections 3(42) and 401 of the Act and 29 CFR 2510.3–101) and in which the covered plan has a direct equity investment (a direct equity investment does not include investments made by the investment contract, product, or entity in which the covered plan invests); or

(*3*) Services provided directly to the covered plan as an investment adviser registered under either the Investment Advisers Act of 1940 or any State law.

(B) *Certain recordkeeping or brokerage services.* Recordkeeping services or brokerage services provided to a covered plan that is an individual account plan, as defined in section 3(34) of the Act, and that permits participants or beneficiaries to direct the investment of their accounts, if one or more designated investment alternatives will be made available (*e.g.,* through a platform or similar mechanism) in connection with such recordkeeping services or brokerage services.

(C) *Other services for indirect compensation.* Accounting, auditing, actuarial, appraisal, banking, consulting (*i.e.,* consulting related to the development or implementation of investment policies or objectives, or the selection or monitoring of service providers or plan investments), custodial, insurance, investment advisory (for plan or participants), legal, recordkeeping, securities or other investment brokerage, third party administration, or valuation services provided to the covered plan, for which the covered service provider, an affiliate, or a subcontractor reasonably expects to receive indirect compensation (as defined in paragraph (c)(1)(viii)(B)(*2*) of this section) or compensation described in paragraph (c)(1)(iv)(C)(*3*) of this section).

(D) *Limitations.* Notwithstanding paragraphs (c)(1)(iii)(A), (B), or (C) of this section, no person or entity is a "covered service provider" solely by providing services—

(*1*) As an affiliate or a subcontractor that is performing one or more of the services described in paragraphs (c)(1)(iii)(A), (B), or (C) of this section under the contract or arrangement with the covered plan; or

(*2*) To an investment contract, product, or entity in which the covered plan invests, regardless of whether or not the investment contract, product, or entity holds assets of the covered plan, other than services as a fiduciary described in paragraph (c)(1)(iii)(A)(*2*) of this section.

(iv) *Initial disclosure requirements.* The covered service provider must disclose the following information to a responsible plan fiduciary, in writing—

(A) *Services.* A description of the services to be provided to the covered plan pursuant to the contract or arrangement (but not including non-fiduciary services described in paragraph (c)(1)(iii)(D)(*2*) of this section).

(B) *Status.* If applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan (or to an investment contract, product or entity that holds plan assets and in which the covered plan has a direct equity investment) as a fiduciary; and, if applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan as an investment adviser registered under either the Investment Advisers Act of 1940 or any State law.

(C) *Compensation.*

(*1*) *Direct compensation.* A description of all direct compensation (as defined in paragraph (c)(1)(viii)(B)(*1*)

of this section), either in the aggregate or by service, that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described pursuant to paragraph (c)(1)(iv)(A) of this section.

(*2*) *Indirect compensation.* A description of all indirect compensation (as defined in paragraph (c)(1)(viii)(B)(*2*) of this section) that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services described pursuant to paragraph (c)(1)(iv)(A) of this section; including identification of the services for which the indirect compensation will be received and identification of the payer of the indirect compensation.

(*3*) *Compensation paid among related parties.* A description of any compensation that will be paid among the covered service provider, an affiliate, or a subcontractor, in connection with the services described pursuant to paragraph (c)(1)(iv)(A) of this section if it is set on a transaction basis (*e.g.,* commissions, soft dollars, finder's fees or other similar incentive compensation based on business placed or retained) or is charged directly against the covered plan's investment and reflected in the net value of the investment (*e.g.,* Rule 12b-1 fees); including identification of the services for which such compensation will be paid and identification of the payers and recipients of such compensation (including the status of a payer or recipient as an affiliate or a subcontractor). Compensation must be disclosed pursuant to this paragraph (c)(1)(iv)(C)(*3*) regardless of whether such compensation also is disclosed pursuant to paragraph (c)(1)(iv)(C)(*1*) or (*2*), (F) or (G) of this section. This paragraph (c)(1)(iv)(C)(*3*) shall not apply to compensation received by an employee from his or her employer on account of work performed by the employee.

(*4*) *Compensation for termination of contract or arrangement.* A description of any compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with termination of the contract or arrangement, and how any prepaid amounts will be calculated and refunded upon such termination.

(D) *Recordkeeping services.* Without regard to the disclosure of compensation pursuant to paragraph (c)(1)(iv)(C), (F), or (G) of this section, if recordkeeping services will be provided to the covered plan—

(*1*) A description of all direct and indirect compensation that the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with such recordkeeping services; and

(*2*) If the covered service provider reasonably expects recordkeeping services to be provided, in whole or in part, without explicit compensation for such recordkeeping services, or when compensation for recordkeeping services is offset or rebated based on other compensation received by the covered service provider, an affiliate, or a subcontractor, a reasonable and good faith estimate of the cost to the covered plan of such recordkeeping services, including an explanation of the methodology and assumptions used to prepare the estimate and a detailed explanation of the recordkeeping services that will be provided to the covered plan. The estimate shall take into account, as applicable, the rates that the covered service provider, an affiliate, or a subcontractor would charge to, or be paid by, third parties, or the prevailing market rates charged, for similar recordkeeping services for a similar plan with a similar number of covered participants and beneficiaries.

(E) *Manner of receipt.* A description of the manner in which the compensation described in paragraph (c)(1)(iv)(C) and (D) of this section will be received, such as whether the covered plan will be billed or the compensation will be deducted directly from the covered plan's account(s) or investments.

(F) *Investment disclosure—fiduciary services.* In the case of a covered service provider described in paragraph (c)(1)(iii)(A)(*2*) of this section, the following additional information with respect to each investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment, and for which fiduciary services will be provided pursuant to the contract or arrangement with the covered plan, unless such information is disclosed to the responsible plan fiduciary by a covered service provider providing recordkeeping services or brokerage services as described in paragraph (c)(1)(iii)(B) of this section—

(*1*) A description of any compensation that will be charged directly against the amount invested in connection with the acquisition, sale, transfer of, or withdrawal from the investment contract, product, or entity (*e.g.,* sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees);

(*2*) A description of the annual operating expenses (*e.g.,* expense ratio) if the return is not fixed; and

(*3*) A description of any ongoing expenses in addition to annual operating expenses (*e.g.,* wrap fees, mortality and expense fees).

(G) *Investment disclosure—recordkeeping and brokerage services.*

(*1*) In the case of a covered service provider described in paragraph (c)(1)(iii)(B) of this section, the additional information described in paragraph (c)(1)(iv)(F)(*1*) through (*3*) of this section with respect to each designated investment alternative for which recordkeeping services or brokerage services as described in paragraph (c)(1)(iii)(B) of this section will be provided pursuant to the contract or arrangement with the covered plan.

(*2*) A covered service provider may comply with this paragraph (c)(1)(iv)(G) by providing current disclosure materials of the issuer of the designated investment alternative that include the information described in such paragraph, provided that such issuer is not an affiliate, the disclosure materials are regulated by a State or federal agency, and the covered service provider does not know that the materials are incomplete or inaccurate.

(v) *Timing of initial disclosure requirements; changes.*

(A) A covered service provider must disclose the information required by paragraph (c)(1)(iv) of this section to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, and extended or renewed, except that—

(*1*) When an investment contract, product, or entity is determined not to hold plan assets upon the covered plan's direct equity investment, but subsequently is determined to hold plan assets while the covered plan's investment continues, the information required by paragraph (c)(1)(iv) of this section must be disclosed as soon as practicable, but not later than 30 days from the date on which the covered service provider knows that such investment contract, product, or entity holds plan assets; and

(*2*) The information described in paragraph (c)(1)(iv)(G) of this section relating to any investment alternative that is not designated at the time the contract or arrangement is entered into must be disclosed as soon as practicable, but not later than the date the investment alternative is designated by the responsible plan fiduciary.

(B) A covered service provider must disclose a change to the information required by paragraph (c)(1)(iv) of this

section as soon as practicable, but not later than 60 days from the date on which the covered service provider is informed of such change, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable.

(vi) *Reporting and disclosure information; timing.*

(A) Upon request of the responsible plan fiduciary or covered plan administrator, the covered service provider must furnish any other information relating to the compensation received in connection with the contract or arrangement that is required for the covered plan to comply with the reporting and disclosure requirements of Title I of the Act and the regulations, forms and schedules issued thereunder.

(B) The covered service provider must disclose the information required by paragraph (c)(1)(vi)(A) of this section not later than 30 days following receipt of a written request from the responsible plan fiduciary or covered plan administrator, unless such disclosure is precluded due to extraordinary circumstances beyond the covered service provider's control, in which case the information must be disclosed as soon as practicable.

(vii) *Disclosure errors.* No contract or arrangement will fail to be reasonable under this paragraph (c)(1) solely because the covered service provider, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information required pursuant to paragraph (c)(1)(iv) or (vi) of this section, provided that the covered service provider discloses the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days from the date on which the covered service provider knows of such error or omission.

(viii) *Definitions.* For purposes of paragraph (c)(1) of this section:

(A) *Affiliate.* A person's or entity's "affiliate" directly or indirectly (through one or more intermediaries) controls, is controlled by, or is under common control with such person or entity; or is an officer, director, or employee of, or partner in, such person or entity. Unless otherwise specified, an "affiliate" in this paragraph (c)(1) refers to an affiliate of the covered service provider.

(B) *Compensation.* Compensation is anything of monetary value (for example, money, gifts, awards, and trips), but does not include non-monetary compensation valued at $250 or less, in the aggregate, during the term of the contract or arrangement.

(*1*) "*Direct*" compensation is compensation received directly from the covered plan.

(*2*) "*Indirect*" compensation is compensation received from any source other than the covered plan, the plan sponsor, the covered service provider, an affiliate, or a subcontractor (if the subcontractor receives such compensation in connection with services performed under the subcontractor's contract or arrangement described in paragraph (c)(1)(viii)(F) of this section).

(*3*) A description or an estimate of compensation may be expressed as a monetary amount, formula, percentage of the covered plan's assets, or a per capita charge for each participant or beneficiary or, if the compensation cannot reasonably be expressed in such terms, by any other reasonable method. Any description or estimate must contain sufficient information to permit evaluation of the reasonableness of the compensation.

(C) *Designated investment alternative.* A "designated investment alternative" is any investment alternative designated by a fiduciary into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts. The term "designated investment alternative" shall not include brokerage windows, self-directed brokerage accounts, or similar plan arrangements that enable participants and beneficiaries to select investments beyond those specifically designated.

(D) *Recordkeeping services.* "Recordkeeping services" include services related to plan administration and monitoring of plan and participant and beneficiary transactions (*e.g.,* enrollment, payroll deductions and contributions, offering designated investment alternatives and other covered plan investments, loans, withdrawals and distributions); and the maintenance of covered plan and participant and beneficiary accounts, records, and statements.

(E) *Responsible plan fiduciary.* A "responsible plan fiduciary" is a fiduciary with authority to cause the covered plan to enter into, or extend or renew, the contract or arrangement.

(F) *Subcontractor.* A "subcontractor" is any person or entity (or an affiliate of such person or entity) that is not an affiliate of the covered service provider and that, pursuant to a contract or arrangement with the covered service provider or an affiliate, reasonably expects to receive $1,000 or more in compensation for performing one or more services described pursuant to paragraph (c)(1)(iii)(A) through (C) of this section provided for by the contract or arrangement with the covered plan.

(ix) *Exemption for responsible plan fiduciary.* Pursuant to section 408(a) of the Act, the restrictions of section 406(a)(1)(C) and (D) of the Act shall not apply to a responsible plan fiduciary, notwithstanding any failure by a covered service provider to disclose information required by paragraph (c)(1)(iv) or (vi) of this section, if the following conditions are met:

(A) The responsible plan fiduciary did not know that the covered service provider failed or would fail to make required disclosures and reasonably believed that the covered service provider disclosed the information required by paragraph (c)(1)(iv) or (vi) of this section;

(B) The responsible plan fiduciary, upon discovering that the covered service provider failed to disclose the required information, requests in writing that the covered service provider furnish such information;

(C) If the covered service provider fails to comply with such written request within 90 days of the request, then the responsible plan fiduciary notifies the Department of Labor of the covered service provider's failure, in accordance with paragraph (c)(1)(ix)(E) of this section;

(D) The notice shall contain the following information—

(*1*) The name of the covered plan;

(*2*) The plan number used for the covered plan's Annual Report;

(*3*) The plan sponsor's name, address, and EIN;

(*4*) The name, address, and telephone number of the responsible plan fiduciary;

(*5*) The name, address, phone number, and, if known, EIN of the covered service provider;

(*6*) A description of the services provided to the covered plan;

(*7*) A description of the information that the covered service provider failed to disclose;

(*8*) The date on which such information was requested in writing from the covered service provider; and

(*9*) A statement as to whether the covered service provider continues to provide services to the plan;

(E) The notice shall be filed with the Department not later than 30 days following the earlier of—

(*1*) The covered service provider's refusal to furnish the information requested by the written request described in paragraph (c)(1)(ix)(B) of this section; or

(*2*) 90 days after the written request referred to in paragraph (c)(1)(ix)(B) of this section is made;

(F) The notice required by paragraph (c)(1)(ix)(C) of this section shall be sent to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave., NW., Suite 600, Washington, DC 20210; or may be sent electronically to *OE-DelinquentSPnotice@dol.gov;* and

(G) The responsible plan fiduciary, following discovery of a failure to disclose required information, shall determine whether to terminate or continue the contract or arrangement. In making such a determination, the responsible plan fiduciary shall evaluate the nature of the failure, the availability, qualifications, and cost of replacement service providers, and the covered service provider's response to notification of the failure.

(x) *Preemption of State law.* Nothing in this section shall be construed to supersede any provision of State law that governs disclosures by parties that provide the services described in this section, except to the extent that such law prevents the application of a requirement of this section.

(xi) *Internal Revenue Code.* Section 4975(d)(2) of the Code contains provisions parallel to section 408(b)(2) of the Act. Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 214 (2000 ed.), transferred the authority of the Secretary of the Treasury to promulgate regulations of the type published herein to the Secretary of Labor. All references herein to section 408(b)(2) of the Act and the regulations thereunder should be read to include reference to the parallel provisions of section 4975(d)(2) of the Code and regulations thereunder at 26 CFR 54.4975–6.

(xii) *Effective date.* Paragraph (c) of this section shall be effective on July 16, 2011. Paragraph (c)(1) of this section shall apply to contracts or arrangements between covered plans and covered service providers as of the effective date, without regard to whether the contract or arrangement was entered into prior to such date; for contracts or arrangement entered into prior to the effective date, the information required to be disclosed pursuant to paragraph (c)(1)(iv) of this section must be furnished no later than the effective date.

(2) *Welfare plan disclosure.* [Reserved]

(3) *Termination of contract or arrangement.* No contract or arrangement is reasonable within the meaning of section 408(b)(2) of the Act and paragraph (a)(2) of this section if it does not permit termination by the plan without penalty to the plan on reasonably short notice under the circumstances to prevent the plan from becoming locked into an arrangement that has become disadvantageous. A long-term lease which may be terminated prior to its expiration (without penalty to the plan) on reasonably short notice under the circumstances is not generally an unreasonable arrangement merely because of its long term. A provision in a contract or other arrangement which reasonably compensates the service provider or lessor for loss upon early termination of the contract, arrangement, or lease is not a penalty. For example, a minimal fee in a service contract which is charged to allow recoupment of reasonable start-up costs is not a penalty. Similarly, a provision in a lease for a termination fee that covers reasonably foreseeable expenses related to the vacancy and reletting of the office space upon early termination of the lease is not a penalty. Such a provision does not reasonably compensate for loss if it provides for payment in excess of actual loss or if it fails to require mitigation of damages.

* * * * *

Signed at Washington, DC, this 6th day of July, 2010.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–16768 Filed 7–15–10; 8:45 am]

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Federal Register

Friday,
July 16, 2010

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

Availability of Grant Funds for Fiscal Year 2011; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100630282–0282–01; I.D. GF001]

RIN 0648–ZC18

Availability of Grant Funds for Fiscal Year 2011

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to provide the general public with a consolidated source of program and application information related to its competitive grant and cooperative agreement award offerings for fiscal year (FY) 2011. This Omnibus notice is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of NOAA's discretionary funds for its various programs. It should be noted that additional program initiatives may be announced through subsequent **Federal Register** notices. All announcements will also be available through the Grants.gov Web site.

DATES: Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section of this notice for each program. This **Federal Register** notice and the Federal Funding Opportunity (FFO) announcement for each program may be found on the Grants.gov Web site. The URL for Grants.gov is *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Please contact the person listed within this notice as the information contact under each program.

SUPPLEMENTARY INFORMATION: Applicants must comply with all requirements contained in the Federal Funding Opportunity announcement for each of the programs listed in this omnibus notice. The FFO announcements are available at *http://www.grants.gov.*

This notice describes the basic information and requirements for competitive grant/cooperative agreement programs offered by NOAA. These programs are open to any applicant who meets the eligibility criteria provided in each entry. To be considered for an award in a competitive grant/cooperative agreement program, an eligible applicant must submit a complete and responsive application to the appropriate program office. An award is made upon conclusion of the evaluation and selection process for the respective program.

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I. Background

Each of the grant opportunities listed in this notice provides: A description of the program, funding availability, statutory authority, catalog of federal domestic assistance (CFDA) number, application deadline, address for submitting proposals, information contacts, eligibility requirements, cost sharing requirements, and intergovernmental review under Executive Order 12372.

II. NOAA Project Competitions Listed by NOAA Mission Goals

This section lists NOAA's mission goals, which are based on the NOAA Strategic Plan. All awards issued by NOAA must meet at least one of NOAA's mission goals. Below each mission goal statement, you will find a list of the fiscal year 2011 project competitions that address that mission goal.

A. Protect, Restore, and Manage the Use of Coastal and Ocean Resources Through an Ecosystem Approach to Management

Summary Description: NOAA's goal to protect, restore, and manage the use of living marine and coastal and ocean resources is critical to public health and the vitality of the U.S. economy. With its Exclusive Economic Zone of 3.4 million square miles, the United States manages the largest marine territory of

any nation in the world. The value of the ocean economy to the United States is more than $138 billion. The value added annually to the national economy by the commercial and recreational fishing industry alone is over $47 billion. U.S. aquaculture sales total almost $1 billion annually. To achieve balance among ecological, environmental, and social influences, NOAA has adopted an ecosystem approach to management, a concept that is central to the recommendations of the 2004 report of the U.S. Commission on Ocean Policy and the Administration's response to it, the U.S. Ocean Action Plan. NOAA's Ecosystems Goal responds to a specific mandate from Congress for NOAA to be a lead Federal agency in this conservation, management, and restoration effort. Recent statutory revisions (*e.g.,* the Magnuson-Stevens Reauthorization Act and the Marine Debris Research, Prevention and Reduction Act) and emerging legislative changes are broadening this mission for NOAA, opening a new chapter in NOAA's stewardship of the nation's living marine resources and management of the coasts.

Funded proposals should help achieve the following outcomes: A healthy and productive coastal and marine ecosystem that benefits society; and a well-informed public that acts as a steward of coastal and marine ecosystems.

Program Names:

1. Coral Reef Conservation Program Fishery Management Council Coral Reef Conservation Cooperative Agreements
2. Fiscal Year 2011 Community-based Marine Debris Removal Project Grants
3. Fiscal Year 2011 Open Rivers Initiative
4. Fiscal Year 2011 NOAA Chesapeake Bay Watershed Education and Training (B–WET)
5. NOAA New England Bay Watershed Education and Training (B–WET) Program
6. Fiscal Year 2011 Monkfish Research Set-Aside
7. Fiscal Year 2011 Scallop Research Set-Aside
8. John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Grant Program) for Fiscal Year 2011
9. Protected Species Cooperative Conservation
10. Fiscal Year 2011 Gulf of Mexico NOAA Bay Watershed Education and Training (B–WET) Program
11. Marine Fisheries Initiative (MARFIN)
12. Bluefin Tuna Research Program
13. Cooperative Research Program
14. Fiscal Year 2011 Coastal Resilience Networks Program
15. Fiscal Year 2011 NOAA Hawaii Program Bay Watershed Education and Training (B–WET)
16. Fiscal Year 2011 Implementation of the U.S. Integrated Ocean Observing System (IOOS)
17. Coral Reef Conservation Program International Coral Reef Conservation Cooperative Agreements
18. Fiscal Year 2011 Regional Ecosystem Prediction Program (REPP) Concept of Operations for Models to Support Regional Coastal Ecosystem Management
19. Harmful Algal Bloom Programs
20. Fiscal Year 2011 Regional Ecosystem Prediction Program (REPP) Pulley Ridge
21. Fiscal Year 2011 NOAA California Bay Watershed Education and Training Program
22. Fiscal Year 2011 NOAA Pacific Northwest Bay Watershed Education and Training (B–WET) Program
23. Coral Reef Conservation Program Domestic Coral Reef Conservation Grants
24. National Estuarine Research Reserve Graduate Research Fellowship Program for Fiscal Year 2011
25. National Estuarine Research Reserve System (NERRS) Land Acquisition and Construction Program for Fiscal Year 2011
26. Coral Reef Conservation Program State and Territorial Coral Reef Conservation Cooperative Agreements
27. Fiscal Year 2011 NMFS-Sea Grant Fellowships in Population Dynamics
28. Fiscal Year 2011 NMFS-Sea Grant Fellowships in Marine Resource Economics
29. Fiscal Year 2012 National Sea Grant College Program Dean John A. Knauss Marine Policy Fellowship
30. Fiscal Year 2011 Small Grants for Marine Archaeological Exploration
31. Financial Assistance to Establish Five NOAA Cooperative Science Centers at Minority Serving Institutions

B. Understand Climate Variability and Change To Enhance Society's Ability To Plan and Respond

Summary Description: Climate variability and change influence the well-being of society, the environment, and the economy. Numerous long-term changes in climate already have been observed. The changes include those in arctic surface temperatures and sea ice, ocean salinity and carbonate chemistry, and frequency and intensity of extreme weather such as heat and cold waves, droughts, and floods. Decision makers are challenged with addressing major climatic events compounded by issues such as population growth, economic growth, public health concerns, changes in geographic distribution of marine species, loss of habitat, and changes in land-use practices. They require a new generation of climate services. Through legislation, executive orders, and international agreements, NOAA has a long-standing commitment to provide reliable and timely climate research and information. To meet the demand for expanded services, the Climate Goal will focus research to improve understanding of complex climate processes and to enhance the predictive capacity of the global climate system. The Climate Goal's priority is to focus on the development and delivery of climate information and services that assist decision makers with national and international policy decision making, and assessing risks to ecosystems and the U.S. economy in sectors and areas that are sensitive to impacts from climate variability and change.

Funded proposals should help achieve the following outcomes: A predictive understanding of the global climate system on time scales of weeks to decades to a century with quantified uncertainties sufficient for making informed and reasoned decisions; and use of NOAA's climate products by climate-sensitive sectors and the climate-literate public to support their plans and decisions.

Program Names:

1. Fiscal Year 2011 Coastal Resilience Networks Program
2. Fiscal Year 2011 NOAA Hawaii Program Bay Watershed Education and Training (B–WET)
3. Fiscal Year 2011 Implementation of the U.S. Integrated Ocean Observing System (IOOS)
4. National Estuarine Research Reserve Graduate Research Fellowship Program for Fiscal Year 2011
5. Collaborative Science, Technology, and Applied Research (CSTAR) Program
6. Fiscal Year 2011 Climate Program Office
7. Fiscal Year 2012 National Sea Grant College Program Dean John A. Knauss Marine Policy Fellowship
8. Financial Assistance to Establish Five NOAA Cooperative Science Centers at Minority Serving Institutions
9. Climate Data Record Program Office for Fiscal Year 2011

C. Serve Society's Needs for Weather and Water Information

Summary Description: Floods, droughts, hurricanes, tornadoes, tsunamis, wildfires, and other severe weather events cause $11.4 billion in damage each year in the United States. Weather is directly linked to public

health and safety, and nearly one-third of the U.S. economy (approximately $4 trillion, in 2005 dollars) is sensitive to weather and climate. With so much at stake, NOAA's role in understanding, observing, forecasting, and warning of environmental events is expanding. NOAA will continue to collect and analyze environmental data and to issue forecasts and warnings that help protect health, life, and property and enhance the U.S. economy. Future needs can be better met by exploring new concepts and applications through robust weather and water research. A commitment to public benefits shapes NOAA's role within the U.S. weather enterprise, including its partners in the private sector, academia, and government. These partners add value to NOAA services and help disseminate critical environmental information. We will work more closely with our partners and will develop new partnerships so that the public understands and is satisfied with our information. Together, NOAA and its partners will continuously improve existing service and expand to support evolving national needs, including space weather, freshwater and coastal ecosystems, and air quality prediction services.

Funded proposals should help achieve the following outcomes: Reduced loss of life, injury, and damage to the economy; better, quicker, and more valuable weather and water information to support improved decisions; and increased customer satisfaction with weather and water information and services.

Program Names:

1. Fiscal Year 2011 Coastal Resilience Networks Program

2. Fiscal Year 2011 NOAA Hawaii Program Bay Watershed Education and Training (B–WET)

3. Fiscal Year 2011 Implementation of the U.S. Integrated Ocean Observing System (IOOS)

4. National Estuarine Research Reserve Graduate Research Fellowship Program for Fiscal Year 2011

5. Collaborative Science, Technology, and Applied Research (CSTAR) Program

6. Meteotsunami Warning Project

7. Fiscal Year 2012 National Sea Grant College Program Dean John A. Knauss Marine Policy Fellowship

8. Fiscal Year 2011 Joint Hurricane Testbed

9. Financial Assistance to Establish Five NOAA Cooperative Science Centers at Minority Serving Institutions

D. Support the Nation's Commerce With Information for Safe, Efficient, and Environmentally Sound Transportation

Summary Description: NOAA responds to the specific demands of air, sea, and surface transportation with consistent, timely, and accurate information to aid sound and routine operational decision making. All modes of transportation are affected by significant challenges as they operate in the elements of nature. The natural environment is, in turn, affected by our transportation systems. Safe, efficient, and environmentally sound transportation systems are crucial to the nation's commerce, and thus to the nation's economy. For example, more than 78 percent of U.S. overseas trade by weight and 38 percent by value comes and goes by ship. Nine million barrels of oil come through U.S. ports daily, and 8,000 foreign vessels make 50,000 port calls annually. Vessel traffic in the U.S. Marine Transportation System, which ships over 95 percent of foreign trade by tonnage, will double by 2020 and contribute roughly $2 trillion annually to the U.S. economy. NOAA provides information products for transportation systems, including marine and surface weather forecasts, navigational charts, realtime oceanographic information, and Global Positioning System augmentation. NOAA works with the Federal Aviation Administration and industry to improve the weather resilience of aviation systems. NOAA also provides emergency response services to save lives and money and to protect the coastal environment, including hazardous material spill response and search and rescue functions. NOAA works with federal, state, and local partners to ensure the efficient and environmentally sound operation and development of ports.

Funded proposals should help achieve the following outcomes: Safe, secure, efficient, and seamless movement of goods and people in the U.S. transportation system; and environmentally sound development and use of the U.S. transportation system.

Program Names:

1. Fiscal Year 2011 Implementation of the U.S. Integrated Ocean Observing System (IOOS)

2. Collaborative Science, Technology, and Applied Research (CSTAR) Program

3. Fiscal Year 2012 National Sea Grant College Program Dean John A. Knauss Marine Policy Fellowship

4. Financial Assistance to Establish Five NOAA Cooperative Science Centers at Minority Serving Institutions

E. Provide Critical Support for NOAA's Mission

Summary Description: SATELLITE SUBGOAL: Environmental satellites are a major component of NOAA's global efforts to better observe, understand, and predict various environmental phenomena. The backbone of the NOAA satellites includes the Geostationary Operational Environmental Satellite (GOES) and Polar-orbiting Operational Environmental Satellite (POES) programs. GOES and POES are operated to provide critical atmospheric, oceanic, climatic, solar, and space data to protect life and property across the United States. The satellites carry scientific instruments and communications equipment to support the delivery of weather information and aid search and rescue operations. NOAA is acquiring the next generation of each satellite system, including ground processing systems. In concert with the National Aeronautics and Space Administration (NASA), acquisition of the next-generation geostationary satellite (GOES–R) series is underway. The Department of Defense (DoD), NASA, and NOAA are joined with industry partners to build the follow-on series of polar orbiting satellites, the National Polarorbiting Operational Environmental Satellite System. NOAA's satellite systems support other NOAA offices in the delivery of improved severe storm warnings, weather forecasts, climate predictions, oceanic and ecosystems research and analyses, and satellite-aided search and rescue services.

Fleet Services Subgoal: NOAA operates a fleet of 20 ships and 10 aircraft to ensure continuous observation of critical environmental conditions. The Fleet Services Subgoal manages these platforms to increase the number of ship operating days and aircraft flight hours to meet NOAA's data collection requirements. It provides ship and aircraft support for NOAA's four Mission Goals, upgrades NOAA's fleet of ships and aircraft, and partners with the programs to facilitate the development, demonstration, and deployment of new observation platforms, such as Autonomous Underwater Vehicles and Unmanned Aerial Systems.

Modeling and Observing Infrastructure (MObI) Subgoal: The MObI Subgoal's analyses and operational capabilities provide critical infrastructure and support for the integrated monitoring and improved understanding of the Earth's environment. The subgoal enables NOAA's operational forecast products

and services and provides NOAA a strategic investment portfolio recommendation encompassing observing, modeling, and high-performance computing capabilities. NOAA's internal forecasting, assessment, and stewardship capabilities—as well as the capabilities of partners and customers—require integrated oceanic and atmospheric data. Furthermore, NOAA's operations require modeling support, high-performance computing, observing system design and analysis, research and development of improved modeling and data assimilation, and guidance on the architecture of observation and data management systems. MObI also manages the integration of NOAA's observing systems and associated data with those of other federal agencies and nations under the Global Earth Observation System of Systems (GEOSS), which is being built by the Group on Earth Observations (GEO) on the basis of a 10-Year Implementation Plan running from 2005 to 2015. GEOSS seeks to connect the producers of environmental data and decision-support tools with the end users of these products, with the aim of enhancing the relevance of Earth observations to global issues. The end result is to be a global public infrastructure that generates comprehensive, near-real-time environmental data, information and analyses for a wide range of users.

Leadership and Corporate Services Subgoal: The Leadership and Corporate Services Subgoal strives to produce cost-effective, value-added solutions in the cross-cutting areas of Line Office and Headquarters management, workforce management, acquisition and grants, facilities, financial services, Homeland Security, IT, and administrative services. This is accomplished by effective and strategic leadership at corporate and Line Office levels that optimize agency performance and mission accomplishment through streamlined, results oriented processes. The development of long-range facility and IT modernization plans provides the investment framework to ensure that NOAA's facility and IT portfolio will continue to support a safe, secure, and state-of-the-art work environment. The development of streamlined acquisition and workforce management processes will enable NOAA to effectively fulfill its research and scope.

Funded proposals should help achieve the following outcomes: A continuous stream of satellite data and information with the quality and accuracy to meet users requirements for spatial and temporal sampling and timeliness of delivery; adequate number of ship operating days and aircraft flight hours needed to meet NOAA's data collection requirements with high customer satisfaction; integrated observing system architectures, data management architectures, and computing and modeling capabilities to better enable NOAA's mission; a united NOAA working together—guided by a clear strategic vision for planning, programming, and execution—to achieve NOAA's goals; secure, reliable, and robust information flows within NOAA and out to the public; modern and sustainable facilities providing safe and effective work environment; efficient and effective financial, administrative, and acquisition management services; workforce management processes that support a diverse and competent workforce; and integrated Homeland Security and emergency response capabilities.

Program Names:

1. Fiscal Year 2011 NOAA Chesapeake Bay Watershed Education and Training (B–WET)
2. National Estuarine Research Reserve Graduate Research Fellowship Program for Fiscal Year 2011
3. Fiscal Year 2012 National Sea Grant College Program Dean John A. Knauss Marine Policy Fellowship
4. Environmental Literacy Grants for Formal K–12 Education
5. Financial Assistance to Establish Five NOAA Cooperative Science Centers at Minority Serving Institutions

III. Electronic Access

The full funding announcement for each program is available via the Grants.gov Web site at: *http://www.grants.gov.* Electronic applications for the NOAA Programs listed in this announcement may be accessed, downloaded, and submitted to that Web site.

The due dates and times for paper and electronic submissions are identical. NOAA strongly recommends that you do not wait until the application deadline to begin the application process through Grants.gov. Your application must be received and validated by Grants.gov no later than the due date and time. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after your submission. Please consider the Grants.gov validation/rejection process in developing your application submission time line.

Grants.gov

Getting started with Grants.gov is easy. Users should note that there are two key features on the Web site: Find Grant Opportunities and Apply for Grants. The site is designed to support these two features and your use of them.

While you can begin searching for grant opportunities immediately, it is recommended that you complete the steps to Get Started (below) ahead of time. This will help ensure you are registered with Grants.gov and can submit your application when you find an opportunity for which you would like to apply.

Applications From Individuals

In order for you to apply as an individual, the announcement must specify that the program is open to individuals and it must be published on the Grants.gov Web site. Individuals must register with the Credential Provider (see Grants.gov "Get Started") and with Grants.gov (see Grants.gov "Get Started"). Individuals do not need a DUNS number to register (see Grants.gov "Get Started") and submit their applications. The system will generate a default value in that field.

Grants.gov Registration and Application Submission Procedures

This section provides the registration and application submission instructions for NOAA program applications. Please read the following instructions carefully and completely.

1. *Electronic Delivery.* NOAA is participating in the Grants.gov Initiative that provides the Grant Community a single site to find and apply for grant funding opportunities. NOAA encourages applicants to submit their applications electronically through: *http://www.grants.gov/applicants/apply_for_grants.jsp.*

2. *Registration Process Using Grants.gov.*

The following provides some helpful tips for applicants when applying on-line using Grants.gov/Apply.

a. *Instructions.* On the site, you will find step-by-step instructions which enable you to apply for NOAA funds. The Grants.gov/Apply feature includes a simple, unified application process that makes it possible for applicants to apply for grants online. There are six "Get Started" steps to complete at Grants.gov. The information applicants need to understand and execute the steps can be found at: *http://www.grants.gov/applicants/get_registered.jsp.* Applicants should read the Get Started steps carefully. The site also contains registration checklists to help you walk through the process. NOAA recommends that you download the checklists and prepare the information requested before beginning the registration process. Reviewing and

assembling required information before beginning the registration process will make the process fast and smooth and save time.

b. *DUNS Requirement.* All applicants (except individuals) applying for funding, including renewal funding, must have a Dun and Bradstreet Universal Data Numbering System (DUNS) number. The DUNS number must be included in the data entry field labeled "Organizational Duns" on the form SF–424. Instructions for obtaining a DUNS number can be found at the following Web site: *http://www.grants.gov/applicants/get_registered.jsp.*

c. *Central Contractor Registry.* In addition to having a DUNS number (as applicable), all applicants applying electronically through Grants.gov must register with the Central Contractor Registry. The *http://www.grants.gov* Web site at *http://www.grants.gov/applicants/get_registered.jsp* provides step-by-step instructions for registering in the Central Contractor Registry. All applicants filing electronically must register with the Central Contractor Registry and receive User Name and password from Grants.gov in order to apply on line. Failure to register with the Central Contractor Registry will result in your application being rejected by the Grants.gov portal.

The registration process is a separate process from submitting an application. Applicants are, therefore, encouraged to register early. The registration process can take approximately two weeks to be completed. Therefore, registration should be done in sufficient time to ensure it does not impact your ability to meet required submission deadlines. You will be able to submit your application online anytime after you receive your User Name and password from Grants.gov.

d. *Electronic Signature.* Applications submitted through Grants.gov constitute submission as electronically signed applications. The registration and e-authentication process establishes the Authorized Organization Representative (AOR). When you submit the application through Grants.gov, the name of your authorized organization representative on file will be inserted into the signature line of the application. Applicants must register the individual who is able to make legally binding commitments for the applicant organization as the Authorized Organization Representative.

3. *Electronic Application Submission Instructions for Grants.gov/Apply:*

Grants.gov has a full set of instructions on how to apply for funds on its Web site at *http://www.grants.gov/applicants/apply_for_grants.jsp.* The following provides simple guidance on what you will find on the Grants.gov/Apply site. Applicants are encouraged to read through the page entitled, "Complete Application Package" before getting started.

Grants.gov allows applicants to download the application package, instructions and forms that are incorporated in the instructions, and work off line. In addition to forms that are part of the application instructions, there will be a series of electronic forms that are provided utilizing an Adobe Reader.

Note for the Adobe Reader: Grants.gov is only compatible with versions 8.1.1 and above. Please do not use lower versions of the Adobe Reader.

a. *Mandatory Fields on Adobe Reader Forms.* In the Adobe Reader forms you will note fields that appear with a yellow background and red outline color. These fields are mandatory and must be completed to successfully submit your application.

b. *Completion of SF–424 Fields First.* The Adobe Reader forms are designed to fill in common required fields such as the applicant name and address, DUNS number, etc., on all Adobe Reader electronic forms. To trigger this feature, an applicant must complete the SF–424 information first. Once it is completed the information will transfer to the other forms.

c. *Customer Support.* The Grants.gov Web site provides customer support via (800) 518–4726 (this is a toll-free number) or through e-mail at *support@grants.gov.* The Contact Center is open from 7 a.m. to 9 p.m. Eastern time, Monday through Friday, except federal holidays, to address Grants.gov technology issues. For technical assistance to program related questions, contact the number listed in the Program Section of the program you are applying for.

4. *Timely Receipt Requirements and Proof of Submission.*

a. *Electronic Submission.* All applications must be received by *http://www.grants.gov/applicants/apply_for_grants.jsp* by the time and due date established for each program. Proof of submission is automatically recorded by Grants.gov. An electronic time stamp is generated within the system when the application is successfully received by Grants.gov. The applicant will receive an acknowledgment of receipt and a tracking number from Grants.gov with the successful transmission of their application. Applicants should print this receipt and save it, along with facsimile receipts for information provided by facsimile, as proof of submission. When NOAA successfully retrieves the application from Grants.gov, Grants.gov will provide an electronic acknowledgment of receipt to the e-mail address of the AOR. Proof of submission shall be the date and time that Grants.gov receives your application. Applications received by Grants.gov, after the established due date for the program will be considered late and will not be considered for funding by NOAA. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after your submission. Please consider the Grants.gov validation/rejection process in developing your application submission time line. The most common rejection of an application at Grants.gov is because the submitter was not authorized by their organization to submit the application.

NOAA suggests that applicants submit their applications during the operating hours of the Grants.gov, so that if there are questions concerning transmission, operators will be available to walk you through the process. Submitting your application during the Contact Center hours will also ensure that you have sufficient time for the application to complete its transmission prior to the application deadline. Applicants using dial-up connections should be aware that transmission could take some time before Grants.gov receives it. Grants.gov will provide either an error or a successfully received transmission message. Grants.gov reports that some applicants abort the transmission because they think that nothing is occurring during the transmission process. Please be patient and give the system time to process the application. Uploading and transmitting many files, particularly electronic forms with associated XML schemas, will take some time to be processed.

Evaluation Criteria and Selection Procedures

NOAA has standardized the evaluation and selection process for its competitive assistance programs. There are two separate sets of evaluation criteria and selection procedures (see below), one for project proposals, and the other for fellowship, scholarship, and internship programs.

Project Proposals

Review and Selection Process. Some project proposals may include a pre-application process or submission of

Letters of Intent that provides for feedback to interested applicants on their intended proposal; however, not all programs will include this requirement for a pre-application or Letter of Intent. If a program requires a pre-application or Letter of Intent, the deadline will be specified in the Application Deadline section.

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. A merit review will also be conducted by one mail reviewer and at least three peer review panel reviewers to produce a rank order of the proposals. Each reviewer will individually evaluate and rank proposals using the Evaluation Criteria set forth in this notice.

The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the administrative and/or merit review(s) and selection factors listed below. The Selecting Official selects proposals after considering the administrative and/or merit review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final award recommendations to the Grants Officer authorized to obligate the funds.

Evaluation Criteria. The following criteria will be used to evaluate the proposals:

1. Importance and/or relevance and applicability of a proposed project to the program goals: This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, (other than NOAA), regional, state, or local activities.

2. Technical/scientific merit: This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

3. Overall qualifications of applicants: This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

4. Project costs: The project's budget is evaluated to determine if it is realistic and commensurate with the project needs and timeframe.

5. Outreach and education: NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding its mission to protect the Nation's natural resources.

Selection Factors. The merit review ratings will be used to provide a rank order to the Selecting Official for final funding recommendations. A Program Officer may first make recommendations to the Selecting Official applying the selection factors listed below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
a. Geographically,
b. By type of institutions,
c. By type of partners,
d. By research areas, and
e. By project types.
3. Whether the project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or participation of targeted groups.
7. Adequacy of information necessary for NOAA to make a National Environmental Policy Act determination and draft necessary documentation before funding recommendations are made to the Grants Officer.

Fellowship, Scholarship and Internship Programs

Review and Selection Process. Some fellowship, scholarship and internship programs may include a pre-application process that requires interested applicants to submit Letters of Intent or pre-proposals; however, not all programs will include this pre-application requirement. If a program has a pre-application process, the process will be described in the Summary Description section of the announcement and the deadline will be specified in the Application Deadline section.

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. A merit review will also be conducted by one mail reviewer and at least three peer review panel reviewers to produce a rank order of the proposals. Each reviewer will individually evaluate and rank proposals using the Evaluation Criteria set forth in this notice.

The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the administrative and/or merit review(s) and selection factors listed below. The Selecting Official selects proposals after considering the administrative and/or merit review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final award recommendations to the Grants Officer authorized to obligate the funds.

Evaluation Criteria. The following criteria will be used to evaluate the proposals:

1. Academic record and statement of career goals and objectives of the student.
2. Quality of project and applicability to program priorities.
3. Recommendations and/or endorsements of the student.
4. Additional relevant experience related to diversity of education; extra-curricular activities; honors and awards; and interpersonal, written, and oral communications skills.
5. Financial need of the student.

Selection Factors. The merit review ratings will be used to provide a rank order to the Selecting Official for final funding recommendations. A Program Officer may first make recommendations to the Selecting Official applying the selection factors listed below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funds.
2. Balance/distribution of funds:
a. Across academic disciplines,
b. By types of institutions, and
c. Geographically.
3. Program-specific objectives.
4. Degree in scientific area and type of degree sought.

IV. NOAA Project Competitions

National Marine Fisheries Service (NMFS)

1. Coral Reef Conservation Program Fishery Management Council Coral Reef Conservation Cooperative Agreements

Summary Description: The CRCP Fishery Management Council Coral Reef Conservation Cooperative Agreements (FMCCRCCA) provides funding to the

Regional Fishery Management Councils for projects to conserve and manage coral reef fisheries, as authorized under the Coral Reef Conservation Act of 2000. Projects funded through the FMCCRCCA competition are for activities that (1) Provide better scientific information on the status of coral reef fisheries resources, critical habitats of importance to coral reef fishes, and the impacts of fishing on these species and habitats; (2) identify new management approaches that protect coral reef biodiversity and ecosystem function through regulation of fishing and other extractive uses; and (3) incorporate conservation and sustainable management measures into existing or new fishery management plans for coral reef species. Proposals selected for funding through this solicitation will be implemented through a multi-year cooperative agreement. The role of NOAA in these cooperative agreements is to help identify potential projects that reduce impacts of fishing on coral reef ecosystems, strengthen the development and implementation of the projects, and assist in coordination of these efforts with state, territory or commonwealth management authorities and various coral reef user groups. Approximately $1,500,000 is expected to be available for FMCCRCCA in fiscal year 2011. The NOAA Coral Reef Conservation Program anticipates that awards for this competition will range from $125,000-$700,000 per a year.

Funding Availability: This solicitation announces that approximately $1,500,000 is expected to be available for cooperative agreements in support coral reef conservation activities for the FMCCRCCA competition in fiscal year 2011. Actual funding availability for this program is contingent upon fiscal year 2011 Congressional appropriations. Annual funding is anticipated to maintain the cooperative agreements for up to 3 years duration, but this is dependent upon the level of funding made available by Congress. The CRCP anticipates that typical awards will range from about $125,000 to $700,000 for each year; NOAA will not accept proposals for over $700,000/year under this solicitation. Each Council may fund one full time staff member working exclusively on coral reef conservation for up to $125,000/year. Funds for applications approved by NOAA will be awarded as new cooperative agreements through the NMFS Office of Habitat Conservation (HC). The amount of funding for each award will depend on the number of eligible applications received, the amount of funds requested for each project, the merit and ranking of the proposals, and the amount of funds made available to the CRCP by Congress. The funds have not yet been appropriated for this program, and there is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq*).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.441, Regional Fishery Management Councils

Application Deadline: Applications must be submitted to *http://www.grants.gov* by 5 p.m. EDT on November 1, 2010 to be considered for funding. For applications submitted through Grants.gov, a date and time receipt indication is included and will be the basis of determining timeliness. If Grants.gov cannot be reasonably used due to the unavailability of internet access, applications must be postmarked, or provided to a delivery service and documented with a receipt by November 1, 2010. Applications postmarked or provided to a delivery service after that time will not be accepted for funding. Applications submitted via U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. In any event, applications received later than 15 business days following the postmarked closing date will not be accepted. Please address applications sent by mail to: Jennifer Koss, NOAA Coral Reef Conservation Program, NOAA Fisheries, Office of Habitat Conservation (F/HC), 1315 East West Highway, Silver Spring, MD 20910. ATTN: Coral Reef Conservation Applications. Applicants submitted by mail are required to include original signed copies of the financial assistance forms. Electronic copies of the project narrative and budget narrative are requested with the submission of a paper application. Please submit these to *Jennifer.Koss@noaa.gov.* There will be no extensions beyond these dates. If an application is not submitted through the process described above, it will not be reviewed or considered for FY 2011 funding. All applicants, both electronic and paper, should be aware that adequate time must be factored into applicant schedules for delivery of the application. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Paper applicants should allow adequate time to ensure a paper application will be received on time, taking into account that guaranteed overnight carriers are not always able to fulfill their guarantees.

Address for Submitting Proposals: Applications should be submitted via *http://www.grants.gov.* If Grants.gov cannot be reasonably used, applications must postmarked by November 1, 2010. Send to: Jennifer Koss, NOAA Coral Reef Conservation Program, NOAA Fisheries, Office of Habitat Conservation (F/HC), 1315 East West Highway, Silver Spring, MD 20910. ATTN: Coral Reef Conservation Applications.

Information Contacts: Technical point of contact for CRCP Fishery Management Council Coral Reef Conservation Cooperative Agreements is Jennifer Koss, 301–713–4300 or e-mail at *Jennifer.Koss@noaa.gov.*

Eligibility: Eligible applicants are limited to the Caribbean Fishery Management Council, the Gulf of Mexico Fishery Management Council, the South Atlantic Fishery Management Council, and the Western Pacific Regional Fishery Management Council.

Cost Sharing Requirements: The NOAA Coral Reef Conservation Grant Program (under the authority of the Coral Reef Conservation Act (Act) of 2000) is subject to the matching fund requirements described below. As per section 6403(b)(1) of the Act, funds for any coral conservation project funded under this Grant Program may not exceed 50 percent of the total cost of the award. Therefore, any coral conservation project under this Grant Program requires a 1:1 contribution of matching funds. As per section 6403(b)(2) of the Coral Reef Conservation Act of 2000, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: 1. No reasonable means are available through which an applicant can meet the matching requirement, and 2. The probable benefit of such project outweighs the public interest in such matching requirement. The CRCP recognizes that the Councils have no viable means of meeting the matching requirement 6403(b)(1) as the Fishery Management Councils' budgets are composed of entirely federal funds. Therefore, the CRCP will waive the matching requirement as per section 6403(b)(2).

Intergovernmental Review: Applications under this Grant Program are subject to Executive Order 12372,

Intergovernmental Review of Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact established as a result of EO 12372. For more information, please visit *http://www.whitehouse.gov/omb/grants/spoc.html.*

2. Fiscal Year 2011 Community-Based Marine Debris Removal Project Grants

Summary Description: The NOAA Marine Debris Program, authorized in the Marine Debris Research, Prevention, and Reduction Act (MDRPR Act, 33 U.S.C. 1951 *et seq.*), provides funding to catalyze the implementation of locally driven, community-based marine debris prevention, assessment and removal projects that will benefit coastal habitat, waterways, and NOAA trust resources. Funding for this purpose comes through the NOAA Marine Debris Program as appropriations to the Office of Response and Restoration, National Ocean Service. The funding is, in part, administered through a grant competition with the NOAA Restoration Center's Community-based Restoration Program. Projects awarded through this grant competition have strong on-the-ground habitat components involving the removal of marine debris and derelict fishing gear, as well as activities that provide social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Through this solicitation NOAA identifies marine debris removal projects, strengthens the development and implementation of habitat restoration through community-based marine debris removal, and fosters awareness of the effects of marine debris to further the conservation of living marine resource habitats. Successful proposals through this solicitation will be funded through a cooperative agreement. Funding of up to $2,000,000 is expected to be available for Community-based Marine Debris Removal Project Grants in FY2011. Typical awards will range from $15,000 to $150,000.

Funding Availability: This solicitation announces that funding of up to $2,000,000 is expected to be available for Community-based Marine Removal Project Grants in FY2011. Actual funding availability for this program is contingent upon Fiscal Year 2011 Congressional appropriations. Typical project awards will range from $15,000 to $150,000; NOAA will not accept proposals for less than $15,000 or proposals for more than $250,000 under this solicitation. There is no guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for initiating marine debris removal projects by the applicants, the merit and ranking of the proposals, and the amount of funds made available to NOAA by Congress. NOAA anticipates that between 10 and 15 awards will be made as a result of this solicitation. In FY 2009, the latest year for which information is available, 13 applications were funded, ranging from $35,500 to $170,000. The total grant funding level was nearly $1 million, which was matched by over $1.5 million. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any part of any available funds.

Statutory Authority: 33 U.S.C. 1951 *et seq.*

Catalog of Federal Domestic Assistance (CFDA) Number: 11.463, Habitat Conservation.

Application Deadline: Full proposals must be received and validated by Grants.gov, postmarked, or provided to a delivery service on or before 11:59 p.m. EDT, November 1, 2010. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Applications postmarked or provided to a delivery service after that time will not be considered for funding. Applications submitted via the U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. In any event, applications received later than 15 business days following the postmark closing date will not be accepted. No facsimile or electronic mail applications will be accepted. Applications that are aligned with Community-based Marine Debris Removal Project Grants that have been submitted directly to other NOAA grants programs or as part of another NOAA grant may be considered under this solicitation.

Address for Submitting Proposals: To apply for this NOAA funding opportunity, please submit an electronic application to *http://www.grants.gov.* If the applicant does not have Internet access, a hard copy application with the SF–424 bearing an original, ink signature (blue ink preferred) must be postmarked, or provided to a delivery service and documented with a receipt, by 11:59 p.m. EDT, November 1, 2010, and sent to: Tom Barry, NOAA Restoration Center (F/HC3), ATTN: MDP Project Applications, 1315 East West Highway, Rm. 15864, Silver Spring, MD 20910.

Information Contacts: For further information contact Tom Barry (*Tom.Barry@noaa.gov,* 301–713–0174) or David Landsman or (*David.Landsman@noaa.gov,* 301–713–0174).

Eligibility: Eligible applicants are institutions of higher education, non-profit organizations, commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments whose projects have the potential to benefit NOAA trust resources. Applications from Federal agencies or employees of Federal agencies will not be considered. Interested federal agencies are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others that are eligible to apply. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in under-served areas. NOAA encourages proposals involving any of the above institutions.

Cost Sharing Requirements: A major goal of the NOAA Marine Debris Program is to provide seed money to projects that leverage funds and other contributions from a broad public and private sector to implement locally important marine debris removal activities to benefit living marine resources. To this end, the MDRPR Act requires applicants to provide a minimum 1:1 ratio of matching contributions to NOAA funds requested to conduct the proposed project. In addition to formal match, NOAA strongly encourages applicants to leverage as much additional investment as possible. Match can come from a variety of public and private sources and can include in-kind goods and services such as private boat use and volunteer labor. To meet the 1:1 match requirement, applicants are permitted to combine contributions from non-Federal partners, as long as such contributions are not being used to match any other funds and are available within the project period stated in the application. Federal sources cannot be considered for matching funds, but can be

described in the budget narrative to demonstrate additional leverage. Applicants are also permitted to apply federally negotiated indirect costs in excess of federal share limits as described in Section IV.E.2. "Indirect Costs" for the FFO announcement. However, if the match requirement cannot be met, the MDRPR Act allows the Administrator to waive all or part of the matching requirement if the applicant can demonstrate that: (1) No reasonable means are available through which applicants can meet the matching requirement, and, (2) the probable benefit of such project outweighs the public interest in such matching requirement. To request this match waiver, the applicant must provide a match waiver request and detailed justification at the time the proposal is submitted explaining the need for the waiver. This explanation must include descriptions of attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match, and any other extenuating circumstances preventing the incorporation or local availability of match. The MDRPR Act also allows the Administrator to authorize, as appropriate, the non-federal share of the cost of a project to include money paid pursuant to, or the value of any in-kind service performed under, an administrative order on consent or judicial consent decree that will remove or prevent marine debris. In addition, under 48 U.S.C. 10.1469a(d), any department or agency may waive any requirement for matching funds otherwise required by law to be provided by an Insular Area (defined here as the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). Notwithstanding any other provisions herein, and in accordance with 48 U.S.C. 1469a(d), the Marine Debris Program may waive any requirement for local matching funds to Insular Areas. Eligible applicants choosing to apply the waiver in 48 U.S.C. 1469a(d) must include a letter requesting a waiver that demonstrates that their project meets the requirements of 48 U.S.C. 1469a(d). However, if available, the inclusion of matching contributions is encouraged. All applicants should note that cost sharing is an element considered in Evaluation Criterion #4, "Project Costs." Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Successful applicants should be prepared to carefully document matching contributions, including the names of participating volunteers and the overall number of volunteer or community participation hours devoted to individual marine debris removal projects. Letters of commitment for any secured resources expected to be used as match for an award should be submitted as an attachment to the application.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Programs." Any state or local government submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOC's are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

3. Fiscal Year 2011 Open Rivers Initiative

Summary Description: The NOAA Open Rivers Initiative (ORI) provides funding and technical assistance to catalyze the implementation of locally-driven projects to remove dams and other river barriers, in order to benefit living marine and coastal resources, particularly diadromous fish. Projects funded through the Open Rivers Initiative must feature strong on-the-ground habitat restoration components that foster economic, educational, and social benefits for citizens and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Proposals selected for funding through this solicitation will be implemented through a cooperative agreement. Funding of up to $6,000,000 is expected to be available for ORI Project Grants in FY 2011. The NOAA Restoration Center within the Office of Habitat Conservation will administer this grant initiative, and anticipates that typical awards will range from $200,000 to $750,000. Although a select few may fall outside of this range, project proposals requesting less than $100,000 or greater than $3,000,000 will not be accepted or reviewed.

Funding Availability: This solicitation announces that funding of up to $6,000,000 is expected to be available for Open Rivers Initiative Project Grants in FY 2011. Actual funding availability for this program is contingent upon Fiscal Year 2011 Congressional appropriations. NOAA anticipates that typical project awards will range from $200,000 to $750,000; proposals requesting less than $100,000 or more than $3,000,000 will not be accepted under this solicitation. NOAA does not guarantee that sufficient funds will be available to make awards for all proposals. The number of awards to be made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested by the applicants, the merit and ranking of the proposals, and the amount of funds made available to the ORI by Congress. NOAA anticipates that between 10 and 15 awards will be made as a result of this solicitation. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this document does not obligate NOAA to award any specific project or obligate all or any parts of any available funds.

Statutory Authority: The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970, to provide grants or cooperative agreements for fisheries habitat restoration. The Secretary of Commerce is also authorized under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (H.R. 5946) to provide funding and technical expertise for fisheries and coastal habitat restoration and to promote significant community support and volunteer participation in such activities.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.463, Habitat Conservation.

Application Deadline: Applications must be received by *http://www.grants.gov,* postmarked, or provided to a delivery service by 11:59 p.m. Eastern Standard Time (EST) on November 17, 2010. **Note:** It may take *http://www.grants.gov* up to two (2) business days to validate or reject an application. Please keep this in mind when developing your submission timeline. Use of U.S. mail or another delivery service must be documented with a receipt. Applications received later than 15 business days following the postmark closing date will not be accepted. No facsimile or electronic mail applications will be accepted. See Section IV.F. "Other Submission Requirements" of the FFO announcement for complete mailing information.

Address for Submitting Proposals: To apply for this NOAA funding opportunity, please submit an electronic application to *http://www.grants.gov.* If Grants.gov cannot be used, a hard copy application with the SF424 signed in ink (blue ink is preferred) must be postmarked or provided to a delivery service and documented with a receipt by November 17, 2010 and sent to: NOAA Restoration Center (F/HC3), Office of Habitat Conservation, NOAA Fisheries, 1315 East West Highway, Rm. 15749, Silver Spring, MD 20910, ATTN: Open Rivers Initiative Project Applications. Applications postmarked or provided to a delivery service after November 17, 2010 will not be considered for funding. Applications submitted via the U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. In any event, applications received later than 15 business days following the postmark closing date will not be accepted. No facsimile or electronic mail applications will be accepted. Paper applications should be printed on one side only, on 8.5″ x 11″ paper, and should not be bound in any manner.

Information Contacts: For further information contact Tisa Shostik (*Tisa.Shostik@noaa.gov*) at (301) 713–0174 x184 or Cathy Bozek (*Cathy.Bozek@noaa.gov*) at (301) 713–0174 x150. Potential applicants are invited to contact NOAA Restoration Center staff before submitting an application to discuss the applicability of project ideas to the goals and objectives of ORI. Additional information on the ORI can be found on *http://www.nmfs.noaa.gov/habitat/restoration.*

Eligibility: Eligible applicants are institutions of higher education, non-profits, industry and commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments whose projects have the potential to benefit NOAA trust resources. Applications from Federal agencies or employees of Federal agencies will not be considered. Federal agencies are strongly encouraged to work with states, non-governmental organizations, national service clubs or youth corps organizations and others entities that are eligible to apply. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic-serving institutions, tribal colleges and universities, and institutions that work in under-served areas. The ORI encourages proposals from or involving any of the above institutions.

Cost Sharing Requirements: A major goal of the ORI is to provide seed money for projects that leverage funds and other contributions from a broad public and private sector to implement locally important barrier removals to benefit living marine and coastal resources. To this end, applicants are encouraged to demonstrate a 1:1 non-federal match for ORI funds requested to conduct the proposed project. Applicants with less than 1:1 match will not be disqualified, however, applicants should note that cost sharing is an element considered in Evaluation Criterion #4 "Project Costs" (Section V.A.4. located in the FFO announcement). Match to NOAA funds can come from a variety of public and private sources and can include in-kind goods and services and volunteer labor. Applicants are permitted to combine contributions from non-federal partners, as long as such contributions are not being used to match any other federal funds and are available within the project period stated in the application. Those sources cannot be considered for matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are also permitted to apply federally negotiated indirect costs in excess of Federal share limits as described in Section IV.E.2."Indirect Costs" in the FFO announcement. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Successful applicants should be prepared to carefully document matching contributions, including the overall number of volunteers and in-kind participation hours devoted to individual barrier removal projects. Letters of commitment for any secured resources that will be used as match for an award under this solicitation should be submitted as an attachment to the application, see Section IV.B. of the FFO announcement.

Intergovernmental Review: Applications under this initiative are subject to the provisions of Executive Order 12372, "Intergovernmental Review of Programs." Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of E.O. 12372. To find out about and comply with a State's process under E.O. 12372, the names, addresses and phone numbers of participating SPOC's are listed on the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

4. Fiscal Year 2011 NOAA Chesapeake Bay Watershed Education and Training (BWET)

Summary Description: B–WET Chesapeake is a competitive grant program that supports existing, high quality environmental education programs, fosters the growth of new, innovative programs, and encourages capacity building and partnership development for environmental education programs throughout the entire Chesapeake Bay watershed. Successful projects advance the goals of the NOAA Education Strategic Plan and Citizen Stewardship components of Chesapeake Bay Executive Order by providing hands-on environmental education about issues affecting the Chesapeake Bay watershed for students, related professional development for teachers, and/or capacity building for watershed education. These Meaningful Watershed Educational Experiences (MWEEs) integrate field experiences with classroom activities and instruction in NOAA-related content.

Funding Availability: This solicitation announces that approximately $3.5M may be available in FY 2011 in award amounts to be determined by the proposals and available funds. Funding is anticipated to maintain partnerships for up to 3 years duration, but is dependent on funding made available annually by Congress. The NCBO anticipates that typical awards for B–WET will range from $50,000 to $200,000 annually. Applications with budgets in which the total share requested from NOAA for all years of the project is more than $675,000 or less than $150,000 for the direct and indirect costs of the proposed project will not be considered for review. Projects requesting less than $50,000 annually or more than $225,000 annually will not be considered for review. No single organization (as determined by tax identification number) is eligible to receive more than 10% of the funds awarded in any given year. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government.

Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made. Applicants are hereby given notice that funds have not yet been appropriated for this program.

Statutory Authority: Under 33 U.S.C. 893a(a), the Administrator of the National Oceanic and Atmospheric Administration is authorized to conduct, develop, support, promote, and coordinate formal and informal educational activities at all levels to enhance public awareness and understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders, including underrepresented groups in ocean and atmospheric science and policy careers. In conducting those activities, the Administrator shall build upon the educational programs and activities of the agency.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.457, Chesapeake Bay Studies

Application Deadline: Proposals must be received and validated by Grants.gov on or before 11:59 p.m. EDT or received (not postmarked) by mail or in person by 5 p.m. EDT on October 15, 2010. Hard copies and electronic submissions received after the deadline will not be considered for funding. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: To apply for this NOAA funding opportunity, please submit an electronic application to *http://www.grants.gov.* If the applicant does not have Internet access, a hard copy may be submitted to: NOAA Chesapeake Bay Office; 410 Severn Avenue, Suite 107A, Annapolis, MD 21403.

Information Contacts: Please visit the B–WET Web site for further information at: *http://chesapeakebay.noaa.gov/b-wet.html* or contact Kevin Schabow, NOAA Chesapeake Bay Office; 410 Severn Avenue, Suite 107A, Annapolis, MD 21403, or by phone at 410–295–3145, or fax to 410–267–5666, or via internet at *Kevin.Schabow@noaa.gov.*

Eligibility: Eligible applicants are K–12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments in the Chesapeake Bay watershed. For-profit organizations, foreign institutions, foreign organizations and foreign government agencies are not eligible to apply. Federal agencies are not eligible to receive assistance under this announcement, but may be project partners. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. The NCBO encourages proposals involving any of the above institutions.

Cost Sharing Requirements: No cost sharing is required under this program, however, the NCBO strongly encourages applicants to match federal funds with at least 25% in non-federal funds. Funds from other sources may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with preference given to proposals that have a cash match.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, Intergovernmental Review of Programs.

5. NOAA New England Bay Watershed Education and Training (B–WET) Program

Summary Description: NOAA B–WET is an environmental education program that promotes locally relevant, experiential learning in the K–12 environment. A funded project provides meaningful watershed educational experiences for students, related professional development for teachers, and helps to support regional education and environmental priorities in New England.

Funding Availability: It is anticipated that approximately $300,000 will be available in Fiscal Year (FY) 2011 for new awards. NOAA anticipates making approximately 2 to 5 new awards during FY 2011. NOAA will consider only projects with duration of 1 to 3 years. The total amount that may be requested from NOAA shall not exceed $80,000 per year and $240,000 for all years of the proposed project. The minimum amount that must be requested from NOAA for one year is $10,000 and for all years is $30,000. Applications requesting support from NOAA of less than $10,000 for one year or more than $80,000 per year and $240,000 total for the duration of the project will not be considered for funding. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: Under 33 U.S.C. 893a(a), the Administrator of the National Oceanic and Atmospheric Administration is authorized to conduct, develop, support, promote, and coordinate formal and informal educational activities at all levels to enhance public awareness and understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders, including underrepresented groups in ocean and atmospheric science and policy careers. In conducting those activities, the Administrator shall build upon the educational programs and activities of the agency.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.469, Congressionally Identified Awards and Projects

Application Deadline: The deadline for applications is 5 p.m. Eastern Daylight Time (EDT), October 8, 2010. Applications submitted through Grants.gov will produce an automated receipt that provides the date and time of submission. Hard copy applications will be hand stamped with time and date when received in the NOAA Fisheries, Northeast Regional Office (Attn: New England B–WET Program). Note that late-arriving hard copy applications provided to a delivery service on or before 5 p.m., EDT October 8, 2010 will be accepted for review if the applicant can document that the application was provided to the guaranteed delivery service by the specified closing date and time, and if the proposals are received NOAA Fisheries, Northeast Regional Office by 5 p.m., EDT, no later than 3 business days following the closing date. Applicants are recommended to send hard copies via expedited shipping methods (*e.g.,* Airborne Express, DHL, FedEx, UPS, etc.). No e-mail and/or facsimile pre-proposals and/or full applications will be accepted. Applications that are late or are received

by fax or e-mail will not be considered for review. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Paper applicants should allow adequate time to ensure a paper application will be received on time, taking into account that guaranteed overnight carriers are not always able to fulfill their guarantees.

Address for Submitting Proposals: Submissions of electronic applications are strongly encouraged and should be submitted to: *http://www.grants.gov/.* If the applicant does not have Internet access, paper applications may be submitted to: New England B–WET Program, NOAA Fisheries, 55 Great Republic Drive, Gloucester, MA 01930–2276.

Paper application packages are available on the NOAA Grants Management Web site at: *http://www.ago.noaa.gov/ago/grants/forms.cfm.* If the applicant has difficulty accessing Grants.gov or downloading the required forms from the NOAA Web site, the applicant should contact: Kathi Rodrigues, New England B–WET Program Manager, by phone at 978–281–9324 or e-mail at: *kathi.rodrigues@noaa.gov.*

Grants.gov requires applicants to register with the system prior to submitting an application. This registration process can take several weeks and involves multiple steps. In order to allow sufficient time for this process, you should register as soon as you decide to apply, even if you are not yet ready to submit your proposal. If an applicant has problems downloading the application forms from Grants.gov, contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov.* For non-Windows computer systems, please see *http://www.grants.gov/MacSupport* for information on how to download and submit an application through Grants.gov.

Information Contacts: Kathi Rodrigues, New England B–WET Program Manager, NOAA, 55 Great Republic Drive, Gloucester, MA 01930–2276, or via e-mail at *kathi.rodrigues@noaa.gov.* Questions about this opportunity may also be directed to Bronwen Rice, B–WET National Coordinator, by phone at 202–482–6797 or e-mail at *bronwen.rice@noaa.gov.*

Eligibility: Eligible applicants are K–12 public and independent schools and school systems, institutions of higher education, community-based and non-profit organizations, state or local government agencies, interstate agencies, and Indian tribal governments. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of underrepresented groups such as historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that service underserved areas. Participation by these groups and institutions will be taken into consideration during review. While applicants do not need to be from the targeted geographical region specified in the program objectives (*i.e.,* the New England states), they work with target audiences in these areas.

Cost Sharing Requirements: No cost sharing is required under this program, however, the NOAA B–WET Program strongly encourages applicants include a 25% or higher match. Funds from other awards may not be considered matching funds. The nature of the contribution (cash vs. in-kind) and the amount of matching funds will be taken into consideration during the review process. Priority selection is given to proposals that propose cash rather than in-kind services.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Programs."

6. Fiscal Year 2011 Monkfish Research Set-Aside

Summary Description: NOAA's National Marine Fisheries Service (NMFS) is soliciting monkfish research proposals to utilize 500 Monkfish Days-at-Sea (DAS) that have been set-aside by the New England and Mid-Atlantic Fishery Management Councils (Councils) to fund monkfish research endeavors through the 2011 Monkfish Research Set-Aside (RSA) Program. No funds are provided for research under this notification. Rather, proceeds generated from the sale of monkfish harvested during a set-aside DAS is used to fund research activities and compensate vessels that participate in research activities and/or harvest set-aside quota. Projects funded under the Monkfish RSA Program must enhance the knowledge of the monkfish fishery resource or contribute to the body of information on which monkfish management decisions are made. Priority will be given to monkfish research proposals that investigate research priorities identified by the Councils and detailed under the Program Priorities section of the FFO announcement.

Funding Availability: DAS will be awarded to successful applicants. No funds are provided for research under this notification. Funds generated from landings harvested and sold under the Monkfish RSA Program shall be used to cover the cost of research activities, including vessel costs. For example, the funds may be used to pay for gear modifications, monitoring equipment, the salaries of research personnel, or vessel operation costs. The Government is not liable for any costs incurred by the researcher or vessel owner should the sale of catch not fully reimburse the researcher or vessel owner for their expenses. Any additional funds generated through the sale of set-aside landings, above the cost of the research activities, shall be retained by the vessel owner as compensation for the use of his/her vessel. The Government (*i.e.,* NMFS) may issue an Exempted Fishing Permit (EFP), if needed, that may provide special fishing privileges in response to research proposals selected under this program. For example, in previous years, some successful applicants have requested, and were granted, exemption from monkfish DAS possession limits to make compensation fishing more efficient and cost effective. In such cases, applicants were authorized to harvest a maximum amount of monkfish by weight, or fish up to the number of awarded monkfish DAS, whichever came first. To obtain such an exemption, an EFP application must be submitted to the Northeast Regional Office, NMFS. Please be aware that EFP applications are reviewed on a case by case basis, and may be disapproved. For additional information contact Ryan Silva, Cooperative Research Liaison, at 978–281–9326, or *ryan.silva@noaa.gov.* Projects may not have more than 50 vessels authorized to conduct compensation fishing at any given time, unless sufficient rationale can demonstrate that more than 50 vessels are needed. In addition, principal investigators and project coordinators should be aware that it may take NMFS up to 4 weeks to process requests to revise the list of vessels that are authorized to conduct compensation fishing.

Statutory Authority: Statutory authority for this program is found under sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881(c), respectively. The ability to set aside monkfish DAS for research purposes was established in the final rule implementing Amendment 2 to the Monkfish FMP, (70 FR 21927,

April 28, 2005), codified at 50 CFR 648.92(c).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.454, Unallied Management Projects.

Application Deadline: Full proposals must be received and validated by Grants.gov on or before 5 p.m. EST on August 30, 2010. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. If an applicant does not have Internet access, hard copy proposals will be accepted, and date recorded when they are received in the program office. Electronic or hard copies received after the deadline will not be considered, and hard copy applications will be returned to the sender. Mark hard copy proposals "Attention-2011 Monkfish Research Set Aside Program."

Address for Submitting Proposals: To apply for this NOAA funding opportunity, please submit an electronic application at *http://www.grants.gov,* and use the following funding opportunity #NMFS–NEFSC–2010–2001980. Applicants without Internet access may submit paper applications to: Cheryl Corbett, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, by phone 508–495–2070, fax 508–495–2004, or e-mail *cheryl.corbett@noaa.gov.*

Information Contacts: Information may be obtained from Paul Howard, Executive Director, New England Fishery Management Council (NEFMC), by phone 978–465–0492, or by fax 978–465–3116; Philip Haring, Senior Fishery Analyst, NEFMC, by phone 978–465–0492, or by e-mail at *pharing@nefmc.org;* or Cheryl Corbett, NMFS, Northeast Fisheries Science Center, phone 508–495–2070, fax 508–495–2004, or e-mail *cheryl.corbett@noaa.gov,* or from Ryan Silva, NMFS, Northeast Regional Office, Cooperative Research Liaison, phone (978) 281–9326, fax (978) 281–9326, e-mail *ryan.silva@noaa.gov.*

Eligibility: Eligible applicants include, but are not limited to, institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, state, local, and Native American tribal governments. Federal agencies and institutions are not eligible to receive assistance under this notice. Additionally, employees of any agency or Regional Fishery Management Council (Council) are ineligible to submit an application under this program. However, Council members who are not employees may submit an application. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the RSA program. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions. DOC/NOAA encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation.

Cost Sharing Requirements: None required.

Intergovernmental Review: Applicants will need to determine if their State participates in the intergovernmental review process. This information can be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* This information will assist applicants in providing either a Yes or No response to Item 16 of the Application Form, SF–424, entitled "Application for Assistance."

7. Fiscal Year 2011 Scallop Research Set-Aside

Summary Description: NOAA's National Marine Fisheries Service (NMFS) is soliciting Atlantic Sea Scallop (scallop) research proposals to utilize scallop Total Allowable Catch (TAC) and Days-at-Sea (DAS) that have been set-aside by the New England Fishery Management Council (Council) to fund scallop research endeavors through the 2011 Atlantic Sea Scallop Research Set-Aside (RSA) Program (March 1, 2011–February 29, 2012). No funds are provided for research under this notification. Rather, proceeds generated from the sale of scallops harvested under a set-aside quota are used to fund research activities and compensate vessels that participate in research activities and/or harvest set-aside quota. Projects funded under the Scallop RSA Program must enhance the knowledge of the scallop fishery resource or contribute to the body of information on which scallop management decisions are made. Priority will be given to scallop research proposals that investigate research priorities identified by the Council, which are detailed under the Program Priorities section of this announcement.

Funding Availability: Applicants must submit a budget that is based solely on monetary needs, which includes funds necessary to execute the research plan and funds necessary to compensate vessel owners harvesting set-aside quota. Upon project selection, NMFS will negotiate with successful applicants on the specific TAC and/or DAS award. Priority will be given primarily to the higher technically ranked proposal, although additional factors such as individual project needs and cost effectiveness may be considered during negotiations. NMFS will establish a common DAS catch rate and scallop price estimate, based on the best and most recent data available, to determine the amount of set-aside necessary to cover research and compensation fishing expenses. If a desired set-aside quota has been fully utilized by another applicant, TAC and/or DAS will be awarded from a different set-aside quota. Once all the TAC and/or DAS set-aside quotas have been awarded, or all qualified proposals have been funded, whichever occurs first, the selection process will end. No funds are provided for research under this notification. Funds generated from landings harvested and sold under the Scallop RSA Program shall be used to cover the cost of research activities, including vessel costs. For example, the funds may be used to pay for gear modifications, monitoring equipment, the salaries of research personnel, or vessel operation costs. The Government is not liable for any costs incurred by the researcher or vessel owner should the sale of catch not fully reimburse the researcher or vessel owner for their expenses. Any additional funds generated through the sale of set-aside landings, above the cost of the research activities, shall be retained by the vessel owner as compensation for the use of his/her vessel. The government (*i.e.,* NMFS) will issue Letters of Authorization to eligible vessels identified by the Project Coordinator, which authorize such vessels to take access area and DAS compensation fishing trips, and exceed the vessels' normal scallop possession limit. Projects may not have more than 50 vessels authorized to conduct compensation fishing at any given time, unless sufficient rationale can demonstrate that more than 50 vessels are needed. In addition, principal investigators and project coordinators should be aware that it may take NMFS up to 4 weeks to process requests to revise the list of vessels that are authorized to conduct compensation fishing.

Statutory Authority: Statutory authority for this program is provided under sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16

U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881(c), respectively. The ability to set aside scallop TAC and DAS is authorized through the scallop FMP 69FR 35193 (June 23, 2004) and implementing regulations at 50 CFR part 648 subpart D.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.454, Unallied Management Projects

Application Deadline: Full proposals must be received and validated by Grants.gov on or before 5 p.m. EST on August 30, 2010. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. If an applicant does not have Internet access, hard copy proposals will be accepted, and date recorded when they are received in the program office. Electronic or hard copies received after the deadline will not be considered, and hard copy applications will be returned to the sender. Mark hard copy proposals "Attention-2011 Scallop Research Set Aside Program."

Address for Submitting Proposals: To apply for this NOAA funding opportunity, please submit an electronic application at *http://www.grants.gov,* and use the following funding opportunity #NMFS–NEFSC–2011–2002691. Applicants without Internet access may submit paper applications to: Cheryl Corbett, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, by phone 508–495–2070, fax 508–495–2004, or e-mail *cheryl.corbett@noaa.gov.*

Information Contacts: Information may be obtained from Deirdre Boelke, New England Fishery Management Council, phone (978) 465–0492, fax (978) 465–3116, or e-mail *dboelke@nefmc.org,* from Cheryl Corbett, NMFS, Northeast Fisheries Science Center, phone 508–495–2070, fax 508–495–2004, or e-mail *cheryl.corbett@noaa.gov,* or from Ryan Silva, NMFS, Northeast Regional Office, phone (978) 281–9326, fax (978) 281–9135, e-mail *ryan.silva@noaa.gov.*

Eligibility: Eligible applicants include, but are not limited to, institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, state, local, and Native American tribal governments. Federal agencies and institutions are not eligible to receive assistance under this notice. Additionally, employees of any agency or Regional Fishery Management (RFM) Council are ineligible to submit an application under this program. However, RFM Council members who are not employees may submit an application. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the RSA program. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges, and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions. DOC/NOAA encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation.

Cost Sharing Requirements: None required.

Intergovernmental Review: Applicants will need to determine if their State participates in the intergovernmental review process. This information can be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.* This information will assist applicants in providing either a Yes or No response to Item 16 of the Application Form, SF–424, entitled "Application for Assistance."

8. John H. Prescott Marine Mammal Rescue Assistance Grant Program (Prescott Grant Program) for Fiscal Year 2011

Summary Description: The NMFS Marine Mammal Health and Stranding Response Program is charged under the Marine Mammal Protection Act (MMPA) with facilitating the collection and dissemination of reference data on stranded marine mammals and health trends of marine mammal populations in the wild. The John H. Prescott Marine Mammal Rescue Assistance Grant Program is conducted by NOAA to provide assistance to eligible members of the National Marine Mammal Stranding Network to: (1) Support basic needs of organizations for response, treatment, and data collection from living and dead stranded marine mammals, (2) fund scientific research objectives designed to answer questions about marine mammal strandings, health, or rehabilitation techniques utilizing data from living and dead stranded marine mammals, and (3) support facility operations directly related to the recovery, treatment, and data collection from living and dead stranded marine mammals. This document describes how to submit proposals for funding in fiscal year (FY) 2011 and how NMFS will determine which proposals will be funded. This document should be read in its entirety, as some information has changed from the previous year.

Funding Availability: This solicitation announces that approximately $4,000,000 may be available for distribution under the FY 2011 annual competitive Prescott Grant Program. Applicants are hereby given notice that these funds have not yet been appropriated for this program. Therefore, exact dollar amounts cannot be given. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The maximum award for each grant cannot exceed $100,000, as is stated in the legislative language (16 U.S.C. 1421f–1). Funds may be set aside from the annual appropriation to provide for emergency assistance awards to eligible stranding network participants. These emergency funds will be available until expended. There is no limit on the number of proposals that can be submitted by the same stranding network participant during the FY2011 competitive grant cycle. However, stranding network participants will receive no more than two awards per year as part of the competitive program. The two awards must be for completely independent projects that are clearly separate in their objectives, goals, and budget requests and must be successful in the competitive review process. Eligible researchers applying as Principal Investigators, but not independently authorized under MMPA Section 112(c), MMPA Section 109(h) (50 CFR 216.22), or the National Contingency Plan for Response to Marine Mammal Unusual Mortality Events, can only receive one award per year as part of the competitive cycle. Authorized stranding network participants and researchers may be identified as Co-Investigators or collaborators on as many proposals as needed as long as no more than 100 percent of their time is funded through the Prescott Grant Program. In addition, Department of Commerce (DOC) and Department of Interior (DOI) employees may act as collaborators if they are responsible for performing analyses on data or samples collected under a Prescott award. See section I.F. of the FFO announcement for more information on Eligibility requirements. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years beyond the award

period. If an applicant incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, the applicant would do so solely at their own risk of these costs not being included under the award. Notwithstanding any verbal or written assurance that applicants have received, pre-award costs are not allowed under the award unless the Grants Officer approves them in accordance with 15 CFR 14.28.

Statutory Authority: 16 U.S.C. 1421 f–1.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.439, Marine Mammal Data Program.

Application Deadline: Full proposals must be received and validated by Grants.gov, postmarked, or provided to a delivery service on or before 11:59 p.m. EDT, October 5, 2010. Applications submitted through Grants.gov are automatically stamped with the date and time of submission and will be the basis of determining timeliness. For applications submitted through Grants.gov, there will be two automated e-mail receipts sent to the application submitter with the date and time of submission. The first e-mail confirms receipt of the application. The second e-mail confirms that there are no errors with the application submission and that it has been forwarded to NOAA for further processing. If both e-mail confirmation receipts are not provided within two (2) days of application submission, contact the Grants.gov Help Desk at 1–800–518–4726 and Sarah Howlett, at *sarah.howlett@noaa.gov.* **Please Note:** It may take Grants.gov up to two (2) business days to validate or reject the application. Please consider this process in developing your submission timeline. Applicants are responsible for ensuring that all required elements have been appropriately submitted. Applications received after the deadline will be rejected without further consideration. Use of U.S. mail or another delivery service for hard copy applications must be documented with a receipt. No facsimile or electronic mail applications will be accepted.

Address for Submitting Proposals: Electronic applications must be submitted to Grants.gov. If the applicant does not have Internet access, paper applications may be submitted to: Prescott Grant Program, NOAA/NMFS/Office of Protected Resources (F/PR), 1315 East-West Highway, Room 13620, Silver Spring, MD 20910

Information Contacts: The points of contact are: Michelle Ordono and Sarah Howlett, Prescott Grant Program, NOAA/NMFS/Office of Protected Resources (F/PR), 1315 East-West Highway, Room 13620, Silver Spring, MD 20910; Phone: (301) 713–2322; or e-mail at *Michelle.Ordono@noaa.gov* or *Sarah.Howlett@noaa.gov.*

Eligibility: All eligible applicants must currently be an active, authorized participant or researcher in the National Marine Mammal Stranding Network. Eligible applicants must be: (1) Stranding Agreement (SA) holders or their designee organizations; (2) holders of researcher authorization letters issued by a NMFS Regional Administrator; or (3) an eligible state, or local government personnel or tribal personnel (pursuant to MMPA Section 109(h) (16 U.S.C. 1379(h)). An applicant cannot be a current full- or part-time employee or contractor of DOC or DOI.

In Good Standing Criteria. All eligible applicants must meet the following in good standing criteria: a. If the applicant is a designated Principal Investigator of an MMPA and/or Endangered Species Act (ESA) scientific research or enhancement permit holder, the applicant must have fulfilled all permit requirements. The applicant must not have any pending or outstanding enforcement actions under the MMPA or ESA. b. The applicant must have complied with the terms and responsibilities of the appropriate SA, MMPA Section 109(h) authorization, or researcher authorization letter. This includes, but is not limited to: (1) Completion of all reporting requirements; (2) cooperation with state, local, and officials; (3) cooperation with state and local officials in the disposition of stranded marine mammals; and (4) cooperation with other stranding network participants. c. The applicant must have cooperated in a timely manner with NMFS in collecting and submitting Level B and Level C data and samples, when requested. d. The applicant must not have any current enforcement investigation for the take of marine mammals contrary to MMPA/ESA regulations. e. The applicant must not have any pending NMFS notice of violation(s) regarding the policies governing the goals and operations of the Stranding Network and SA, if applicable (*e.g.,* probation, suspension, or termination).

Category Specific Criteria. All eligibility criteria specified for the participant's category must be met in order for a proposal to be considered for funding. Organizations and individuals must meet the following eligibility criteria specific to their category of participation:

a. *SA Holder Participant or SA Designee Participant:* SA participants must be holding a current, active SA for stranding response and/or rehabilitation from a NMFS Regional Administrator or the Assistant Administrator. SA Designee participants must be holding a current, active letter of designation from a NMFS SA holder. Designees cannot request authorization for activities beyond the scope of what is authorized by the SA to the agreement holder.

b. *Researcher Participant:* Researcher participants must be holding a current, active authorizing letter for the proposed award period from the appropriate NMFS Regional Administrator or the Assistant Administrator to salvage stranded marine mammal specimens and parts or samples there for the purpose of utilization in scientific research (50 CFR 216.22). Persons authorized to salvage dead marine mammal specimens under this section must register the salvage with the appropriate NMFS Regional Office within 30 days after the taking occurs. Researchers who are authorized under an MMPA/ESA Scientific Research Permit must still obtain an authorizing letter from the Regional Stranding Coordinator in order to use parts or specimens from stranded animals. Researcher participants that would not require an authorizing letter from the NMFS Regional Administrator (*i.e.,* they will be working with data only and not possessing samples or specimens) must still provide a letter of eligibility from the Regional Stranding Coordinator (see IV.B.8 of the FFO announcement). Researcher participants must also have designated Co-Investigator(s) that are active NMFS authorized stranding network participants in good standing, and provide documentation to this effect.

c. *State, Local, Government Employees or Tribal Participants:* State and local government officials or employees participating pursuant to MMPA Section 109(h) (16 U.S.C. 1379(h)) for marine mammal species not listed under the ESA must fulfill reporting obligations outlined in 50 CFR 216.22. Government officials must be involved in areas of geographic need (*i.e.,* municipality or larger region with no existing SA holder).

Letter of Eligibility. All applicants must submit a letter of eligibility issued by the appropriate NMFS Regional Stranding Coordinator (or NMFS Regional Office). This letter is required in order to be considered for an award in this funding cycle. The letter of eligibility states that you are: (1) An eligible stranding network participant or researcher at the time of the application submission and during the award period; (2) in good standing; (3) have a

history of participation in/with the stranding network or that your organization is from a local area with no pre-existing stranding response and/or rehabilitation capabilities. A copy of your SA or research authorization will not be considered as proof of eligibility. Any proposal that does not provide a letter from the NMFS Regional Stranding Coordinator will not be considered eligible and will not be considered for further review. Contact information for the NMFS Regional Stranding Coordinators to request this letter is available on the following Web site: *http://www.nmfs.noaa.gov/pr/health/coordinators.htm,* or you may contact the Program Office at the address in the Agency Contacts, Section VII of the FFO announcement.

We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit proposals. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate marine management policies and programs that meet the needs of the U.S. insular areas. We encourage proposals from eligible individuals, government entities, universities, colleges, and businesses in U.S. insular areas as defined by the MMPA (Section 3(14), 16 U.S.C. 1362). This includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, Tribal Colleges and Universities, and institutions that work in undeserved areas in our programs. The DOC/NOAA/NMFS vision, mission, and goals are: to achieve full participation by MSIs; to advance the development of human potential; to strengthen the Nation's capacity to provide high-quality education; and to increase opportunities for MSIs to participate in, and benefit from, financial assistance programs. The Prescott Grant Program encourages all eligible applicants to include meaningful participation of MSIs whenever practicable. Applicants are not eligible to submit a proposal under this program if they are an employee of the DOC or DOI. Unsatisfactory performance under prior or current awards, including delinquency in submitting progress and financial reports, may result in proposals not being considered for funding under the Fiscal Year 2011 Prescott Grant Program.

Cost Sharing Requirements: All proposals submitted must provide a minimum cost share of 25 percent of the total budget (*i.e.,* .25 × total project costs = total share). Therefore, the total share will be 75 percent or less of the total budget. For a proposed total share of $100,000, the minimum share is $33,334 (total budget of $133,334; .25 × $133, 334 = $33,334). For a proposed total share of $80,000, the minimum share is $26,667 (total budget of $106,667; .25 × $106,667 = $80,000). Cost share must be an integer, so please round up. The applicant can include a cost share for more than 25 percent of the total budget, but this obligation will be binding. In order to reduce calculation error when determining the correct cost share amounts, we urge all applicants to use the cost share calculator on the Prescott Program webpage *(http://www.nmfs.noaa.gov/pr/health/prescott/proposals/costshare.htm).* Legislation under which the Prescott Grant Program operates requires this cost sharing, or match, to leverage the limited funds available for this program and to encourage partnerships among government, private organizations, non-profit organizations, the stranding network, and academia to address the needs of marine mammal health and stranding response. If a proposal does not comply with these cost share requirements, the proposal will not be returned to the applicant and it will not be considered in this annual funding cycle. Pursuant to 48 U.S.C. 1469a, match may be waived for applicants that are residents in the U.S. insular areas (Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and the U.S. Virgin Islands). The Program Officer will determine the appropriateness of all cost sharing proposals, including the valuation of in-kind contributions, according to the regulations in 15 CFR 14.23 and 24.24. An in-kind contribution is a non-cash contribution, donated or loaned, by a third party to the applicant. In general, the value of in-kind services or property used to fulfill a cost share will be the fair market value of the services or property. The fair market value is the cost of obtaining such services or property, had they not been donated, or of obtaining such services or property for the period of a loan. The applicant must document the in-kind services or property used to fulfill the cost share. If we decide to fund a proposal, we will require strict accounting of the in-kind contributions within the total cost share included in the award document. The Grants Officer is the DOC official responsible for all business management and administrative aspects of a grant and with delegated authority to award, amend, administer, close out, suspend, and/or terminate awards. The Grants Officer is the final approving authority for the award, including the budget and any cost-sharing proposals.

Intergovernmental Review: Applications submitted under this program are subject to the provisions of Executive Order (EO) 12372, "Intergovernmental Review of Programs." Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. For my information on a State's process under EO 12372, please visit the Office of Management and Budget's Web site at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

9. Protected Species Cooperative Conservation

Summary Description: States play an essential role in the conservation and recovery of endangered and threatened species. Protected species under the National Marine Fisheries Service's (NMFS) jurisdiction may spend all or a part of their life-cycles in state waters, and success in conserving these species will depend in large part on working cooperatively with state agencies. NMFS is authorized to provide assistance to eligible States to support the development of conservation programs for marine and anadromous species that reside within that State. This assistance, provided in the form of grants through the Protected Species Cooperative Conservation program, can be used to support conservation of endangered, threatened, and proposed species, as well as monitoring of candidate and delisted species. Funded activities may include development and implementation of management plans, scientific research, and public education and outreach; proposals should address priority actions identified in an ESA Recovery Plan, a State's ESA Section 6 Program, a State Wildlife Action Plan, or address a NMFS-identified regional priority or need. Any State agency that has entered into or applied for an agreement with NMFS pursuant to section 6(c) of the ESA is eligible to apply under this solicitation. Proposals focusing on listed Pacific salmonids will not be considered for funding under this grant program; such projects may be considered through the NMFS Pacific Coastal Salmon Recovery Fund. This document describes how to submit

proposals for funding in fiscal year (FY) 2011 and how NMFS will determine which proposals will be funded; this document should be read in its entirety, as some information has changed from the previous year.

Funding Availability: NOAA anticipates that up to $15 million may be available for distribution under the FY 2011 PSCC program for new awards; awards are expected to range between about $500,000 and $1,000,000 in federal funding per year. Applications requesting less than $200,000 in federal funding per year may receive lower priority. The exact amount of funds that may be awarded will be determined during pre-award negotiations between the applicant and NOAA representatives. Funds have not yet been appropriated for this program, and there is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific grant proposal or to obligate any available funds. In addition to this opportunity, the President's FY2011 Budget requested $10.364M specifically to support larger scale habitat restoration to support recovery of threatened and endangered species through habitat conservation actions. If these funds are made available by Congress, the NOAA Restoration Center within NMFS Office of Habitat Conservation may provide funding for applications selected through this competition, thereby increasing the amount of funds available through this program. NOAA will consider funding more than one project under a single application. Applicants that bundle projects into a single application should ensure that there is sufficient detail for each project as per the guidelines and information requirements listed in this document if an application is to be competitive. Applications should provide clear indications of how each project is related to the overall goals and objectives described in the application. To allow for appropriate review of proposals, bundled projects should address the same or related species (*e.g.* shortnose and Atlantic sturgeon). There is no limit on the number of applications that can be submitted by the same Principal Investigator, agency, or State. Multiple applications submitted by the same applicant must, however, clearly identify distinct projects. If an application for a financial assistance award is selected for funding, NOAA has no obligation to provide any additional funding in connection with that award in subsequent years. Notwithstanding verbal or written assurance that may have been received, pre-award costs are not allowed under the award unless approved by the Grants Officer in accordance with 2 CFR part 225.

Statutory Authority: 16 U.S.C. 661 *et seq.;* 16 U.S.C. 1535.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.472, Unallied Science Program.

Application Deadline: Applications must be postmarked, provided to a delivery service, or received by *http://www.grants.gov* by 11:59 p.m. Eastern Daylight Time October 4, 2010. Applications submitted by U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. Use of a delivery service other than U.S. mail must be documented with a receipt. Proposals submitted after the deadline cannot be considered for funding. **Please Note:** It may take Grants.gov up to two business days to validate or reject an application. Please keep this in mind when developing your submission timeline.

Address for Submitting Proposals: Applications should be submitted electronically through the Grants.gov Web site at *http://www.grants.gov.* NOAA strongly recommends that applicants do not wait until the application deadline to begin the application process through Grants.gov. To use Grants.gov, applicants must have a DUNS number and register in the Central Contractor Registry (CCR). Applicants should allow at least 5 business days to complete the CCR registration; registration is only required once. Also, it may take Grants.gov up to two business days to validate or reject an application. Please keep this in mind when developing your submission timeline. Following submission of applications through Grants.gov, applicants should receive two automated responses from Grants.gov: one confirms receipt of the application; the other confirms that the application has been forwarded to NOAA. If both confirmation messages from Grants.gov are not received, applicants should contact both the Grants.gov Helpdesk and the NMFS Office of Protected Resources to confirm the application has been transmitted and received by NOAA. For applicants lacking internet access, hard copies may be submitted (by postal mail or commercial delivery) to the NMFS Office of Protected Resources, Attn: Lisa Manning, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910. Applications submitted by U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. Use of a delivery service other than U.S. mail must be documented with a receipt. Paper applications should be printed on one side only, on 8.5 x 11 inch paper, and not be bound in any manner. A signed (in ink) SF–424 must be included. No facsimile or electronic mail applications will be accepted.

Information Contacts: If you have any questions regarding this proposal solicitation, please contact Lisa Manning or Sean Ledwin at the NOAA/NMFS/Office of Protected Resources, Endangered Species Division, 1315 East-West Highway, Silver Spring, MD 20910, by phone at 301–713–1401, or by e-mail at *Lisa.Manning@noaa.gov* or *Sean.Ledwin@noaa.gov.* You may also contact one of the following NMFS regional office contacts for further guidance: Amanda Johnson, Northeast Regional Office (*Amanda.Johnson@noaa.gov,* 978–282–8463); Karla Reece, Southeast Regional Office (*Karla.Reece@noaa.gov,* 727–824–5348); Eric Murray, Northwest Regional Office (*Eric.Murray@noaa.gov,* 503–231–2378); Scott Hill, Southwest Regional Office *(Scott.Hill@noaa.gov,* 562–980–4026); Kaja Brix, Alaska Regional Office (*Kaja.Brix@noaa.gov,* 907–586–7824); Krista Graham, Pacific Islands Regional Office, *(Krista.Graham@noaa.gov,* 808–944–2238).

Eligibility: Eligible applicants are state agencies that have entered into an agreement with NMFS pursuant to section 6(c) of the ESA. The terms "state" and "state agency" are used as defined in section 3 of the ESA (16 U.S.C. 1532). Currently eligible state agencies are listed here: *http://www.nmfs.noaa.gov/pr/conservation/states/.* Any state agency that enters into a section 6(c) agreement with NMFS within 45 days following the grant application deadline is also eligible to apply. State agencies may apply for funding to conduct work on federally listed species that are included in their ESA section 6 agreement and any species that has become a candidate or a proposed species by the grant application deadline. State agencies may not apply for funding to conduct work on federally listed species that are not covered in their ESA section 6 agreement unless said species is added to the agreement within 45 days following the grant application deadline. Federal agencies or institutions are not eligible to receive assistance under this notice. In addition, NOAA and NMFS employees shall not provide assistance in writing applications, write letters of support for any application, or otherwise confer any unfair advantage on a particular application. However, for activities

involving collaboration with current NMFS programs, NMFS employees can write a letter verifying that they are collaborating with the project.

Cost Sharing Requirements: In accordance with section 6(d) of the ESA, proposals must include a minimum cost share of 25 percent of the total budget if the proposal involves a single state. If a proposal involves collaboration of two or more states, the minimum cost share decreases to 10 percent of the total project budget. The project proposal and budget should reflect the work and responsibilities to be carried out by each of the cooperating states. The cost share should be identified in the project budget (and on the SF–424A) and may include in-kind contributions according to the regulations at 15 CFR part 24. Match requirements of section 6(d) of the ESA do not apply to insular areas covered by the Omnibus Insular Areas Act of 1977 (48 U.S.C. 1469a) including Guam, American Samoa, Northern Mariana Islands, and the U.S. Virgin Islands.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Programs."

10. Bluefin Tuna Research Program

Summary Description: The Bluefin Tuna Research Program (BTRP) provides opportunity to compete for financial assistance for projects which seek to increase and improve the working relationship between fisheries researchers from the NMFS, state fishery agencies, universities, other research institutions and U.S. fishery interests (recreational and commercial) focusing on northern bluefin tuna in the Atlantic Ocean. The program is a means of advancing research objectives to address the information needs to improve the science-based fishery management for Atlantic bluefin. This program addresses NOAA's mission goal to "Protect, Restore, and Manage the Use of Coastal and Ocean Resources through an Ecosystem Approach to Management."

Funding Availability: Approximately $600,000 may be available in fiscal year (FY) 2011 for projects. Actual funding availability for this program is contingent upon FY 2011 Congressional appropriations. The NMFS Southeast Fisheries Science Center estimates awarding approximately 5 projects that will range from $25,000 to $300,000. The expected average award is $125,000. Publication of this notice does not obligate NMFS to award any specific grant or cooperative agreement or any of the available funds.

Statutory Authority: Authority for the BTRP is provided by the following: 16 U.S.C. 661.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.472, Unallied Science Program.

Application Deadline: Applications must be received by 5 p.m., Eastern Time on September 14, 2010 to be considered for funding. Hard copy applications arriving after the closing date given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery prior to the specified closing date and time; in any event, hard copy applications received by NMFS later than two business days following the closing date will not be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov* unless an applicant does not have internet access. If an applicant does not have internet access, hard copies with original signatures may be sent to: National Marine Fisheries Service, Liaison Branch, 263 13th Avenue South, St. Petersburg, FL 33701.

Information Contacts: For questions regarding the application process, you may contact: Dax Ruiz, Liaison Branch, (727) 824–5324, or *Dax.Ruiz@noaa.gov.*

Eligibility: Eligible applicants may be institutions of higher education, nonprofits, commercial organizations, individuals, and state, local, and Indian tribal governments, agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the BTRP is to optimize research and development benefits from U.S. marine fishery resources.

Cost Sharing Requirements: Cost-sharing is not required for this program.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of Executive Order (E.O.) 12372, Intergovernmental Review of Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of E.O. 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

11. Cooperative Research Program

Summary Description: The CRP program provides opportunity to compete for financial assistance for projects which seek to increase and improve the working relationship between fisheries researchers from the NMFS, state fishery agencies, universities, and the U.S. fishing (recreational and commercial) in the Gulf of Mexico (FL, AL, MS, LA, TX), South Atlantic (FL, NC, SC, GA) and Caribbean (USVI and Puerto Rico). The program is a means of involving commercial and recreational fishermen in the collection of fundamental fisheries information in support of management and regulatory options. This program addresses NOAA's mission goal to "Protect, Restore, and Manage the Use of Coastal and Ocean Resources through an Ecosystem Approach to Management."

Funding Availability: Approximately $2.0 million may be available in fiscal year (FY) 2011 for projects. Actual funding availability for this program is contingent upon FY 2011 Congressional appropriations. The NMFS Southeast Fisheries Science Center estimates awarding approximately eight projects that will range from $25,000 to $300,000. The average award is $150,000. Publication of this notice does not obligate NMFS to award any specific grant or cooperative agreement or any of the available funds.

Statutory Authority: Authority for the CRP is provided by the following: 16 U.S.C. 661.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.454, Unallied Management Projects.

Application Deadline: Applications must be received by 5 p.m., Eastern Time on Applications must be received by 5 p.m., Eastern Time on September 14, 2010 to be considered for funding. Hard copy applications arriving after the closing date given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery prior to the specified closing date and time; in any event, hard copy applications received by NMFS later than two business days following the closing date will not be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov* unless an applicant does not have internet access. If an applicant does not have internet access, hard copies with original signatures may be sent to: National Marine Fisheries Service, Liaison Branch, 263 13th Avenue, South, St. Petersburg, FL 33701.

Information Contacts: For questions regarding the application process, you may contact: Dax Ruiz, Liaison Branch, (727) 824–5324, or *Dax.Ruiz@noaa.gov.*

Eligibility: Eligible applicants may be institutions of higher education, nonprofits, commercial organizations, individuals, and state, local, and Indian tribal governments, agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the CRP is to optimize research and development benefits from U.S. marine fishery resources. Applicants who are not commercial or recreational fisherman must have commercial or recreational fishermen participating in their project. There must be a written agreement with a fisherman describing the involvement in the project activity and the estimated dollar amount to be provided to that fisherman in compensation for their involvement.

Cost Sharing Requirements: Cost-sharing is not required for this program.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of executive Order 12372, Intergovernmental Review of Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

12. Fiscal Year 2011 Gulf of Mexico NOAA Bay Watershed Education and Training (B–WET) Program

Summary Description: The National Marine Fisheries Service (NMFS), Southeast Region, is seeking proposals under the Gulf of Mexico B–WET Program. The B–WET program is an environmental education program that promotes locally relevant, experiential learning in the K–12 environment. Funded projects provide meaningful watershed educational experiences for students, related professional development for teachers, and help to support regional education and environmental priorities in the Gulf of Mexico. This program addresses NOAA's mission goal to "Protect, Restore, and Manage the Use of Coastal and Ocean Resources Through an Ecosystem Approach to Management."

Funding Availability: It is anticipated that approximately $700,000 will be available in FY2011 for new awards. NOAA anticipates making approximately 3 to 5 new awards during FY 2011. The total amount that may be requested from NOAA shall not exceed $100,000. The minimum amount that must be requested from NOAA is $25,000. Applications requesting support from NOAA for more than $100,000 will not be considered for funding. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: Authority for the Bay Watershed Education and Training Program is provided by the following: 33 U.S.C. 893a(a) America Competes Act.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.463, Habitat Conservation.

Application Deadline: Applications must be received by 5 p.m., Eastern Time on October 14, 2010 to be considered for funding. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Applications received after the deadline will be rejected/returned to the sender without further consideration. For applications submitted through Grants.gov, a date and time receipt indication is generated by the system and will be the basis of determining timeliness. Hard copy submissions will be dated and time stamped when they are received in the NMFS office. Hard copy applications arriving after the closing dates given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery prior to the specified closing date and time; in any event, hard copy applications received by NMFS later than two business days following the closing date will not be accepted. Faxed or e-mailed copies of applications will not be accepted.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov* unless an applicant does not have internet access. If an applicant does not have internet access, hard copies with original signatures may be sent to: National Marine Fisheries Service, Liaison Branch, 263 13th Avenue, South, St. Petersburg, FL 33701.

Information Contacts: For questions regarding the application process, you may contact: Jeff Brown, Liaison Branch, (727) 824–5324, or *Jeff.Brown@noaa.gov*

Eligibility: Eligible applicants are K–12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments.

Cost Sharing Requirements: Cost-sharing is not required for this program.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of executive Order 12372, Intergovernmental Review of Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

13. Marine Fisheries Initiative (MARFIN)

Summary Description: The National Marine Fisheries Service (NMFS), Southeast Region, is seeking proposals under the Marine Fisheries Initiative Program (MARFIN), for research and development projects that optimize the use of fisheries in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia, and Florida involving the U.S. fishing industry (recreational and commercial),

including projects exploring fishery biology, resource assessment, socioeconomic assessment, fishery management and conservation, selected harvesting methods, and fish handling and processing practices. This program addresses NOAA's mission goal to "Protect, Restore, and Manage the Use of Coastal and Ocean Resources Through an Ecosystem Approach to Management."

Funding Availability: Approximately $2.0 million may be available in fiscal year (FY) 2011 for projects. This amount includes possible in-house projects. Actual funding availability for this program is contingent upon Fiscal Year 2011 Congressional appropriations. The NMFS Southeast Regional Office anticipates awarding approximately ten projects that will range from $25,000 to $175,000 per year (not to exceed $175,000 per year). The total amount that may be requested shall not exceed $175,000 for a one year project, $350,000 for a two year project, and $525,000 for a three year project. Applications exceeding these amounts will be rejected/returned without further consideration. Publication of this notice does not obligate NMFS to award any specific grant or cooperative agreement or any of the available funds. Project proposals accepted for funding with a project period over one year do not have to compete for the additional years of funding. However, funding for the additional years is contingent upon the availability of funds and satisfactory performance and is at the sole discretion of the agency.

Statutory Authority: Authority for the Marine Fisheries Initiative Program is provided by the following: 16 U.S.C. 753a.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.433, Marine Fisheries Initiative.

Application Deadline: Applications must be received by 5 p.m., Eastern Time on August 16, 2010 to be considered for funding. Hard copy applications arriving after the closing date given above will be accepted for review only if the applicant can document that the application was provided to a delivery service that guaranteed delivery prior to the specified closing date and time; in any event, hard copy applications received by NMFS later than two business days following the closing date will not be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov* unless an applicant does not have internet access. If an applicant does not have internet access, hard copies with original signatures may be sent to: National Marine Fisheries Service, Liaison Branch, 263 13th Avenue, South, St. Petersburg, FL 33701.

Information Contacts: For questions regarding the application process, you may contact: Robert Sadler, (727) 824–5324, or *Robert.Sadler@noaa.gov.*

Eligibility: Eligible applicants may be institutions of higher education, nonprofits, commercial organizations, individuals, state, local and Indian tribal governments, agencies or institutions are not eligible. Foreign governments, organizations under the jurisdiction of foreign governments, and international organizations are excluded for purposes of this solicitation since the objective of the MARFIN program is to optimize research and development benefits from U.S. marine fishery resources.

Cost Sharing Requirements: Cost-sharing is not required for this program.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of Executive Order (E.O.) 12372, Intergovernmental Review of Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of E.O. 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

National Ocean Service (NOS)

1. Fiscal Year 2011 Coastal Resilience Networks Program

Summary Description: The purpose of this notice is to solicit grant proposals from eligible organizations to implement activities that enhance resilience of coastal communities to natural hazard and climate risks. Proposals submitted in response to this announcement should provide beneficial public outcomes for coastal communities to address existing and potential future risks to coastal infrastructure, local economies, vulnerable populations, and the natural environment. Eligible funding applicants are regional authorities, nonprofit organizations, institutions of higher education, and state, territorial, and county/local governments from the U.S. Flag Pacific Islands (Hawaii, American Samoa, Guam, Commonwealth of the Northern Mariana Islands), Gulf Coast (Alabama, Gulf Coast of Florida, Louisiana, Mississippi, and Texas) and West Coast (California, Oregon, and Washington).

Funding Availability: Total anticipated funding for all awards is approximately $1,000,000 and is subject to the availability of fiscal year (FY) 2011 appropriations. The anticipated Federal funding per award (min-max) is approximately $100,000 to $350,000 per year. Multi-year proposals will be considered but limited to three years. The anticipated number of awards ranges from three (3) to six (6), approximately, and will be adjusted based on available funding.

Statutory Authority: 16 U.S.C. 1456c.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.473, Coastal Services Center.

Application Deadline: Letters of Intent (LOIs). To be considered for funding, all applicants must submit an LOI. The deadline for receipt of LOIs is 5:59 p.m. Hawaii Time on August 2, 2010. For LOIs submitted by e-mail, the date and time indication of the receiving server will be the basis of determining timeliness. Note that receipt may be delayed if e-mail servers are not functioning efficiently. Applicants submitting multiple LOIs must use a unique project title for each LOI and may send all LOIs in one e-mail or in multiple e-mails. For hard copy submission of LOIs, they will be date and time stamped when they are received. LOIs may not be considered if received by the Pacific Services Center after 5:59 p.m. Hawaii Time on August 2, 2010.

Full Proposals. Full proposals must be received no later than 5:59 p.m. Hawaii Time, September 15, 2010. For proposals submitted through Grants.gov, a date and time receipt indication by Grants.gov will be the basis of determining timeliness. If an applicant does not have Internet access, one set of originals (signed) and one electronic copy on CD of the proposals and related forms should be mailed to NOAA Pacific Services Center, Stephanie Bennett, Suite 1550, 737 Bishop St., Honolulu, Hawaii, 96813. Hard copy applications will be date and time stamped when they are received. Full proposals received after the submission deadline will not be reviewed or considered. Applicants may not submit full proposals unless they submitted an LOI. The final decision to submit a full proposal will be made by the principle

investigator. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Letters of intent (LOI) may be sent via e-mail to *nos.psc.crest@noaa.gov.* Insert FY 2011 Adapting to Coastal Risks as the subject line of the e-mail. If hard copy LOIs are submitted, an original and electronic copy on CD should be sent to NOAA Pacific Services Center, Stephanie Bennett, Suite 1550, 737 Bishop St, Honolulu, Hawaii, 96813. Full proposal application packages, including any letters of support, should be submitted through Grants.gov APPLY. If an applicant does not have Internet access, one set of originals (signed) and one electronic copy on CD of the proposals and related forms should be mailed to NOAA Pacific Services Center, Stephanie Bennett, Suite 1550, 737 Bishop St., Honolulu, Hawaii, 96813.

Information Contacts: For administrative questions, contact Stephanie Bennett, NOAA Pacific Services Center: Suite 1550, 737 Bishop St., Honolulu, Hawaii, 96813; or contact her at 808–532–3200 or via e-mail at *Stephanie.Bennett@noaa.gov* . For technical questions regarding this announcement, contact Adam Stein, NOAA Pacific Services Center: Suite 1550, 737 Bishop St., Honolulu, Hawaii, 96813, or by phone at 808–532–3962 or by fax 808–532–3224, or via e-mail at *Adam.Stein@noaa.gov.*

Eligibility: Eligible funding applicants are, regional authorities, nonprofit organizations, institutions of higher education, Indian Tribal governments, and state, territorial, and county/local governments from the U.S. Flag Pacific Islands (Hawaii, American Samoa, Guam, Commonwealth of the Northern Mariana Islands), Gulf Coast (Alabama, Gulf Coast of Florida, Louisiana, Mississippi, and Texas) and West Coast (California, Oregon, Washington). The following types of organizations are encouraged to either submit proposals or participate in proposal development and provide in-kind services: land use authorities, port authorities, housing authorities, public works authorities, transportation authorities, critical facility authorities, emergency management authorities, community service organizations, stewardship organizations, and conservation organizations. Federal agencies are not allowed to receive funds under this announcement but may serve as collaborative project partners and may contribute services in kind.

Cost Sharing Requirements: No cost sharing or matching is required under this program.

Intergovernmental Review: Funding applications under the Center are subject to Executive Order 12372, Intergovernmental Review of Programs. It is the state agency's responsibility to contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under EO 12372. To assist the applicant, the names and addresses of the SPOCs are listed on the Office of Management and Budget's Web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

2. Fiscal Year 2011 NOAA Hawaii Program Bay Watershed Education and Training (B-WET)

Summary Description: This Federal funding opportunity meets NOAA's mission goal to protect, restore, and manage the use of coastal and ocean resources through ecosystem-based management. The purpose for this financial assistance is to support NOAA's mission goal by developing a well-informed citizenry involved in decision-making that positively impacts our coastal, marine, and watershed ecosystems in the State of Hawaii. This opportunity is a competitively based grant that provides funding to assist in the development of new programs, encourage innovative partnerships among environmental education programs, and support geographically targeted programs to advance environmental education efforts that complement national and state school requirements. The B–WET Hawaii Program is an environmental education program that promotes locally relevant experiential learning in the K–12 environment on priority topics, such as understanding climate change, earth sciences, and community resilience to hazards. Funded projects provide meaningful watershed educational experiences for students and related professional development for teachers, and support regional education and environmental priorities.

Funding Availability: Total anticipated funding for all awards is approximately $1,000,000 and is subject to the availability of fiscal year 2011 appropriations. Multiple awards are anticipated from this announcement. The minimum federal assistance request is $10, 000 and maximum request is $100,000. The anticipated number of awards ranges from five (5) to fifteen (15) and will be adjusted based on available funding. Applications requesting federal support from NOAA of more than $100,000 will not be considered for review or funding. Applicants are hereby given notice that funds have not yet been appropriated for this program. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: 15 U.S.C. 1540; 33 U.S.C. 893a(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.473, Coastal Services Center.

Application Deadline: Letters of Intent (LOIs). To be considered for funding, all applicants must submit an LOI. The deadline for receipt of LOIs is 5:59 p.m. Hawaii Time on August 2, 2010. For LOIs submitted by e-mail, the date and time indication of the receiving server will be the basis of determining timeliness. Note that receipt may be delayed if e-mail servers are not functioning efficiently. Applicants submitting multiple LOIs must use a unique project title for each LOI and may send all LOIs in one e-mail or in multiple e-mails. For hard copy submission of LOIs, they will be date and time stamped when they are received. LOIs may not be considered if received by the Pacific Services Center after 5:59 p.m. Hawaii Time on August 2, 2010.

Full Proposals must be received by *http://www.grants.gov,* postmarked, or provided to a delivery service by 5:59 Hawaii Time on August 2, 2010. Use of U.S. mail or another delivery service must be documented with a receipt. No facsimile or electronic mail applications will be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Applicants may not submit full proposals unless they submitted an LOI.

Address for Submitting Proposals: Letters of intent (LOI) may be sent via e-mail to *nos.psc.bwethawaii@noaa.gov.* Insert FY 2011 B–WET Hawaii as the subject line of the e-mail. If hard copy LOIs is submitted, an original and electronic copy on CD should be sent to NOAA Pacific Services Center, Stephanie Bennett, Suite 1550, 737 Bishop St., Honolulu, Hawaii, 96813. Full proposal application packages, including any letters of support, should be submitted through Grants.gov APPLY. If an applicant does not have Internet access, one set of originals (signed) and one electronic copy on CD

of the proposals and related forms should be mailed to NOAA Pacific Services Center, Stephanie Bennett, Suite 1550, 737 Bishop St., Honolulu, Hawaii, 96813.

Information Contacts: For administrative and technical questions, contact Stephanie Bennett, Program Officer at NOAA Pacific Services Center, 737 Bishop Street, Suite 1550, Honolulu, Hawaii 96813 or by phone at (808) 522–7481, or via e-mail at *Stephanie.Bennett@noaa.gov.*

Eligibility: Eligible applicants are K–12 public and independent schools and school systems, institutions of higher education, commercial and nonprofit organizations, state or local government agencies, and Indian tribal governments. Individual applicants and federal agencies are not eligible. Federal agencies are not allowed to receive funds under this announcement but may serve as collaborative project partners. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically Black Colleges and Universities, Hispanic-serving institutions, tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that service underserved areas.

Cost Sharing Requirements: No cost sharing is required under this program, however, the NOAA Pacific Services Center strongly encourages applicants to share as much of the costs of the award as possible. Funds from other sources may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process.

Intergovernmental Review: Funding applications under the Center are subject to Executive Order 12372, Intergovernmental Review of Programs. It is the state agency's responsibility to contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under EO 12372. To assist the applicant, the names and addresses of the SPOCs are listed on the Office of Management and Budget's Web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

3. Fiscal Year 2011 Implementation of the U.S. Integrated Ocean Observing System (IOOS)

Summary Description: On behalf of the National Oceanographic Partnership Program (NOPP), NOAA and its partner agencies—the National Aeronautics and Space Administration (NASA), the Office of Naval Research (ONR), and the U.S. Department of Energy (DOE)—are requesting proposals for coordinated regional efforts that further the U.S. Integrated Ocean Observing System (IOOS). In addition, the agencies have identified several related topic areas for which they are requesting proposals, to include verification and validation of observing technologies for studying and monitoring coastal and ocean environments; improved and routine production, stewardship, and coastal application of the Group for High Resolution Sea Surface Temperature (GHRSST) data; and study of marine animal interactions with offshore renewable energy devices. Applicants are invited to submit proposals for one or more of these topic areas, which are described in detail in the FFO announcement. It is recommended that applicants to multiple topic areas submit a separate application for each, and that each application list other topic areas for which the applicant is making a submission. For single topic proposals or if multiple topics are included in a single proposal, ensure that the topic areas are clearly identified and that all required information is presented such that merit reviewers can associate proposal elements (project description, partners, budgets) with specific topic areas. Multiple awards are anticipated, subject to the availability of funds, in amounts ranging from $200,000 to $4,000,000 per year for up to five years.

Funding Availability: Total anticipated funding for all awards is subject to the availability of appropriations. NOPP, through its partner agencies, expects to fund multiple awards (anywhere from 10 to 21 awards), in multiple topic areas, in amounts ranging from $200,000 to $4,000,000 per year, contingent on availability of funds each year.

Statutory Authority: Statutory authority for this program is provided under the Integrated Coastal and Ocean Observation System Act of 2009, 33 U.S.C 3601–3610.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.012, Integrated Ocean Observing System (IOOS).

Application Deadline: Full Proposals must be received by *http://www.grants.gov,* postmarked, or provided to a delivery service by 5 p.m. (EDT) on October 1, 2010. Use of U.S. mail or another delivery service must be documented with a receipt. No facsimile or electronic mail applications will be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Applications received after that time will not be reviewed or considered.

Address for Submitting Proposals: Full proposal application packages should be submitted through Grants.gov. The standard NOAA funding application package is available at *http://www.grants.gov.* Please be advised that potential funding applicants must register with Grants.gov before any application materials can be submitted. An organization's one time registration process may take up to three weeks to complete so please allow sufficient time to ensure applications are submitted before the closing date. The Grants.gov site contains directions for submitting an application, the application package (forms), and is also where the completed application is submitted. If an applicant does not have Internet access, the applicant must submit through surface mail one set of originals (signed) and two copies of the proposals and related forms to the NOAA IOOS Program at the following address: NOAA IOOS; 1100 Wayne Avenue, Suite 1225, Silver Spring, Maryland 20910. Attention Regina Evans. No e-mail or fax copies will be accepted.

Information Contacts: For questions regarding this announcement, contact: Regina Evans, NOAA IOOS; 1100 Wayne Avenue, Suite 1225, Silver Spring, Maryland 20910; or by phone at 301–427–2422, or by fax 301–427–2073, or via e-mail at *Regina.Evans@noaa.gov.*

Eligibility: Eligible funding applicants for this competition are institutions of higher education, non-profit and for-profit organizations, and state, local and Indian tribal governments. Federal agencies or institutions and foreign governments are not allowed to be the primary recipient of awards under this announcement, but are encouraged to partner with applicants when appropriate. If requesting funds under this award, federal partners must identify the relevant statutory authorities that will allow for the receipt of funds. For all NOPP-funded activities, team efforts are required among at least two of the following three sectors: Academia, industry (including Non-Governmental Organizations or NGOs), and government (including State and Local). If applicants have partners who would receive funds, the lead grantee will be expected to provide funds using subcontracts or other appropriate mechanisms to the project partners. If a Federal partner is a NOAA office, the funds will be transferred internally. If the partner is a Federal agency other than NOAA, the grantee and the Federal

partner must use interagency agreements or otherwise take steps relevant to their organizations to ensure that funds can be transferred by the primary grantee and received by the Federal partner. Before non-NOAA applicants may be funded, they must demonstrate that they have legal authority to accept funds in excess of their appropriation. Because of the nature of this competition, the Economy Act (31 U.S.C. 1535) is not an appropriate authority. Applicants should note that federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any employee unless specifically approved in the terms of the award. A Special Award Condition will be required if invitational travel for employees is included in a proposal.

Cost Sharing Requirements: There is no requirement for cost sharing. NOPP appreciates that applicants may seek additional support (in-kind or cash) for development of regional coastal ocean observing systems under the umbrella of IOOS. While a cost share of funding is not required, applicants are requested to provide a description of complementary funding and in-kind contributions from project partners. In general, the IOOS Program will support the use of IOOS funds and activities towards meeting the shared goals of IOOS and state and local partners over the course of a funded project. This support is based on the assumption that the work plan for which the Federal funds were awarded remains unchanged.

Intergovernmental Review: Funding applications that include State agencies as funded partners are subject to Executive Order 12372, "Intergovernmental Review of Programs", which relies on State and local processes for the coordination and review of proposed financial assistance and direct development. It is the state agency's responsibility to contact their state's Single Point of Contact (SPCO) to find out about and comply with the state's process under EO 12372. To assist the applicant, the names and addresses of the SPOCs are listed on the Office of Management and Budget Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

4. Coral Reef Conservation Program International Coral Reef Conservation Cooperative Agreements

Summary Description: The NOAA Coral Reef Conservation Grant Program (Grant Program), as authorized under the Coral Reef Conservation Act of 2000, provides matching grants of financial assistance for international coral reef conservation cooperative agreements. The Grant Program solicits proposals that will support the newly published NOAA Coral Reef Conservation Program International Strategy 2010–2015 (International Strategy). This constitutes a major strategic shift from support provided in previous years. The International Strategy focuses on supporting existing regional efforts in four priority regions based on their interconnections with U.S. reef ecosystems and existing initiatives and partnerships. Three of these four priority regions will be considered under this Funding Opportunity: the Wider Caribbean, Micronesia, and the Southwest Pacific.

Applicants should have a working relationship and demonstrated experience working with the local government authorities that manage the marine areas addressed. Applicants for this funding opportunity must have experience conducting regional coordination work in two or more countries (except independent Samoa—see Section I.B of the FFO announcement) within a priority region (as described below) with other local partners and the local/regional/national government(s) with jurisdiction over the marine sites listed in the pre- and final applications. Priority will be considered for those competitive pre- and final applications that propose working effectively in more than two countries (except independent Samoa—see Section I.B of the FFO announcement). Applicants must describe their past experience in the selected sites or countries and whether there are any environmental conservation agreements in place with the local partners and government authorities. Pre- and final applications that propose work across multiple regions (for ex., Micronesia and the Southwest Pacific) are eligible to apply; in these instances, the application must demonstrate that the two or more countries in which work is proposed can be grouped legitimately based on existing regional networks, agreements, and/or existing coral reef conservation activities. Specific country eligibility is limited to: 1. The Non-US countries and territories of the Wider Caribbean as defined by the Cartagena Convention: Antigua & Barbuda, Bahamas, Barbados, Belize, Colombia, Costa Rica, Dominica, Dominican Republic, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St. Kitts and Nevis, St. Lucia, St. Vincent & Grenadines, Suriname, Trinidad & Tobago, Venezuela, France Caribbean Territories, Netherlands Caribbean Territories and United Kingdom Caribbean Territories 2. The Non-US Micronesia region including independent countries under compacts of free association with the United States: the Republic of the Marshall Islands; the Republic of Palau; and the Federated States of Micronesia as well as the independent nations of Kiribati and Nauru. 3. The Southwest Pacific: independent Samoa, Fiji, Vanuatu, Tonga and Tuvalu.

Funding Availability: NOAA announces the availability of approximately $1,000,000 in FY 2011 to support International Coral Reef Conservation Cooperative Agreements under the Grant Program. Distribution of awards may be in the following approximate ranges according to funding availability: Approximately $400,000 for the first year of one 36-month cooperative agreement in Micronesia. Approximately $200,000 for one 12-month cooperative agreement in the Wider Caribbean. Approximately $200,000 for one 12-month cooperative agreement in independent Samoa and Southwest Pacific. These funds will be used to support financial assistance awards that meet the criteria listed in section I. B. Program Priorities of the FFO announcement. Applicants that are invited to submit a final application may be requested to revise award objectives, work plans, or budgets prior to submittal of the final application. The amount of funds to be awarded and the final scope of activities will be determined in pre-award negotiations among the applicant, NOAA Grants Management Division (GMD) and relevant NOAA CRCP staff. Funding will be subject to the availability of Federal appropriations. Applicants should not begin a project in expectation of funds under this Grant Program.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq*).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.482, Habitat Conservation.

Application Deadline: Pre-applications must be received or postmarked by 5 p.m., U.S. Eastern Standard Time, on Monday, November 8, 2010. Final applications are by invitation only and must be received through *http://www.grants.gov* or postmarked by 5 p.m. U.S. Eastern Standard Time, on Monday, February 21, 2011. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business

days after submission. Please consider this process in developing your submission timeline. Paper applicants should allow adequate time to ensure a paper application will be received on time, taking into account that guaranteed overnight carriers are not always able to fulfill their guarantees.

Address for Submitting Proposals:

Pre-application Submission Information: Pre-applications may be submitted by surface mail, fax or e-mail. If submitting by e-mail, please send pre-applications to *coral.grants@noaa.gov.* Acceptable electronic formats for narratives, attachments, and images are limited to Adobe Acrobat (.PDF), or Microsoft Word files. The fax number for pre-applications only is: 301–713–4263. If submitting by surface mail, a paper pre-application must be submitted to: Scot Frew, NOAA/NOS International Program Office, 1315 East West Highway, 5th Floor, N/IP, Room 5826, Silver Spring, MD 20910. All pre-applications submitted by surface mail must include a CD that contains an electronic copy of the pre-application. Financial assistance forms are not required to be submitted with the pre-application.

Please note that late pre-applications cannot be considered under any circumstances including e-mail transmission malfunctions. Electronic files of pre-applications must arrive without viruses. If attachments cannot be opened due to a virus or they arrive with a virus, the pre-applications will be disqualified. You may call us at 301–713–3078 x218 before the deadline to ensure that your pre-application arrived.

Final Application Submission Information: Final applications will be accepted only from those applicants who are invited to submit a final application. Applicants may be required to make modifications or revisions to the project and budget narratives and must submit these narratives with a financial assistance award application package (federal forms described below). Only applicants who submitted pre-applications by the deadline will be eligible to be considered for invitations to submit a final application by 5 p.m., U.S. Eastern Standard Time, on February 21, 2011. The applicant must submit the final application (narratives, federal forms, and supporting documentation) through *http://www.grants.gov,* unless an applicant does not have internet access. If an applicant does not have internet access, hard copies with original signatures and scanned copies on a CD must be postmarked by 5 p.m., U.S. Eastern Standard Time, on February 21, 2011 and sent to: Scot Frew, NOAA/NOS International Program Office, 1315 East West Highway, 5th Floor, N/IP, Room 5826, Silver Spring, MD 20910. Late final applications by any method cannot be accepted under any circumstances.

Information Contacts: Technical point of contact for International Coral Reef Conservation is Scot Frew, NOAA/NOS International Program Office, 301–713–3078, extension 220, e-mail at *scot.frew@noaa.gov* or address at: NOAA/NOS/IPO, 1315 East West Highway, Room 5826, Silver Spring, MD 20910.

Eligibility: Eligible applicants are limited to the following categories: institutions of higher education, U.S. and international non-profit organizations, non-US government authorities, and commercial organizations. Individuals and U.S. federal agencies are not eligible.

Cost Sharing Requirements: All awards of financial assistance provided by the NOAA Coral Reef Conservation Grant Program (Grant Program) under the authority of the Coral Reef Conservation Act (Act) of 2000 are subject to the matching fund requirements described below. As per section 6403(b)(1) of the Act, funds for any coral conservation project funded under this Grant Program may not exceed 50 percent of the total cost of the award. Therefore, any coral conservation project under this Grant Program requires a 1:1 contribution of matching funds. Matching funds can come from a variety of public and private sources and can include in-kind goods and services such as private boat use and volunteer labor. sources cannot be considered as matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are permitted to combine contributions from multiple non-federal partners in order to meet the 1:1 match requirement, as long as such contributions are not being used to match any funds received under another award. Applicants must specify in their proposal the source(s) of match and may be asked to provide letters of commitment to confirm stated match contributions. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Applicants should be prepared to carefully document matching contributions for each project selected for funding. As per section 6403(b)(2) of the Coral Reef Conservation Act of 2000, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: 1. No reasonable means are available through which an applicant can meet the matching requirement, and, 2. The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver including attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match, and any other extenuating circumstances preventing the availability of match. Match waiver requests including the appropriate justification should be submitted as part of the final application package. **Please Note:** Eligible applicants choosing to apply 48 U.S.C. 1469a(d) should note the use of the waiver and the total amount of funds requested to be waived in the matching funds section of their respective pre- and final applications.

Intergovernmental Review: Applications under the International Coral Reef Conservation Cooperative Agreements are not subject to Executive Order 12372, Intergovernmental Review of Programs.

5. Fiscal Year 2011 Regional Ecosystem Prediction Program (REPP) Concept of Operations for Models to Support Regional Coastal Ecosystem Management

Summary Description: National Centers for Coastal Ocean Centers (NCCOS)/Center for Sponsored Coastal Ocean Research (CSCOR) is soliciting proposals for a project of 2 years in duration to develop a concept of operations for scenario-type forecasts used for ecosystem-based management of coastal ecosystems. Note that for this opportunity, the term coastal includes Great Lakes systems. Funding is contingent upon the availability of Fiscal Year 2011 appropriations. It is anticipated that final recommendations for funding under this announcement will be made by early Calendar Year 2011, and that any project funded under this announcement will have an August 1, 2011 start date. One project is expected to be supported for 2 years, with an annual budget less than $250K. Electronic Access: Background information about the NCCOS/CSCOR efforts can be found at *http://www.cop.noaa.gov.* Proposals should be submitted through Grants.gov *(http://www.grants.gov.)*

Funding Availability: Funding is contingent upon availability of appropriations. NOAA is committed to continual improvement of the grants process and accelerating the award of

financial assistance to qualified recipients in accordance with the recommendations of the Business Process Reengineering Team. In order to fulfill these responsibilities, this solicitation announces that award amounts will be determined by the proposals and available funds. Award amounts will not exceed $250,000 per project per year with project durations of 2 years. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. Publication of this notice does not obligate any agency to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all laws and agency policies, regulations and procedures applicable to financial assistance awards.

Statutory Authority: 16 U.S.C. 1456c.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.478, Center for Sponsored Coastal Ocean Research—Coastal Ocean Program.

Application Deadline: Full proposals must be received and validated by Grants.gov on or before 3 p.m. EST on October 21, 2010. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. If an applicant does not have Internet access, hard copy proposals will be accepted, and date recorded when they are received in the NCCOS/CSCOR program office. Electronic or hard copies received after the deadline will not be considered, and hard copy applications will be returned to the sender. Note that late-arriving hard copy applications will be accepted for review only if the applicant can document that: (1) The application was provided to a delivery service with delivery to the National Oceanic & Atmospheric Administration, 1305 East-West Highway, SSMC4, Mail Station 8240 8th Floor, Silver Spring, Maryland 20910–3282; (2) delivery was guaranteed by 3 p.m., Eastern Time on the specified closing date; and, (3) the proposal was received in the NCCOS/CSCOR office by 3 p.m., Eastern Time no later than 2 business days following the closing date. Investigators submitting proposals electronically are advised to submit well in advance of the deadline.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov,* unless an applicant does not have Internet access. If an applicant does not have internet access, hard copies with original signatures may be sent to: Laurie Golden National Oceanic and Atmospheric Administration 1305 East West Highway Mail Station 8240, Silver Spring, MD 20910

Information Contacts: Technical Information: Beth Turner, NCCOS/CSCOR Program Manager, 603/862–4680; e-mail *Elizabeth.turner@noaa.gov* Business Management Information: Laurie Golden, NCCOS/CSCOR Grants Administrator, 301–713–3338/ext 151, e-mail: *Laurie.Golden@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, commercial organizations U.S. Territories and agencies that possess the statutory authority to receive financial assistance. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the CSCOR programs. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions Please note that NCCOS/CSCOR will not fund any Full Time Employee (FTE) salaries, but will fund travel, equipment, supplies, and contractual personnel costs associated with the proposed work. Researchers must be employees of an eligible entity listed above; and proposals must be submitted through that entity. researchers should comply with their institutional requirements for proposal submission. Non-NOAA applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research. Foreign researchers may apply as subawards through an eligible US entity. Researchers affiliated with NOAA–University Cooperative/Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs. It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a) (2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with implications as that term is defined in Executive Order 13132.

6. Fiscal Year 2011 Regional Ecosystem Prediction Program (REPP) Pulley Ridge

Summary Description: National Centers for Coastal Ocean Centers (NCCOS)/Center for Sponsored Coastal Ocean Research (CSCOR), in partnership with the NOAA Office of National Marine Sanctuaries, Office of Ocean Exploration and Research, National Marine Fisheries Service Southeast Regional Office, and Gulf of Mexico Regional Collaboration Team, is soliciting proposals under the Regional Ecosystem Prediction Program for a project of up to 5 years in duration to conduct research to improve the understanding of population connectivity of key species between the southernmost portion of Pulley Ridge on the West Florida continental shelf, and downstream to the coral ecosystems of the Florida Keys. Coral ecosystems upstream of Pulley Ridge can be considered if directly relevant to population connectivity or to provide context to the overall study. This information will be used to improve the ability of Gulf of Mexico resource managers to proactively develop strategies to manage and protect poorly understood mesophotic coral ecosystems, including coastal and marine spatial planning and the siting of marine protected areas and marine protected area networks for shallow and mesophotic coral ecosystems. Funding is contingent upon the availability of Fiscal Year 2011 appropriations. It is anticipated that final recommendations for funding under this announcement will be made by early Calendar Year 2011, and that any project funded under this announcement will have a September 1, 2011 start date. One project is expected to be supported for

up to 5 years, with an annual budget up to $1,000,000. Electronic Access: Background information about the NCCOS/CSCOR efforts can be found at *http://www.cop.noaa.gov.* Proposals should be submitted through Grants.gov *(http://www.grants.gov.)*

Funding Availability: Funding is contingent upon availability of appropriations. NOAA is committed to continual improvement of the grants process and accelerating the award of financial assistance to qualified recipients in accordance with the recommendations of the Business Process Reengineering Team. The award amount will not exceed $1,000,000 per year of up to 5 years. Applicants are hereby given notice that funds for this announcement and the use of the MolaMola Automated Underwater Vessel (AUV) have not yet been appropriated for this program. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. Publication of this notice does not obligate any agency to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all laws and agency policies, regulations and procedures applicable to financial assistance awards.

Statutory Authority: 33 U.S.C. 1442.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.478, Center for Sponsored Coastal Ocean Research—Coastal Ocean Program.

Application Deadline: Full proposals must be received and validated by Grants.gov on or before 3 p.m. EST on October 21, 2010. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. If an applicant does not have Internet access, hard copy proposals will be accepted, and date recorded when they are received in the NCCOS/CSCOR program office. Electronic or hard copies received after the deadline will not be considered, and hard copy applications will be returned to the sender. Note that late-arriving hard copy applications will be accepted for review only if the applicant can document that: (1) The application was provided to a delivery service with delivery to the National Oceanic & Atmospheric Administration, 1305 East-West Highway, SSMC4, Mail Station 8240 8th Floor, Silver Spring, Maryland 20910–3282; (2) delivery was guaranteed by 3 p.m., Eastern Time on the specified closing date; and, (3) the proposal was received in the NCCOS/CSCOR office by 3 p.m., Eastern Time no later than 2 business days following the closing date. Investigators submitting proposals electronically are advised to submit well in advance of the deadline.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov,* unless an applicant does not have internet access. If an applicant does not have internet access, hard copies with original signatures may be sent to: Laura J. Golden National Oceanic and Atmospheric Administration Center for Sponsored Coastal Ocean Research 1305 East West Highway Routing Code: N/SCI2 Building SSMC4, Room 8240 Silver Spring, MD 20910.

Information Contacts: Technical Information. Kimberly Puglise, NCCOS/CSCOR Program Manager, 301–713–3338/ext 140, internet: *Kimberly.Puglise@noaa.gov.* Business Management Information. Laurie Golden, NCCOS/CSCOR Grants Administrator, 301–713–3338/ext 151, Internet: *Laurie.Golden@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, commercial organizations, U.S. Territories, and agencies that possess the statutory authority to receive financial assistance. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the CSCOR programs. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions Please note that NCCOS/CSCOR will not fund any Full Time Employee (FTE) salaries, but will fund travel, equipment, supplies, and contractual personnel costs associated with the proposed work. Researchers must be employees of an eligible entity listed above; and proposals must be submitted through that entity. researchers should comply with their institutional requirements for proposal submission. Non-NOAA applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research. Foreign researchers may apply as subawards through an eligible U.S. entity. Researchers affiliated with NOAA–University Cooperative/Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Cost Sharing Requirements: None required.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs. It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a) (2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with implications as that term is defined in Executive Order 13132.

7. Harmful Algal Bloom Programs

Summary Description: National Centers for Coastal Ocean Centers (NCCOS)/Center for Sponsored Coastal Ocean Research (CSCOR) is soliciting proposals for the Ecology and Oceanography of Harmful Algal Blooms Program, the Monitoring and Event Response for Harmful Algal Blooms Program and the Prevention, Control and Mitigation of Harmful Algal Blooms Program. Background information about the NCCOS/CSCOR efforts can be found at *http://www.cop.noaa.gov.* Proposals should be submitted through Grants.gov *http://www.grants.gov/.*

Funding Availability: Funding is contingent upon availability of appropriations. NOAA is committed to continual improvement of the grants process and accelerating the award of financial assistance to qualified recipients in accordance with the recommendations of the Business Process Reengineering Team. In order to fulfill these responsibilities, this solicitation announces that award amounts will be determined by the proposals and available funds. The following program-specific guidelines for budget requests are provided: (1) Ecology and Oceanography of Harmful

Algal Blooms (ECOHAB) Targeted: $100,000–$250,000/yr not including ship time; (2) Monitoring and Event Response for Harmful Algal Blooms (MERHAB) Targeted: $100,000–$250,000/yr not including ship time; (3) ECOHAB Regional: $1,000,000/yr, not including ship time; (4) MERHAB Regional: $600,000/yr, not including ship time; and (5) Prevention, Control, and Mitigation of Harmful Algal Blooms (PCM HAB): $100,000–$500,000/yr, not including ship time. Budget requests that exceed the guidelines will need to be specifically justified. Project periods may be modified after review due to the availability of appropriations. It is anticipated that up to 1 or 2 regional-scale projects and up to 8 targeted projects will be funded. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is cancelled because of other agency priorities. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving an award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. Publication of this notice does not obligate any agency to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all laws and agency policies, regulations and procedures applicable to financial assistance awards.

Statutory Authority: 1. ECOHAB: 16 U.S.C. 1456C; 33 U.S.C. 883d; 33 U.S.C. 1442; 15 U.S.C. 1540; and/or Pub. L. 105–383, as amended by 108–456. 2. MERHAB: 16 U.S.C. 1456C; 33 U.S.C. 883d; 33 U.S.C. 1442; 15 U.S.C. 1540; and/or Pub. L. 105–383, as amended by 108–456. 3. PCM HAB: 16 U.S.C. 1456C; 33 U.S.C. 883d; 33 U.S.C. 1442; 15 U.S.C. 1540; and/or Pub. L. 105–383, as amended by 108–456.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.478, Center for Sponsored Coastal Ocean Research—Coastal Ocean Program.

Application Deadline: LOIs for all programs must be received at the CSCOR Program Office by 5 p.m. Eastern Time, August 16, 2010. Applicants who have not received a response to their LOI within three weeks should contact Mary Payne at *Mary.Payne@noaa.gov.* Applicants may not submit full applications if they do not submit a LOI. The deadline for receipt of full proposals for all programs at the NCCOS/CSCOR office is 3 p.m., Eastern Time on October 14, 2010. These deadlines are for hand delivered or electronically submitted proposals. Note that late-arriving hard copy applications will be accepted for review only if the applicant can document that: (1) The application was provided to a delivery service with delivery to the National Oceanic & Atmospheric Administration, 1305 East-West Highway, SSMC4, Mail Station 8240, 8th Floor, Silver Spring, Maryland 20910–3282; (2) delivery was guaranteed by 3 p.m., Eastern Time on the specified closing date; and, (3) the proposal was received in the NCCOS/CSCOR office by 3 p.m., Eastern Time no later than 2 business days following the closing date. Investigators submitting proposals electronically are advised to submit well in advance of the deadline. *Important:* All applicants, both electronic and paper, should be aware that adequate time must be factored into applicant schedules for delivery of the application. Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Paper applicants should allow adequate time to ensure a paper application will be received on time, taking into account that guaranteed overnight carriers are not always able to fulfill their guarantees.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov,* unless an applicant does not have Internet access. If an applicant does not have Internet access, hard copies with original signatures may be sent to: National Oceanic and Atmospheric Administration, Center for Sponsored Coastal Ocean Research, 1305 East-West Highway, Mail Station 8240, 8th Floor, Silver Spring, MD 20910.

Information Contacts: Technical Information: Quay Dortch, ECOHAB Coordinator, 301–713–3338 extension 157, e-mail: *Quay.Dortch@noaa.gov.* Marc Suddleson, MERHAB Program Manager, 301–713–3338 extension 162, e-mail: *Marc.Suddleson@noaa.gov.* Quay Dortch, PCM Acting Program Manager, 301–713–3338 extension 157, e-mail: *Quay.Dortch@noaa.gov.* Business Management Information: Laurie Golden, NCCOS/CSCOR Grants Administrator, 301–713–3338 extension 151, e-mail: *Laurie.Golden@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, commercial organizations, U.S. Territories and agencies that possess the statutory authority to receive financial assistance. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the CSCOR programs. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions. Please note that NCCOS/CSCOR will not fund any Full Time Employee (FTE) salaries, but will fund travel, equipment, supplies, and contractual personnel costs associated with the proposed work. Researchers must be employees of an eligible entity listed above; and proposals must be submitted through that entity. Researchers should comply with their institutional requirements for proposal submission. Non-NOAA applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research. Foreign researchers may apply as subawards through an eligible U.S. entity. Researchers affiliated with NOAA–University Cooperative/Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs. It has been determined that this notice is not significant for purposes of Executive Order 12866. Pursuant to 5 U.S.C. 553(a)(2), an opportunity for public notice and comment is not required for this notice relating to grants, benefits and contracts. Because this notice is exempt from the notice and comment provisions of the Administrative Procedure Act, a Regulatory Flexibility Analysis is not required, and none has been prepared. It has been determined that this notice does not contain policies with implications as that term is defined in Executive Order 13132.

8. Fiscal Year 2011 NOAA California Bay Watershed Education and Training Program

Summary Description: The California B–WET grant program is a competitively based program that supports existing

environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the San Francisco Bay, Monterey Bay, and Santa Barbara Channel watersheds. Projects support organizations that provide students "meaningful" watershed educational experiences and teachers professional development opportunities in the area of environmental education.

Funding Availability: This solicitation announces that approximately $2,000,000 may be available in FY 2011 in award amounts to be determined by the proposals and available funds. About $850,000 will be made available to the San Francisco Bay area, about $700,000 will be made available to the Monterey Bay area, and about $450,000 will be made available to the Santa Barbara area. The NOAA Office of National Marine Sanctuaries anticipates that approximately 35 grants will be awarded with these funds. The NOAA Office of National Marine Sanctuaries anticipates that typical project awards for the identified priority areas will range from $30,000 to $60,000. Proposals will be considered for funds greater than the specified ranges if there is sufficient demonstration that the project requires additional funds and/or if the proposal includes multiple partners. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: Under 33 U.S.C. 893a(a), the Administrator of the National Oceanic and Atmospheric Administration is authorized to conduct, develop, support, promote, and coordinate formal and informal educational activities at all levels to enhance public awareness and understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders, including underrepresented groups in ocean and atmospheric science and policy careers. In conducting those activities, the Administrator shall build upon the educational programs and activities of the agency.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.429, Marine Sanctuary Program.

Application Deadline: Full Proposals must be received by *http://www.grants.gov,* postmarked, or provided to a delivery service by 5 p.m. Pacific Standard Time on October 5, 2010. Use of U.S. mail or another delivery service must be documented with a receipt. No facsimile or electronic mail applications will be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Both hard copy and electronic proposals received after that time will not be considered for funding and will be returned to the applicant.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov,* unless an applicant does not have Internet access. If an applicant does not have Internet access, hard copies with original signatures may be sent to: Office of National Marine Sanctuaries, CA B–WET Program, Attention Seaberry Nachbar, 299 Foam Street, Monterey, CA 93940.

Information Contacts: Please visit the National Marine Sanctuaries CA B–WET Web site at: *http://sanctuaries.noaa.gov/news/bwet/welcome.html)* or contact Seaberry Nachbar, Monterey Bay National Marine Sanctuary office; 299 Foam Street, Monterey, CA 93940, or by phone at 831–647–4201, or fax to 831–647–4250, or via Internet at *seaberry.nachbar@noaa.gov.*

Eligibility: Eligible applicants are K-through-12 public and independent schools and school systems, institutions of higher education, nonprofit organizations, state or local government agencies, and Indian tribal governments. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that service undeserved areas. The NOAA Office of National Marine Sanctuaries encourages proposals involving any of the above institutions.

Cost Sharing Requirements: No cost sharing is required under this program; however, the NOAA Office of National Marine Sanctuaries strongly encourages applicants applying for either area of interest to share as much of the costs of the award as possible. Funds from other awards may not be considered matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs.

9. Fiscal Year 2011 NOAA Pacific Northwest Bay Watershed Education and Training (B–WET) Program

Summary Description: NOAA B–WET is an environmental education program that promotes locally relevant, experiential learning in the K–12 environment. Funded projects provide meaningful watershed educational experiences for students, related professional development for teachers, and helps to support regional education and environmental priorities in the Pacific Northwest.

Funding Availability: It is anticipated that up to approximately $1,000,000 will be available in FY2011 for all Pacific Northwest projects. NOAA anticipates making up to approximately 13 new awards during FY 2011. NOAA will consider only projects with duration of one year. The total amount that may be requested from NOAA shall not exceed $60,000 per year. The minimum amount that must be requested from NOAA for all years is $25,000. Applications requesting support from NOAA of less than $25,000 total or more than $60,000 per year will not be considered for funding. Proposals may be considered eligible for renewal beyond the first project period. However, funds will be made available for only a 12-month award period and any renewal of the award period will depend on submission of a successful proposal subject to panel reviews, adequate progress on previous award(s), and available funding to renew the award. No assurance for funding renewal exists; funding will be at the complete discretion of NOAA. Projects that plan on renewal must include in their first-year submission a full description of the activities and budget for the first year as described in this announcement, and a summary description of the proposed work and estimated budget for each subsequent year. If selected for funding, the applicant will be required to submit a full proposal each subsequent year by the deadline announced in the following competitive cycle. In addition

to the requirements for new proposals, renewed projects should include the accomplishments to date on the previous year's grant in their subsequent grant submissions. No proposal will be considered for renewal more than two times. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: Under 33 U.S.C. 893 a(a), the Administrator of the National Oceanic and Atmospheric Administration is authorized to conduct, develop, support, promote, and coordinate formal and informal educational activities at all levels to enhance public awareness and understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders, including underrepresented groups in ocean and atmospheric science and policy careers. In conducting those activities, the Administrator shall build upon the educational programs and activities of the agency.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.429, Marine Sanctuary Program.

Application Deadline: Full proposals must be received and validated by Grants.gov, postmarked, or provided to a delivery service on or before 5 p.m. PDT, October 8, 2010. **Please Note:** Validation or rejection of your application by Grants.gov may take up to two business days after submission. Please consider this process in developing your submission timeline. Applications received after the deadline will be rejected/returned to the sender without further consideration. Use of U.S. mail or another delivery service must be documented with a receipt. No e-mail and/or facsimile pre-proposals and/or full applications will be accepted. Applications that are late or are received by fax or e-mail will deemed to not fulfill minimum requirements and will not be considered for review. Applications submitted through Grants.gov will be accompanied by an automated receipt of the date and time of submission. Hard copy applications will be hand stamped with time and date when received in the office of Olympic Coast National Marine Sanctuary, 115 E. Railroad Ave., Suite 301, Port Angeles, WA, 98362. (Note that late-arriving hard copy applications provided to a delivery service on or before 5 p.m., Pacific Time, October 8, 2010 will be accepted for review if the applicant can document that the application was provided to the guaranteed delivery service by the specified closing date and time, and if the proposals are received before 5 p.m., Pacific Time, no later than two business days following the closing date. Applicants are recommended to send hard copies via expedited shipping methods (e.g, Airborne Express, DHL, FedEx, UPS, etc.).

Address for Submitting Proposals: Applications must be submitted to *http://www.grants.gov* to be considered for funding. If an applicant does not have Internet access, the applicant may submit proposals in hard copy to: Robert Steelquist, B–WET Pacific Northwest Manager, Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362; telephone 360/457–6622, extension 19. Applicants are advised to send hard copies via expedited shipping methods (*e.g.,* Airborne Express, DHL, FedEx, UPS, etc.).

Information Contacts: Pacific Northwest B–WET: please contact Robert Steelquist, NOAA B–WET PNW Manager, 115 E. Railroad Ave., Suite 301, Port Angeles, WA, 98362; 360/457–6622 ext.19 or by e-mail at: *Robert.steelquist@noaa.gov.*

Eligibility: Eligible applicants are K–12 public and independent schools and school systems, institutions of higher education, community-based and nonprofit organizations, state or local government agencies, interstate agencies, and Indian tribal governments. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that service underserved areas. While applicants do not need to be from the targeted geographical regions specified in the program objectives, they must be working with target audiences in these areas.

Cost Sharing Requirements: No cost sharing is required under this program, however, the NOAA B–WET Program strongly encourages applicants include a 25 percent or higher match. Funds from other awards may not be considered matching funds. The nature of the contribution (cash vs. in-kind) and the amount of matching funds will be taken into consideration during the review process. Priority selection is given to proposals that propose cash rather than in-kind services.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Programs."

10. Coral Reef Conservation Program Domestic Coral Reef Conservation Grants

Summary Description: The NOAA Coral Reef Conservation Grant Program, as authorized under the Coral Reef Conservation Act of 2000, provides matching grants of financial assistance to institutions of higher education, non-profit organizations, commercial organizations, and local and Indian tribal government agencies under the Domestic Coral Reef Conservation Grant program. These awards are intended to support coral reef conservation projects in shallow water coral reef ecosystems, including mesophotic depths, in American Samoa, the Commonwealth of the Northern Mariana Islands, Florida, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands. Proposals submitted to this competition must address at least one of the following four categories: (1) Fishing Impacts; (2) Land-Based Sources of Pollution; (3) Climate Change; and (4) Local and Emerging Management Issues. All proposed work should be consistent with the CRCP National Goals and Objectives 2010–2015 (*http://coralreef.noaa.gov/aboutcrcp/strategy/currentgoals/resources/3threats_go.pdf*) and/or the relevant Jurisdictional Coral Reef Management Priorities *(http://coralreef.noaa.gov/aboutcrcp/strategy/reprioritization/managementpriorities).* Proposals selected for funding through this solicitation will be implemented through a grant and will require a 1:1 match of funds. Approximately $500,000 is expected to be available for this competition in FY 2011. Funding will be divided among the U.S. Pacific and Atlantic regions to maintain the geographic balance of the Grant Program overall, as required by the Coral Reef Conservation Act of 2000. NOAA will not accept proposals with a budget under $30,000 or over $125,000 under this solicitation. It is expected that the average award size will be $65,000.

Funding Availability: Total anticipated funding for all grants is

approximately $500,000 and is subject to the availability of FY 2011 appropriations. NOAA will not accept proposals with a budget under $30,000 or over $125,000 under this solicitation. It is expected that the average award size will be $65,000. There is no limit on the number of applications that can be submitted by the same applicant during the FY 2011 competitive grant cycle. However, multiple applications submitted by the same applicant must clearly identify different projects and must be successful in the competitive review process. The number of awards made as a result of this solicitation will depend on the number of eligible applications received, the amount of funds requested for each project, the merit and ranking of the proposals, and the amount of funds made available to the Coral Reef Conservation Program by Congress. In addition, funding will be divided between the U.S. Pacific and U.S. Atlantic to meet requirements for geographic distribution of funds, as described in the Coral Reef Conservation Act. Attempts will also be made to fund one or more projects in each jurisdiction, provided that the project addresses priorities outlined above, it is identified as having sufficient merit, and it meets all other requirements as stipulated in this solicitation. The funds have not yet been appropriated for this program, and there is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq*).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.482, Coastal Zone Management Administration Awards.

Application Deadline: Full Proposals must be received by *http://www.grants.gov,* postmarked, or provided to a delivery service by 5 p.m. (EDT) on November 1, 2010. Use of U.S. mail or another delivery service must be documented with a receipt. Applications postmarked or provided to a delivery service after that time will not be accepted for funding. Applications submitted via U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. In any event, applications received later than 15 business days following the postmarked closing date will not be accepted. No facsimile or electronic mail applications will be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. There will be no extensions beyond these dates. If an application is not submitted through Grants.gov or postmarked by the deadline listed above, it will not be reviewed or considered for FY 2011 funding.

Address for Submitting Proposals: Applications must be submitted to *http://www.grants.gov* by 5 p.m. EDT on November 1, 2010 to be considered for funding. If Grants.gov cannot be reasonably used, applications must be postmarked, or provided to a delivery service and documented with a receipt by November 1, 2010. Applications postmarked or provided to a delivery service after that time will not be accepted for funding. Applications submitted via U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. In any event, applications received later than 15 business days following the postmarked closing date will not be accepted. There will be no extensions beyond these dates. If an application is not submitted through Grants.gov or postmarked by the deadline listed above, it will not be reviewed or considered for FY 2011 funding. If internet access is unavailable, hard copies can be submitted to: ATTN: CRCP Domestic Grant Applications, Jenny Waddell, 1305 East West Highway, 10th Floor, N/ORM1, Silver Spring, MD 20910, Phone: 301–713–3155 extension 150; or e-mail: *Jenny.Waddell@noaa.gov.* Applicants submitted by mail are required to include original signed and dated copies of the financial assistance forms. Electronic copies of the project narrative and budget narrative are requested with the submission of a paper application. Please submit these to *Jenny.Waddell@noaa.gov.*

Information Contacts: The technical point of contact for CRCP Domestic Coral Reef Conservation Grants is Jenny Waddell. She can be reached at 301–713–3155, extension 150 or by e-mail at *Jenny.Waddell@noaa.gov.* Fax: 301–713–4367. Her mailing address is OCRM/NOAA, N/–ORM, 1305 East West Highway, Silver Spring, MD, 20910.

Eligibility: Institutions of higher education, non-profit organizations, commercial organizations, local and Indian tribal government agencies can apply for funding under the DCRCG. U.S. Federal, State, territory, and commonwealth governments and Regional Fishery Management Councils are not eligible under this category. NOAA employees are not allowed to help in the preparation of applications or write letters of support for any application. NOAA staff is available to provide information on programmatic goals and objectives, ongoing coral reef conservation programs/activities, regional funding priorities, and, along with other Program Officers, can provide information on application procedures and completion of required federal forms. For activities that involve collaboration with current NOAA programs or staff, NOAA employees must provide a letter verifying that they are collaborating with the project. Employee travel and salaries are not allowable costs under this program.

Cost Sharing Requirements: All awards of financial assistance provided by the NOAA Coral Reef Conservation Grant Program (Grant Program) under the authority of the Coral Reef Conservation Act (Act) of 2000 are subject to the matching fund requirements described below.

As per section 6403(b)(1) of the Act, funds for any coral conservation project funded under this Grant Program may not exceed 50 percent of the total cost of the award. Therefore, any coral conservation project under this Grant Program requires a 1:1 contribution of matching funds. Matching funds can come from a variety of public and private sources and can include in-kind goods and services such as private boat use and volunteer labor. Federal sources cannot be considered as matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are permitted to combine contributions from multiple non-federal partners in order to meet the 1:1 match requirement, as long as such contributions are not being used to match any funds received under another award. Applicants must specify in their proposal the source(s) of match and may be asked to provide letters of commitment to confirm stated match contributions. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Applicants should be prepared to carefully document matching contributions for each project selected for funding. As per section 6403(b)(2) of the Coral Reef Conservation Act of 2000, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: 1. No reasonable means

are available through which an applicant can meet the matching requirement, and, 2. The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver including attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match, and any other extenuating circumstances preventing the availability of match. Match waiver requests including the appropriate justification should be submitted as part of the final application package. **Please Note:** eligible applicants choosing to apply 48 U.S.C. 1469a(d) should note the use of the waiver and the total amount of funds requested to be waived in the matching funds section of their respective pre- and final applications.

Intergovernmental Review: Applications under this competition are subject to Executive Order 12372, Intergovernmental Review of Programs. Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact established as a result of EO 12372: *http://www.whitehouse.gov/omb/grants/spoc.html.*

11. Coral Reef Conservation Program State and Territorial Coral Reef Conservation Cooperative Agreements

Summary Description: The NOAA Coral Reef Conservation Program, as authorized by the Coral Reef Conservation Act of 2000, provides matching grants of financial assistance to State, Territorial and Commonwealth resource management agencies that were appointed by their respective Governors to serve as the primary point of contact agencies for coral reef conservation activities in each of the jurisdictions of American Samoa, Florida, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands. The awards are administered as cooperative agreements to enable the collaboration and involvement of NOAA in the planning and implementation of the work. The objective of these Cooperative Agreements is to support coral reef management and monitoring programs and conservation projects that seek to improve the condition of coral reef ecosystem resources located in these seven U.S. States, Territories and Commonwealths.

Funding Availability: Funding of about approximately $4,500,000 is expected to be available from NOAA's Coral Reef Conservation Program for cooperative agreements to support priority coral reef management activities as described in section I(B) of the FFO announcement. There is no appropriation of funds at this time and the final funding amount will be subject to the availability of federal appropriations. Support in out-years following FY2011 is likewise contingent upon the availability of future funding and the requirements of the agency supporting the project. Each eligible jurisdiction can apply for a maximum of $750,000 per year. In certain instances, when requested by the applicant and agreed upon by NOAA, NOAA may hold back a portion of any awarded funds in order to provide specific coral reef conservation technical assistance in the form of contractual or other services. This will only be allowed where such priority technical assistance and/or the lack of sufficient means to deliver it are unavailable at the local level. Such requests proposed herein will be reviewed on a case by case basis with respect to the specific management objectives of this and the local coral reef program. NOAA will work with each jurisdiction to ensure the greatest degree of success in meeting local, state, territorial and national coral reef management needs.

Statutory Authority: Authority for the NOAA Coral Reef Conservation Grant Program is provided by Section 6403 (Coral Reef Conservation Program) of the Coral Reef Conservation Act of 2000 (16 U.S.C. 6401 *et seq*).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.482, Coastal Zone Management Administration Awards.

Application Deadline: Project Lists, which are comprised of a simple table of proposed project titles and one-paragraph descriptions of proposed projects, must be submitted to *coral.grants@noaa.gov* or postmarked by October 1, 2011. Project Lists are optional but strongly encouraged. Pre-applications must be received by NOAA at *coral.grants@noaa.gov* or postmarked by 5 p.m. Eastern Standard Time on Friday, November 12, 2010. Applicants should submit an electronic copy of their pre-applications via e-mail and provide a copy to their NOAA Coral Reef Management Liaison as appropriate. Final Applications must be received by Grants.gov or postmarked by 5 p.m. Eastern Standard Time on Friday, March 4, 2011. For applications submitted through Grants.gov, a date and time receipt is generated by the system and will be the basis of determining timeliness. Hard copy applications must be received by NOAA by 5 p.m. Eastern Standard Time on the dates specified; any late-arriving hard copy applications will be accepted for review only if the applicant can document that: (1) The application was provided to a delivery service with delivery to Jenny Waddell, NOAA Coral Reef Conservation Program, 1305 East-West Highway, SSMC4, N/ORM1 10th Floor, Silver Spring, Maryland 20910; (2) delivery was guaranteed by 5 p.m. Eastern Standard Time on the specified closing date; and, (3) the application was received in the program office by 5 p.m. Eastern Standard Time no later than 2 business days following the closing date. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. All applicants, both electronic and paper, should be aware that adequate time must be factored into applicant schedules for delivery of the application. Paper applicants should allow adequate time to ensure a paper application will be received on time, taking into account that guaranteed overnight carriers are not always able to fulfill their guarantees.

Address for Submitting Proposals: Applicants must submit an electronic copy of their Project List by e-mail to *coral.grants@noaa.gov.* Applicants must submit an electronic copy of their pre-applications via e-mail to *coral.grants@noaa.gov.* Final applications must be submitted via Grants.gov. If Internet access is not available to the applicant, a hard copy of the Project List, pre-application and final application may be submitted via surface mail to: Jenny Waddell, 1305 East West Highway, 10th Floor, N/ORM1, Silver Spring, MD 20910.

Information Contacts: The technical point of contact for CRCP State and Territorial Coral Reef Conservation Cooperative Agreements is Jenny Waddell. She can be reached at 301–713–3155, extension 150 or by e-mail at *Jenny.Waddell@noaa.gov.* Fax: 301–713–4367. Her mailing address is OCRM/NOAA, N/-ORM, 1305 East West Highway, Silver Spring, MD, 20910.

Eligibility: Eligible applicants are the State, Territorial and Commonwealth resource management agencies that were appointed by their respective Governors to serve as the primary point of contact agencies for coral reef conservation activities in each of the jurisdictions of American Samoa, Florida, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands.

Cost-Sharing Requirements: All awards of financial assistance provided by the NOAA Coral Reef Conservation Grant Program (Grant Program) under the authority of the Coral Reef Conservation Act (Act) of 2000 are subject to the matching fund requirements described below. As per section 6403(b)(1) of the Act, funds for any coral conservation project funded under this Grant Program may not exceed 50 percent of the total cost of the award. Therefore, any coral conservation project under this Grant Program requires a 1:1 contribution of matching funds. Matching funds can come from a variety of public and private sources and can include in-kind goods and services such as private boat use and volunteer labor. Federal sources cannot be considered as matching funds, but can be described in the budget narrative to demonstrate additional leverage. Applicants are permitted to combine contributions from multiple non-Federal partners in order to meet the 1:1 match requirement, as long as such contributions are not being used to match any funds received under another award. Applicants must specify in their proposal the source(s) of match and may be asked to provide letters of commitment to confirm stated match contributions. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the NOAA Grants Officer. Applicants should be prepared to carefully document matching contributions for each project selected for funding. As per section 6403(b)(2) of the Coral Reef Conservation Act of 2000, the NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements:(1) No reasonable means are available through which an applicant can meet the matching requirement and, (2) The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver including attempts to obtain sources of matching funds, how the benefit of the project outweighs the public interest in providing match, and any other extenuating circumstances preventing the availability of match. Match waiver requests including the appropriate justification should be submitted as part of the final application package. **Please Note:** eligible applicants choosing to apply 48 U.S.C. 1469a(d) should note the use of the waiver and the total amount of funds requested to be waived in the matching funds section of their respective pre- and final applications.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Programs."

12. National Estuarine Research Reserve Graduate Research Fellowship Program for Fiscal Year 2011

Summary Description: The National Estuarine Research Reserve System (NERRS) consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each Reserve within the system is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921. Each Reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For detailed descriptions of the sites, refer to the NERRS Web site at *http://www.nerrs.noaa.gov* or contact the site staff listed in Appendix I.

Funding Availability: The total project cost for a one-year Graduate Research Fellowship award is $28,572. The Federal funding amount of the fellowship is $20,000, and at least 30% of the total project cost is required as non-Federal match. To illustrate how the total project cost of $28,572 is calculated-$20,000 of this amount is supplied by the Federal government as 70%, with a minimum of 30% non-Federal match ($8,572) of the total funding provided by the student's eligible institution.

Statutory Authority: Section 315 of the Coastal Zone Management Act of 1972, as amended CZMA, 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a National Estuarine Research Reserve that are consistent with the research guidelines developed under subsection (c).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.420, Coastal Zone Management Estuarine Research Reserves.

Application Deadline: Full Proposals must be received by *http://www.grants.gov,* postmarked, or provided to a delivery service by 11 p.m. (EST) on November 1, 2010. Use of U.S. mail or another delivery service must be documented with a receipt. No facsimile or electronic mail applications will be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Applications submitted in response to this announcement are strongly encouraged to be submitted through the *http://www.grants.gov* Web site no later than November 1, 2010 at 11 p.m. (EST). Electronic access to the full funding announcement for this program is available via the *http://www.grants.gov* Web site. The announcement will also be available by contacting Alison Krepp with the Estuarine Reserves Division at *Alison.Krepp@noaa.gov* or 301–713–3155 x 105. If an applicant does not have access to the Internet, paper applications (a signed original and two copies) may be submitted to the Estuarine Reserves Division at the following address, and must be postmarked by November 1, 2010: Attn: Alison Krepp, NOAA/Estuarine Reserves Division, 1305 East West Highway, Room 10503, Silver Spring, Maryland 20910.

Information Contacts: For questions regarding the program and application process, please contact Alison Krepp (301–713–3155 ext. 105) at NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, Station 10503, Silver Spring, MD 20910 or via e-mail at *Alison.Krepp@noaa.gov,* or fax at 301–713–4012. The program Web site can be accessed at *http://www.nerrs.noaa.gov/Fellowship.aspx* . If the Web page does not provide sufficient information and Alison Krepp is unavailable, please contact Erica Seiden at (301) 713–3155 ext. 172 or *Erica.Seiden@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education, other non-profits, State and local governments. Eligible applicants must

apply on behalf of a graduate student who has been admitted to or is enrolled in a full-time master's or doctoral program at a U.S. accredited university. Students should have completed a majority of their graduate course work at the beginning of their fellowship and have an approved thesis research program to be conducted at a Reserve. Minority students are encouraged to apply. All awards are normally made to the fellow's graduate institution through the use of a grant. Therefore, students must work with an authorized representative from their institution's Office of Sponsored Research, or equivalent office, to complete the following required standard Federal forms—SF 424, CD–511, and SF 424B. Reserve staff are ineligible to submit an application for a fellowship under this announcement.

Cost-Sharing Requirements: Requested Federal funds must be matched by at least 30 percent of the TOTAL cost of the project, not only the $20,000 Federal share. The total project cost for a one year Graduate Research Fellowship is $28,572. To illustrate, $20,000 or 70% of this funding is supplied by the federal government, with a minimum 30% non-Federal match of $8,572 supplied by the student's eligible applicant institution. Cash or in-kind contributions directly benefitting the research project may be used to satisfy the matching requirements. Waived overhead costs may also be used as match. Funds from other Federal agencies and Reserve staff salaries supported by Federal funds may not be used as match. Requested overhead costs as well as institutional fees that do not qualify as direct costs under fellowship awards are limited to 10% of the Federal amount.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Programs." Applicants should contact their State Single Point of Contact (SPOC) to find out about and comply with the State's process under EO12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site at *http://www.whitehouse.gov/omb/grants/spoc.html.*

13. National Estuarine Research Reserve System (NERRS) Land Acquisition and Construction Program for Fiscal Year 2011

Summary Description: The National Estuarine Research Reserve System consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each reserve within the system is chosen to represent a different bio-geographic region and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921. By funding designated reserve agencies and universities to conduct land acquisition and construction projects that support the NERRS purpose, NOAA will strengthen protection of key land and water areas, enhance long-term protection of the area for research and education, and provide for facility and exhibit construction that meet the highest sustainable design standards possible.

Funding Availability: This funding opportunity announces that approximately $3.89 million is available to designated reserve agencies or universities for construction and acquisition projects in fiscal year 2011. It is anticipated that 5 to 20 total projects may be funded. Awards will be issued as competitive grants. It is anticipated that the awards will run for up to three years. In the past, funding for land acquisition and construction awards has ranged in amount from approximately $20,000 to $3 million.

Statutory Authority: Authority for the NERR program is provided by 16 U.S.C. 1461 (e)(1)(A)(i),(ii), and (iii).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.420, Coastal Zone Management Estuarine Research Reserves.

Application Deadline: Complete grant applications must be submitted or postmarked by 11:59 p.m., Eastern Standard Time, November 30, 2010. **Please Note:** Validation or rejection of your application by *Grants.gov* may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov,* unless an applicant does not have internet access. If an applicant does not have internet access, hard copies with original signatures may be sent to: NOS/OCRM/ERD Nina Garfield 1305 East West Highway, room 10505 Silver Spring, MD 20910.

Information Contacts: Administrative and Technical questions regarding the program and application process, please contact Nina Garfield, program coordinator, at NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, Station 10505, Silver Spring, MD 20910 or via phone: 301–563–1171 ext. 171, e-mail: contact *Nina.Garfield@noaa.gov,* or fax: 301–713–4363. The program Web site can be accessed at *http://www.ocrm.nos.noaa.gov/nerr.html.* Other questions should be directed to Nina Garfield of ERD at 301–563–1171 ext. 171, or fax 301–713–4012, or via internet at *Nina.Garfield@noaa.gov* or Laurie McGilvray at (301) 713–3155 ext. 158, *laurie.mcgilvray@noaa.gov.*

Eligibility: Eligible applicants are NERR lead state agencies or universities in coastal states. Eligible applicants should have completed all requirements as stated in the NERRS regulations at 15 CFR part 921, *http://nerrs.noaa.gov/Background_Regulations.html.*

Cost-Sharing Requirements: The amount of Federal funds requested must be matched by the applicant: 30 percent total project match for construction awards and 50 percent total project match for land acquisition awards. Cash or in-kind contributions directly benefiting the project may be used to satisfy the matching requirements. If using Reserve land acquisition banked match, a list of the banked match, indicating when the land was banked, must be included with the application. Applicants must identify all match sources and amounts equal to that requested above. Projects without match or with highly speculative match will not be considered.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Programs." Applicants should contact their State Single Point of Contact to find out about and comply with the State processes under EO12372. The names and addresses of the Single Points of Contact are listed in the Office of Management and Budget Web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

National Weather Service (NWS)

1. Collaborative Science, Technology, and Applied Research (CSTAR) Program

Summary Description: The CSTAR Program represents an NOAA/NWS effort to create a cost-effective transition from basic and applied research to operations and services through collaborative research between operational forecasters and academic institutions which have expertise in the environmental sciences. These activities will engage researchers and students in applied research of interest to the operational meteorological community and will improve the accuracy of forecasts and warnings of environmental hazards by applying scientific knowledge and information to operational products and services. The NOAA CSTAR Program is a contributing

element of the U.S. Weather Research Program (USWRP). NOAA's program is designed to complement other agency contributions to that national effort. The CSTAR Program addresses NOAA's Mission Goal 3—Serve society's needs for weather and water information.

Funding Availability: The total funding amount available for proposals is anticipated to be approximately $250,000. However, there is no appropriation of funds at this time and no guarantee that there will be in the next fiscal year. Individual annual awards in the form of cooperative agreements are limited to a maximum of $125,000 per year for no more than three years. We anticipate making 1–3 awards.

Statutory Authority: Authority for the CSTAR program is provided by the following: 15 U.S.C. 313; 49 U.S.C. 44720 (b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2934.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.468, Applied Meteorological Research.

Application Deadline: Full Proposals must be received by *http://www.grants.gov,* postmarked, or provided to a delivery service by 5 p.m. (EDT) on October 15, 2010. Use of U.S. mail or another delivery service must be documented with a receipt. No facsimile or electronic mail applications will be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Proposals received after the deadline will be rejected/returned to the sender without further consideration.

Address for Submitting Proposals: Proposals should be submitted through *http://www.grants.gov.* For those organizations without Internet access, proposals may be sent to Sam Contorno, CSTAR Program Manager, NOAA/NWS, 1325 East-West Highway, Room 15330, Silver Spring, Maryland 20910.

Information Contacts: The point of contact is Sam Contorno, NOAA/NWS; 1325 East-West Highway, Room 15330; Silver Spring, Maryland 20910–3283, or by phone at 301–713–3557 ext. 150, by fax to 301–713–1253, or via e-mail at *samuel.contorno@noaa.gov.* Questions concerning this announcement must be made via e-mail to *samuel.contorno@noaa.gov.* Questions and NOAA responses will be made public via the Web at *http://www.nws.noaa.gov/ost/cstar.htm.*

Eligibility: Eligible applicants are institutions of higher education and federally funded educational institutions such as the Naval Postgraduate School. This restriction is needed because the results of the collaboration are to be incorporated in academic processes which ensure academic multidisciplinary peer review as well as review of scientific validity for use in operations.

Cost Sharing Requirements: No cost sharing is required under this program.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs.

2. Meteotsunami Warning Project

Summary Description: NOAA's Tsunami Program's mission is to provide reliable tsunami forecasts and warnings and to promote community resilience. The Tsunami Warning System is designed to warn coastal residents of tsunamis generated by impulsive displacement of the sea floor through earthquakes and/or sub-sea landslides triggered by earthquakes. Approximately 85% of tsunamis are triggered by earthquakes. However, in some locations of the country meteorologically-generated waves with the same characteristics as tsunamis (or, 'meteotsunamis') have historically posed a greater threat than the well-known earthquake-generated tsunami. Presently, no system is in place in the U.S. which monitors for the phenomena and alerts coastal residents to the threat. The NOAA Tsunami Program recognizes the need to research the possibility of developing a meteotsunami warning capability. This RFA requests research to address four primary objectives: Identify the causative forces and pre cursor environmental conditions which have generated meteotsunamis historically; define the observational systems, communications, and processing systems necessary to evaluate meteotsunami formation prior to impact along a coast; develop a protocol for issuing meteotsunami warnings along the U.S. coast; and define an overall Concept of Operations to distribute meteotsunami alerts from existing NWS facilities.

Funding Availability: The total funding amount available to the applicants over the course of the project is anticipated to be $400,000.00. It is anticipated there will be one recipient of this award. Individual annual awards are limited to a maximum of $200,000 per year for no more than two years.

Statutory Authority: 33 U.S.C. 3205.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.467, Meteorologic and Hydrologic Modernization Development.

Application Deadline: Applications must be received on or before 5 p.m. Eastern Standard Time, August 31, 2010. For applications submitted through Grants.gov, timeliness will be determined by the time and date stamp generated by Grants.gov. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Hard copy applications will be date and time stamped when they are received to determine timeliness.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov* unless an applicant does not have Internet access. If an applicant does not have Internet access, hard copies with original signatures may be sent to: Jenifer Rhoades, NOAA/NWS, 1325 East West Highway, Room 13118, Silver Spring, Maryland 20910, Phone: 301–713–1677 x102, e-mail: *jenifer.rhoades@noaa.gov.* E-mail and fax submissions will not be accepted.

Information Contacts: Lewis Kozlosky, NOAA/NWS, 1325 East West Highway, Room 13123, Silver Spring, Maryland 20910, Phone: 301–713–1677 x108, e-mail: *lewis.kozlosky@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, state, local and Indian tribal governments.

Cost Sharing Requirements: No cost sharing is required under this program.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs.

Oceanic and Atmospheric Research (OAR)

1. Fiscal Year 2011 Climate Program Office

Summary Description: Changing climate confronts society with significant economic, health, safety, and national security challenges. NOAA has important responsibilities in conducting observations, research, prediction, and information management for the purpose of understanding and responding to climate and global change. The NOAA Climate Program Office (CPO) manages the competitive research programs in which NOAA funds high-priority climate science to advance understanding of Earth's climate system and its atmospheric, oceanic, land, and snow and ice components. This science contributes to knowledge about how climate variability and change affect our health,

economy, and well-being. The CPO supports research that is conducted in regions across the United States, at national and international scales, and globally. The CPO also provides strategic guidance and oversight for the agency's climate science and services programs. In this connection, the CPO is helping lead the development of a proposed NOAA Climate Service; details about the proposed Service can be found at *(http://www.noaa.gov/climate.html).* The CPO is in the process of restructuring its grants programs that will go into effect with this announcement of opportunity. The grants activities are now organized within four Programs: Climate Observations and Monitoring, Earth System Science, Modeling, Analysis, Predictions, and Projections, and Climate and Societal Interactions. In addition, the CPO announces an opportunity in FY 2011 that cuts across these four Programs to deal with Improving NOAA's Climate Services for the Coastal Zone. In FY 2011, approximately $21 million will be available for new awards pending budget appropriations. It is anticipated that most awards will be at a funding level between $50,000 and $300,000 per year, with some exceptions for larger awards ($600K–$700K). Investigators are highly encouraged to visit the CPO Web site *(http://www.climate.noaa.gov)* for general program information prior to submitting applications.

Funding Availability: In FY 2011, approximately $21 million will be available for new awards pending budget appropriations. It is anticipated that most awards will be at a funding level between $50,000 and $200,000 per year, with some exceptions for larger awards ($600K–$700K). Funding for FY 2012 may be used to fund some awards submitted under this competition. Current or previous grantees are eligible to apply for a new award that builds on, but does not replicate, activities covered in the current or previous award. Current grantees should not apply for supplementary funding through this announcement. Funding will be divided among the following five categories of projects: 1. Climate Observations and Monitoring: It is anticipated that $1.5 million will be available in FY11 for new projects. Projects should be primarily in the $50,000–$175,000/year range. 2. Earth System Science: It is anticipated that $4 million will be available in FY11 for new projects. Projects should be primarily in the $75,000–$175,000/year range. See the ESS information sheet for areas of exception. 3. Modeling, Analysis, Predictions, and Projections: It is anticipated that $3 million will be available in FY11 for new projects. Projects should be primarily in the $75,000–$200,000/year range. See the MAPP information sheet for areas of exception. 4. Climate and Societal Interactions: It is anticipated that $13.1 million will be available in FY11 for new projects. Projects should be primarily in the $50,000–$700,000/year range. For more detail on funding availability, please see the information sheet available for the individual program elements. 5. Coastal Zone Special Competition: It is anticipated that $1.0 million will be available in FY11 for new projects. Projects should be primarily in the $500,000/year (up to $1.5 million over the project lifetime).

Statutory Authority: 49 U.S.C. 47720(b), 15 U.S.C. 2904, 15 U.S.C. 2931–2934.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.431, Climate and Atmospheric Research.

Application Deadline: Full proposals for all competitions must be postmarked, or received and validated by Grants.gov on or before 5 p.m. EDT on September 10, 2010. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. If an applicant does not have Internet access, hard copy proposals will be accepted, and date recorded when they are received in the program office. Electronic or hard copies received after the deadline will not be considered, and hard copy applications will be returned to the sender.

Address for Submitting Proposals: Applications must be submitted through *http://www.grants.gov.* If an applicant does not have Internet access, hard copy applications may be submitted to the CPO Grants Manager Diane Brown at NOAA Climate Program Office (R/CP1), SSMC3, Room 12112, 1315 East-West Highway, Silver Spring, MD 20910.

Information Contacts: Please visit the CPO Web site for further information *http://www.climate.noaa.gov/* or contact the CPO Grants Manager, Diane Brown by mail (*see* address above). Please allow up to two weeks after receipt for a response.

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive assistance under this notice.

Cost Sharing Requirements: None.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal programs.

2. Fiscal Year 2011 NMFS–Sea Grant Fellowships in Population Dynamics

Summary Description: The Graduate Fellowship Program awards at least two new PhD fellowships each year to students who are interested in careers related to the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status. Fellows will work on thesis problems of public interest and relevance to NMFS under the guidance of NMFS mentors at participating NMFS Science Centers or Laboratories. The NMFS–Sea Grant Fellowships in Population Dynamics meets NOAA's Mission goal of Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management.

Funding Availability: The Graduate Fellowship Program awards at least two new PhD fellowships each year to students who are interested in careers related to the population dynamics of living marine resources and the development and implementation of quantitative methods for assessing their status. The award for each Fellowship, contingent upon the availability of funds, will be a multi-year cooperative agreement in the amount of $38,500 per year for up to three years. This involvement includes serving for 10–20 days aboard a research or commercial vessel during a scientific survey or experimental activity. Additionally, the Fellow may work on his/her thesis research or related activity at a participating NMFS facility. The Fellow's work will be overseen by a NMFS mentor who will provide advice and guidance.

Statutory Authority: Authority for the Population Dynamics Graduate Fellowship Program is provided by the following: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Applications are due to the appropriate State Sea Grant Program by 11:59 p.m. local on January 21, 2011. If your state does not have a Sea Grant Program, please check Section VII. Agency Contacts of the FFO announcement and *http://www.seagrant.noaa.gov* for information on contacting a State Sea Grant program. The State Sea Grant Program must transmit all applications via *http://www.grants.gov* so that it is received by

4 p.m., Eastern Time February 18, 2011, by the National Sea Grant Office (NSGO). A date and time receipt indication will be generated by the system and will be the basis of determining timeliness. Facsimile transmission and electronic submission of applications will not be accepted. Applications received after the deadline will not be reviewed.

Address for Submitting Proposals: Applicants must submit their applications to the applicable State Sea Grant Office. Please go to *http://www.seagrant.noaa.gov* for instructions on contacting a State Sea Grant program office. State Sea Grant programs must submit selected applications through *http://www.Grants.gov.*

Information Contacts: Contact Terry Smith, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 734–1084; e-mail: *Terry.Smith@noaa.gov.*

Eligibility: Prospective Fellows must be United States citizens. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology, at an institution of higher education in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. Applications must come from Sea Grant programs and should be submitted through *http://www.Grants.gov.*

Cost Sharing Requirements: Of the $38,500 award, 50 percent ($19,250) will be contributed by NMFS, 33⅓ percent ($12,833) by the National Sea Grant Office (NSGO), and 16⅔ percent ($6,417) by the institution of higher education as the required 50 percent match of NSGO funds.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs.

3. Fiscal Year 2012 National Sea Grant College Program Dean John A. Knauss Marine Policy Fellowship

Summary Description: This notice announces that applications may be submitted for the National Sea Grant College Program Dean John A. Knauss Marine Policy Fellowship (Sea Grant Knauss Fellowship Program). The Sea Grant Knauss Fellowship Program is a program initiated by the National Oceanic and Atmospheric Administration (NOAA) National Sea Grant College Program, in fulfilling its broad educational responsibilities and legislative mandate of the Sea Grant Act, to provide an educational experience in the policies and processes of the Legislative and Executive Branches of the Government to graduate students in marine and aquatic-related fields. The Sea Grant Knauss Fellowship Program meets NOAA's Mission goal of "Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management."

Funding Availability: The state SGCP receives and administers the overall cooperative agreement of $49,000 per student on behalf of each fellow selected from their program. Of this amount, the state SGCP provides $38,000 to each Fellow for stipend and living expenses (per diem). Of the total cooperative agreement amount, the state SGCP provides $9,000 to cover mandatory health insurance for the fellow and moving expenses. Any remaining funds of the $9,000 shall be used for the fellow during the fellowship year, first to satisfy academic degree-related activities, and second for fellowship-related activities. Finally, up to $2,000 from the total $49,000 can be used to cover placement week costs. Indirect costs are not allowable from the federal funds either for the fellowships or for any costs associated with the fellowships, including the $2,000 budgeted for placement week. During the fellowship, the host may provide supplemental funds for work-related travel by the fellow. Not less than 30 applicants will be selected, of which only 10 of the selected applicants may be assigned to the Legislative branch.

Statutory Authority: 33 U.S.C. 1123(c) 4(F) and 33 U.S.C. 1127 (b).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Eligible applicants must submit application materials to the State Sea Grant College Programs (SGCP) by 5 p.m. local time February 18, 2011. The sponsoring state SGCP must submit all selected applications through Grants.gov by 5 p.m. EDT on April 1, 2011. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline. Applications received after the deadline will be rejected/returned to the sender without further consideration. No facsimile or electronic mail applications will be accepted. For state SGCP applications submitted through Grants.gov, a date and time receipt will be generated by the system and will be the basis of determining timeliness.

Address for Submitting Proposals: The sponsoring state SGCP must submit all selected applications through Grants.gov. Application information may be obtained directly from Grants.gov. It may also be obtained from the state SGCP directors. The addresses of the state SGCP directors may be found on Sea Grant's World Wide Web *(http://www.seagrant.noaa.gov/other/programsdirectors.html).*

Information Contacts: Contact Miguel Lugo, Sea Grant Knauss Fellowship Program Manager, National Sea Grant College Program, 1315 East-West Highway, R/SG, Room 11828, Silver Spring, MD 20910; Tel: (301) 734–1077 ext 1075.

Eligibility: An eligible applicant is any student, regardless of citizenship, who, on February 18, 2011, is enrolled towards a degree, in a graduate or professional program in a marine or aquatic-related field. The graduate degree needs to be awarded through a United States accredited institution of higher education in the United States or U.S. Territories. Each eligible applicant will need to submit the application information to the state where their institution of higher education is located. Only state SGCPs are eligible to submit applications to the National Sea Grant College Program. Applicants that have participated in the fellowship in past years will not be eligible to submit an application. This is a onetime fellowship opportunity. Applicants from states not served by a state SGCP should contact the National Sea Grant College Program; subsequently, the applicant will be referred to the appropriate state SGCP. All applicants should consult the state SGCP before submitting an application.

Cost Sharing Requirements: N/A.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs.

4. Fiscal Year 2011 NMFS–Sea Grant Fellowships in Marine Resource Economics

Summary Description: The Graduate Fellowship Program generally awards two new PhD fellowships each year to students who are interested in careers related to the development and implementation of quantitative methods for assessing the economics of the conservation and management of living marine resources. Fellows will work on thesis problems of public interest and relevance to NMFS under the guidance of NMFS mentors at participating NMFS Science Centers or Laboratories. The NMFS–Sea Grant Fellowships in Marine Resource Economics meets NOAA's

Mission goal of Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management.

Funding Availability: The NMFS—Sea Grant Joint Graduate Fellowship Program in Marine Resource Economics expects to support two new fellowships for up to 2 years for each fellowship.

Statutory Authority: Authority for the Resource Economics Graduate Fellowship Program is provided by the following: 33 U.S.C. 1127(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support

Application Deadline: Applications are due to the appropriate State Sea Grant Program by 11:59 p.m. local time on January 21, 2011. If your state does not have a Sea Grant Program, please check VII, Agency Contacts located in the FFO announcement and *http://www.seagrant.noaa.gov* for information on contacting a Sea Grant program. The Sea Grant Program must transmit the application via *http://www.grants.gov* so that it is received by the National Sea Grant Office (NSGO) by 4 p.m., Eastern Time February 18, 2011. A date and time receipt generated by the system and will be the basis of determining timeliness. Facsimile transmission and electronic submission of applications will not be accepted. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Applicants must submit their applications to the applicable State Sea Grant Office. Please go to *http://www.seagrant.noaa.gov* for instructions on contacting a State Sea Grant program office. Applications must come from State Sea Grant programs and must be submitted through *http://www.Grants.gov.*

Information Contacts: Contact Terry Smith, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 734–1084; e-mail: *Terry.Smith@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education in the United States or its territories. Eligible applicants must apply on behalf of a prospective fellow who has been admitted or received provisional acceptance conditioned on obtaining financial support such as this fellowship, to a PhD degree program in natural resource economics or a related field at an institution of higher education in the United States or its territories. Prospective fellows must submit a signed letter from the institution indicating the provisional acceptance. Prospective Fellows must be United States citizens. Applications must come from Sea Grant programs and must be submitted through *http://www.Grants.gov.*

Cost Sharing Requirements: Of the $38,500 award, 50 percent ($19,250) will be contributed by NMFS, 33⅓ percent ($12,833) by the National Sea Grant Office (NSGO), and 16⅔ percent ($6,417) by the institution of higher education as the required 50 percent match of NSGO funds.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Programs.

5. Fiscal Year 2011 Small Grants for Marine Archaeological Exploration

Summary Description: NOAA Office of Ocean Exploration and Research (OER) is seeking pre-proposals and full proposals to support its mission, consistent with NOAA's Strategic Plan *(http://www.nrc.noaa.gov),* to discover significant or potentially significant maritime heritage sites. Small Grants for Marine Archaeological Exploration is a new type of funding program from OER. The program will provide a researcher with the opportunity to assess the feasibility of a potentially larger marine archaeology exploration project. Proposals should examine new ideas or new opportunities with potential to make significant discoveries of maritime cultural resources. OER anticipates a total of approximately $100,000 will be available through this announcement for small grants ($25K or less). Applicants are encouraged to visit the Ocean Explorer Web site *(http://oceanexplorer.noaa.gov)* to familiarize themselves with past and present OER-funded activities. All applicants are required to submit pre-proposals in order to be considered for funding for this program. Background on how to apply and the required Pre-Proposal Application Form and required Proposal Cover Sheet are accessible through the OER Office Web site at *http://explore.noaa.gov.* The office priorities for this opportunity support NOAA's mission support goal of: Ecosystems—Protect, Restore, and Manage Use of Coastal and Ocean Resources through Ecosystem-Based Management.

Funding Availability: In anticipation of the FY 11 President's Budget, OER anticipates a total of approximately $100,000 will be available through this announcement for Small Grants for Marine Archaeological Exploration. OER anticipates supporting four awards through this solicitation, not to exceed $25,000. The OER Director may hold-over select proposals submitted for 2011 funding for consideration in 2012. The amount of funding available through this announcement is subject to the final FY11 appropriation for Ocean Exploration and Research. Publication of this announcement does not obligate NOAA to fund any specific project or to obligate all or any part of available funds. There is no guarantee that sufficient funds will be available to initiate or continue research activities where funding has been recommended by OER. The exact amount of funds that OER may recommend be granted will be determined in pre-award negotiations between the applicant and NOAA representatives. Future opportunities for submitting proposals may be available and will depend on OER funding levels.

Statutory Authority: 33 U.S.C. 3403(a)(4).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.011, Ocean Exploration.

Application Deadline: Completed pre-proposals are required and must be received by 5 p.m. (EDT) on August 16, 2010. If the application is submitted before 5 p.m. (EDT), an auto-reply message will notify applicants that their e-mail with pre-proposal material was received. If the application is submitted after 5 p.m. (EDT), an auto-reply message will notify applicant that their e-mail with pre-proposal material submission is late and will not be considered. A complete pre-proposal is a prerequisite for submission of a full proposal. Applicants will receive an e-mail encouraging or discouraging a full proposal submission by August 25, 2010. If you have not received a reply by September 1, 2010 contact OER *(OAR.OE.FAQ@noaa.gov)* as soon as possible. Full proposals must be received by 5 p.m. (EDT) on October 12, 2010. For applications submitted through Grants.gov, a date and time receipt generated by the system and will be the basis of determining timeliness. Hard copy, proposals will be date and time stamped when they are received in the Program Office. For applicants without internet access, hard copies of the Proposal Cover Sheet and the application package can be obtained via mail at NOAA Office of Ocean Exploration and Research, 1315 East West Highway, SSMC 3, 10th Floor, Silver Spring, Maryland 20910, or requested by phone at (301) 734–1015 as well. Pre-proposals and Full-Proposals submitted after their respective cutoff date and time will not be considered. **Please Note:** Applicants may have to register or renew their central contractor registration prior to submitting to Grants.gov. Grants.gov will not accept

submissions if the applicant has not been authorized or if credentials are incorrect. Authorizations and credential corrections can take several days to establish. Please plan your time accordingly to avoid late submissions. For further information please visit the Central Contractor Registration Web site *(http://www.ccr.gov/).* Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Pre-proposal submissions can be either by e-mail, which is the preferred submission method to *OAR.OE.FAQ@noaa.gov,* or by hard-copy (send one copy to the mailing address below). If by e-mail, please put your last name in the subject heading along with the words OER Pre-proposal, *e.g.,* "Smith OER Pre-proposal." Adobe PDF format is preferred. No facsimile pre-proposals will be accepted. Full proposal submissions must be submitted through Grants.gov. Applicants without internet access may submit hard-copies to the address below. Please refer to important information in submission dates and times above to help ensure your application is received on time. No e-mail or facsimile full proposal submissions will be accepted. Address for Hard-Copy Submissions: ATTN: Dr. Nicolas Alvarado, NOAA Office of Ocean Exploration & Research, SSMC III, 10th Floor, 1315 East West Highway, Silver Spring, Maryland 20910. Hard copy applications should be binder-clipped together (not bound or stapled) and printed on one-side only. One signed, hard copy original is required (use blue/black ink). Since reviewers will require access to an electronic copy, applicants submitting hard copies are highly encouraged to also submit a digital version in one Adobe PDF file on CD–ROM.

Information Contacts: For further information contact the NOAA Office of Ocean Exploration and Research at (301) 734–1015 or submit inquiries via e-mail to the Frequently Asked Questions address: *OAR.OE.FAQ@noaa.gov.* E-mail inquiries should include the Principal Investigator's name in the subject heading. Inquiries can be mailed to ATTN: Dr. Nicolas Alvarado (Proposal Manager) NOAA Office of Ocean Exploration 1315 East West Highway SSMC3, 10th Floor, Silver Spring, Maryland 20910

Eligibility: Eligible applicants are institutions of higher education; other nonprofits; commercial organizations; state, local and Indian tribal governments.

Cost Sharing Requirements: Cost-sharing is not required.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Programs." Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOC's are listed in the Office of Management and Budget's Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

6. Fiscal Year 2011 Joint Hurricane Testbed

Summary Description: The Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), is soliciting Letters of Intent (LOIs) under the United States Weather Research Program (USWRP), as administrated by the USWRP Joint Hurricane Testbed (JHT). This notice also provides guidelines for the submission of full proposals. This notice describes opportunities and application procedures for the transfer of relevant research and technology advances into tropical cyclone analysis and forecast operations. This notice calls for researchers to submit proposals to test and evaluate, and modify if necessary, in a quasi-operational environment, their own scientific and technological research applications. Projects satisfying metrics for success and operational constraints may be selected for operational implementation by the operational center(s) after the completion of the JHT-funded work. The period of the award is from one to two years.

Funding Availability: The estimate for total JHT funding that will be available in FY 2011 is $1,250,000, which will likely be used to fund 10–15 new projects. Award amounts for previous JHT grants have been mostly between $50,000 and $200,000 per year. A similar range is expected for this announcement. Initial and renewal funding of any JHT proposals is contingent upon availability of these funds. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs.

Statutory Authority: The program authority is 49 U.S.C. 44720(b), 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.431, Climate and Atmospheric Research.

Application Deadline: LOIs submitted must be received no later than 5 p.m. Eastern Daylight Time (EDT) on 30 July 2010. TPC/NHC determines whether an LOI has been submitted before the deadline by the date and time indication on the e-mail or by date and time stamp imprinted on the applications as they are physically received in the NHC office. LOIs received after the deadline will not be reviewed. Although LOIs are strongly recommended, they are not required in order to submit a full application. Full proposal packages must be submitted no later than 5 p.m. Eastern Daylight Time (EDT) on 29 October 2010. A date and time receipt on the submission to Grants.gov will be the basis of determining timeliness. For those without Internet access, hard copy proposals will be date and time stamped when they are received in the program office. Applications received after that time will not be reviewed. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: LOIs may be submitted via e-mail or hard copy to the JHT Director Dr. Jiann-Gwo Jiing via e-mail: *Jiann-Gwo.Jiing@noaa.gov,* DOC/NOAA, Office of Weather & Air Quality Research, Routing Code R/WA, 1315 East-West Highway, Room 11209, Silver Spring, MD 20910.

Federal applications must submit their full proposals to the JHT Director Dr. Jiann-Gwo Jiing via e-mail: *Jiann-Gwo.Jiing@noaa.gov.* If a non-federal co-Principal Investigator is seeking funds under a Federal Principal Investigator proposal, the non-federal Principal Investigator will need to submit the full proposal package via *http://grants.gov/Apply* Web site. For non-Federal Principal Investigator(s), full proposal packages should be submitted through the *http://grants.gov/Apply* Web site. For those without Internet access, hard copy proposals should be addressed to Dorothy Fryar, DOC/NOAA, Office of Weather & Air Quality Research, Routing Code R/WA, 1315 East-West Highway, Room 11209, Silver Spring, MD 20910.

Information Contacts: Please visit the Joint Hurricane Testbed Web site for further information at: *http://www.nhc.noaa.gov/jht/index.shtml* or contact Dr. Jiann-Gwo Jiing, Director, Joint Hurricane Testbed, Tropical Prediction Center, 11691 SW. 17th Street, Miami, FL 33165, phone (305) 229–4443, or via e-mail at *Jiann-Gwo.Jiing@noaa.gov.* Any technical questions addressed by Dr. Jiing (or his

authorized representative) about this JHT funding opportunity and the answers will be posted on the JHT Web site *(http://www.nhc.noaa.gov/jht).*

Eligibility: Eligible applicants are institutions of higher education; other nonprofits; commercial organizations; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; state, local and Indian tribal governments; and agencies. Applications will be competed against each other. Proposals selected for funding from applicants will be funded through a cooperative agreement as described in section II. C. of the FFO announcement. Proposals from NOAA scientists selected for funding shall be effected by an intra-agency fund transfer. Proposals from a non-NOAA agency selected for funding will be funded through an inter-agency transfer. **Please Note:** Before non-NOAA applicants may be funded, they must demonstrate that they have legal authority to receive funds from another agency in excess of their appropriation. The only exception to this is governmental research facilities for awards issued under the authority of 49 U.S.C. 44720(b). Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: No cost sharing is required under this program.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372,"Intergovernmental Review of Programs."

Office of the Under Secretary (USEC)

1. Environmental Literacy Grants for Formal K–12 Education

Summary Description: The goal of this funding opportunity is to support K–12 education projects that advance inquiry-based Earth System Science learning and stewardship directly tied to the school curriculum, with a particular interest in increasing climate literacy. To address this goal, this solicitation will support service-learning and professional development projects related to NOAA's mission in the areas of ocean, coastal, Great Lakes, weather and climate sciences and stewardship. A successful project will catalyze change in K–12 education at the state, regional and national level through development of new programs and/or revision of existing programs to improve the environmental literacy of K–12 teachers and their students. A successful project will also leverage NOAA assets, although use of non-NOAA assets is also encouraged. The target audiences for this funding opportunity are K–12 students, pre- and in-service teachers, and providers of pre-service teacher education and in-service teacher professional development. There is a special interest in projects that address reaching groups traditionally underserved and/or underrepresented in Earth System science. One group that has been identified as underserved is elementary level teachers and students. This funding opportunity has two priorities, which are equal in their importance for funding. Priority 1 is for innovative proof-of-concept projects that are one to two years in duration, for a total minimum request of $200,000 and a total maximum request of $500,000. Priority 2 is for full-scale implementation of educational projects that are three to five years in duration, for a total minimum request of $500,001 and a total maximum request of $1,500,000. This opportunity meets NOAA's Mission Support goal to provide critical support for NOAA's mission. It is anticipated that awards under this announcement will be made by June 30, 2011 and that projects funded under this announcement will have a start date no earlier than July 1, 2011. **Note:** a PDF version of this announcement is available at *http://www.oesd.noaa.gov/funding_opps.html.*

Funding Availability: NOAA anticipates the availability of approximately $8,000,000 of total financial assistance in FY 2011 for this solicitation. Approximately 5 to 10 awards total among both priorities in the form of grants or cooperative agreements will be made. For Priority 1, the total amount that may be requested from NOAA shall not exceed $500,000 for all years including direct and indirect costs. The minimum amount that must be requested from NOAA for all years for the direct and indirect costs for this priority is $200,000. Applications requesting support from NOAA of less than $200,000 or more than $500,000 total for all years will not be considered for funding. For Priority 2, the total amount that may be requested from NOAA shall not exceed $1,500,000 for all years including direct and indirect costs. The minimum amount that must be requested from NOAA for all years for the direct and indirect costs for this priority is $500,001. Applications requesting support from NOAA of more than $1,500,000 or less than $500,001 total for all years will not be considered for funding. The amount of funding available through this announcement will be dependent upon final FY11 appropriations. Publication of this notice does not oblige DOC/NOAA to award any specific project or to obligate any available funds. If an applicant incurs any costs prior to receiving an award agreement from an authorized NOAA Grants Officer, the applicant would do so solely at one's own risk of such costs not being included under the award. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives.

Statutory Authority: Authority for this program is provided by the following 33 U.S.C. 893a(a), the America COMPETES Act.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.008, NOAA Mission-Related Education Awards

Application Deadline: An informational teleconference with the program officers will occur on July 28 2010, 3 to 5 p.m. EDT. Interested applicants should register by contacting *oed.grants@noaa.gov,* including in the Subject line of the e-mail: "Interested in FFO Teleconference—Need Details". Please provide the interested parties' name, institution and telephone number in the body of the e-mail. Whenever possible, people from the same institution should try to call in through the same phone line.

Pre-proposal Submission Dates and Times: Pre-proposals are required for all applications and must be received by 5 p.m., EDT, September 8, 2010. Late pre-proposals will not be merit reviewed. Pre-proposals should be submitted via *http://www.Grants.gov.* Pre-proposals submitted through Grants.gov will generate an automated receipt indicating the date and time of submission. For pre-proposals submitted through Grants.gov, there will be two automated e-mail receipts sent to the application submitter with the date and time of submission (the first e-mail confirms receipt, the second e-mail confirms that there are no errors with your pre-proposal submission and it has been forwarded to NOAA for further processing). If both e-mail confirmation receipts are not provided within two (2) days of pre-proposal submission, contact the Grants.gov Help Desk and *oed.grants@noaa.gov.* **Please Note:** It may take Grants.gov up to 48 hours to validate or reject the pre-proposal. Please keep this in mind in developing your submission timeline. Applicants are responsible for ensuring that all required elements have been appropriately submitted. Additional instructions for Grants.gov can be found

at *http://www.oesd.noaa.gov/elg/elg_faqs.html.*

Hard copy pre-proposals will be hand stamped with the time and date when received in the Office of Education. (Note that late-arriving hard copy pre-proposals provided to a delivery service on or before 5 p.m., EDT September 8, 2010 will be accepted for review if the applicant can document that the pre-proposal was provided to the guaranteed delivery service by the specified closing date and time and if the applications are received in the Office of Education no later than 5 p.m. EDT two business days following the closing date.) **Please Note:** hard copy applications submitted via the U.S. Postal Service can take up to 4 weeks to reach this office; therefore applicants are advised to send hard copy applications via expedited shipping methods (*e.g.,* Airborne Express, DHL, Fed Ex, UPS). If you have submitted a hard-copy application, you must either call Stacey Rudolph at 202–482–3739 or send an e-mail to *oed.grants@noaa.gov* indicating that you have submitted a hard copy full application within 24 hours after the deadline. The submitter will receive a response from the program office acknowledging receipt of the phone call or e-mail and including an update on the receipt of the application. If you do not receive this response within 72 hours of the deadline, then call Stacey Rudolph: 202–482–3739 to confirm that your application has been received. Pre-proposals are a prerequisite for submission of a full application. Applicants who submit a pre-proposal by 5 p.m. EDT, September 8, 2010 will receive notification authorizing or not authorizing a full application on or about November 19, 2010. Please contact Stacey Rudolph at 202–482–3739 or *oed.grants@noaa.gov* if you have not received this notification by Nov 23, 2010.

Full Application Submission Dates and Times: The deadline for full applications is 5 p.m., EST on January 12, 2011. Full applications should be submitted via *http://www.grants.gov.* Late applications will not be merit reviewed. Full applications submitted through Grants.gov will generate an automated receipt indicating the date and time of submission. For applications submitted through Grants.gov, there will be two automated e-mail receipts sent to the application submitter with the date and time of submission (the first e-mail confirms receipt, the second e-mail confirms that there are no errors with your application submission and it has been forwarded to NOAA for further processing). If both e-mail confirmation receipts are not provided within two (2) days of application submission, contact the Grants.gov Help Desk and *oed.grants@noaa.gov.* **Please Note:** It may take Grants.gov up to 48 hours to validate or reject the application. Please keep this in mind in developing your submission timeline. Applicants are responsible for ensuring that all required elements have been appropriately submitted. Additional instructions for Grants.gov can be found at *http://www.oesd.noaa.gov/elg/elg_faqs.html.*

Hard copy applications will be hand stamped with time and date when received in the Office of Education. (Note that late-arriving hard copy applications provided to a delivery service on or before 5 p.m., EST January 12, 2011 will be accepted for review if the applicant can provide official proof that their application was provided to the guaranteed delivery service by the specified closing date and time and if the application is received in the Office of Education no later than 5 p.m. EST two business days following the closing date.) **Please Note:** hard copy applications submitted via the US Postal Service can take up to 4 weeks to reach this office; therefore applicants are advised to send hard copy applications via expedited shipping methods (*e.g.,* Airborne Express, DHL, Fed Ex, UPS). If you have submitted a hard-copy application, you must either call Stacey Rudolph at 202–482–3739 or send an e-mail to *oed.grants@noaa.gov* indicating that you have submitted a hard copy full application within 24 hours after the deadline. The submitter will receive a response from the program office acknowledging receipt of the phone call or e-mail and including an update on the receipt of the application. If you do not receive this response within 72 hours of the deadline, then call Stacey Rudolph: 202–482–3739 to confirm that your application has been received. See Section F of the full funding opportunity for additional guidance.

Address for Submitting Proposals: Pre-proposals and full applications must be submitted through Grants.gov APPLY (*http://www.grants.gov.*) However, if an applicant does not have Internet access or if technical issues prohibit submission through Grants.gov, hard copy pre-proposals or full applications will be accepted. Hard copy pre-proposals and full applications should be delivered to: Stacey Rudolph, Dept. of Commerce, NOAA Office of Education, 1401 Constitution Avenue, NW., HCHB 6863, Washington, DC 20230; Telephone: 202–482–3739. **Please Note:** hard copy applications submitted via the US Postal Service can take up to 4 weeks to reach this office; therefore applicants are advised to send hard copy applications via expedited shipping methods (*e.g.,* Airborne Express, DHL, Fed Ex, UPS) and to retain proof of their submission to the expedited shipping company.

Information Contacts: Please visit the OEd Web site for further information at *http://www.oesd.noaa.gov/funding_opps.html* or contact the Program Officers: Carrie McDougall at 202–482–0875; or Sarah Schoedinger at 704–370–3528; or John McLaughlin at 202–482–2893; or by e-mailing any of them at *oed.grants@noaa.gov.* For those applicants without Internet access, hard copies of referenced documents may be requested from NOAA's Office of Education by contacting Stacey Rudolph at 202–482–3739 or sending a letter to: Stacey Rudolph, Dept. of Commerce, NOAA Office of Education, 1401 Constitution Avenue, NW., HCHB 6863, Washington, DC 20230; Telephone: 202–482–3739.

Eligibility: Eligible applicants are institutions of higher education, other nonprofits, K–12 public and independent schools and school systems, and state, local and Indian tribal governments in the United States. U.S. federal agencies, for-profit organizations, foreign organizations and foreign government agencies are not eligible to apply as the lead institution. The following types of organizations may be partners on an application submitted by an eligible applicant: NOAA programs and offices, other Agencies, Funded Research and Development Centers, for-profit companies, non-U.S. organizations and institutions. Federally Funded Research and Development Centers conduct research for the United States Government. They are administered in accordance with U.S Code of Federal Regulations, Title 48, Part 35, Section 35.017 by universities and corporations. For the most up to date master list of every FFRDC, please view the following Web site: *http://www.nsf.gov/statistics/ffrdclist/start.cfm.* NOAA will consider applications that request a portion of the funding be used to support these types of partners. **Please Note:** although NOAA programs and offices can receive a small portion of funds associated with a project, the principal benefit of the project cannot be to support NOAA. Home-school organizations are eligible to apply. However, individuals are not eligible to apply. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to increasing the participation of Minority

Serving Institutions (MSIs), *i.e.,* Historically Black Colleges and Universities, Hispanic-serving institutions, Tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that work in underserved communities. Applications are encouraged that involve any of the above types of institutions. An individual may apply only once as principal investigator (PI) through this funding opportunity. However institutions may submit more than one application and individuals may serve as co-PIs or key personnel on more than one application.

Cost Sharing Requirements: There is no cost share requirement.

Intergovernmental Review: Applications submitted to this funding opportunity are not subject to Executive Order 12372, Intergovernmental Review of Programs.

2. Financial Assistance to Establish Five NOAA Cooperative Science Centers at Minority Serving Institutions

Summary Description: NOAA's Office of Education (OEd), Educational Partnership Program (EPP) with Minority Serving Institutions (MSIs) solicits applications from accredited postsecondary MSIs to establish five NOAA Cooperative Science Centers (CSCs). These five CSCs are designed to create collaborative partnerships among MSIs and NOAA's Line Offices. NOAA's mission as stated in the FY2009–2014 NOAA Strategic Plan, is "[t]o understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet our nation's economic, social, and environmental needs." The Uniform Resource Locator for NOAA Strategic Planning is *http://www.ppi.noaa.gov/strategic_planning.html.* Additional information about NOAA may be found on the Web site: *http://www.noaa.gov.* Each NOAA Cooperative Science Center must conduct education and research that directly supports NOAA's mission. The purpose of these CSCs at MSIs is to: (1) Educate students in science, technology, engineering, and mathematics (STEM) fields related to the CSCs' research areas to increase the number and diversity of NOAA's and the nation's STEM workforce; (2) conduct research in collaboration with NOAA scientists and engineers to better understand the significance of changes in the Earth's oceans, coasts, Great Lakes, weather and climate; and, (3) build capacity and sustainability in NOAA-relevant STEM areas at all center institutions. The CSCs are to leverage existing education and research program capabilities to train and graduate students in NOAA-mission STEM fields including broader disciplines (*e.g.,* economics and social sciences). The CSCs are to build sustainable capacity, maintaining newly established curricula, as well as upgraded research facilities that will enhance their ability to conduct NOAA education and research that contributes to a pipeline of students trained in STEM fields. The EPP is designed to enhance capacity at MSIs that educate, train, and graduate students in STEM fields and to increase environmental literacy by establishing partnerships with academia, the private sector, and other state, tribal and local agencies. Additional program details may be found on the Web site: *http://www.epp.noaa.gov.* Interested applicants should be responsive to both the notice in the **Federal Register** and the Federal Funding Opportunity (FFO) announcement. A PDF version of both the **Federal Register** Notice and the FFO are available at *http://www.epp.noaa.gov/.*

Funding Availability: All funding is contingent upon availability of appropriations. NOAA anticipates that up to $3 million will be available annually for each Cooperative Science Center. Five awards will be made to five successful applicants; total funds of approximately $75 million are available to support the proposed five (5) Cooperative Science Centers for a period of five years, subject to appropriations. NOAA will not accept applications requesting more than $15 million under this solicitation. Subject to Congressional appropriations, NOAA anticipates making awards in the summer 2011. Awards will be funded incrementally on an annual basis for a five-year period and are subject to the availability of funds and acceptable performance. There is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: The applicable statutory authorities follow: 15 U.S.C. 1540; Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970; Cooperative research and training programs for fish and wildlife resources, 16 U.S.C. 753(a); National Marine Sanctuaries Act, 16 U.S.C. 1431; Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.;* Magnuson-Stevenson Fishery Conservation and Management Reauthorization Act of 2006, 16 U.S.C. 1891a; 33 U.S.C.—US Code—Title 33: Navigation and Navigable Waters (January 2003) Sec. 883a. Surveys and other activities, and, Sec. 883d. Improvement of methods, instruments, and equipments; investigations and research; Sec. 1442. Research program respecting possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems; Meteorological Services, 49 U.S.C. 44720; White House Initiative on Educational Excellence for Hispanic Americans Commission, Executive Orders 13230; White House Initiative on Historically Black Colleges and Universities, Executive Order 13256; White House Initiative on Tribal Colleges and Universities, Executive Order 13270; American Indian and Alaska Native Education, Executive Order 13336; Increasing Economic Opportunity and Business Participation of Asian Americans and Pacific Islanders, Executive Order 13339; and, America Competes Act H.R. 2272.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.481, Educational Partnership Program.

Application Deadline: Informational teleconferences with the Program Officer are scheduled for Wednesday, July 21, 2010 and Wednesday, August 25, 2010, at 3 p.m. Eastern Time on both days. Interested applicants should register by contacting *oed.epp10@noaa.gov.* The e-mail should include in the Subject line of the e-mail: "Interested in FFO Teleconference—Need Details" and provide the interested parties name, institution, telephone number, and selected information teleconference date in the body of the e-mail no later than two weeks prior to the scheduled informational teleconference. Where possible, individuals from the same institution should try to call in using one telephone line. Full applications must be submitted through *http://www.grants.gov* no later than November 15, 2010. Applicants must comply with all requirements contained in this notice in the **Federal Register** and the FFO announcement. For those applicants without Internet access, paper applications (a signed original and two copies) and a flash drive with the application in MS Word and/or PDF format may be submitted to the Office of Education: NOAA Office of Education, Educational Partnership Program, 1315 East-West Highway, Room 10600, Silver Spring, Maryland 20910. Paper applications must be received or postmarked no later than November 15, 2010. Facsimile transmissions and electronic mail submission of full applications will not be accepted. **Please Note:** Hard copy applications submitted via the U.S. Postal Service may take up to four (4) weeks to reach NOAA's Office of

Education; therefore applicants are advised to send hard copy applications via expedited shipping methods (*e.g.* Fed Ex, UPS). Use of U.S. Postal Service or another delivery service must be documented with a receipt. **Please Note:** It may take Grants.gov up to two (2) business days to validate or reject the application. Please keep this in mind in developing your submission timeline. Applications postmarked or provided to a delivery service after that time will not be considered for funding. Applications submitted via the U.S. Postal Service must have an official postmark; private metered postmarks are not acceptable. In any event, applications received later than five (5) business days following the postmark closing date will not be accepted.

Address for Submitting Proposals: Applicants must comply with all requirements contained in the Federal Funding Opportunity announcement. If Internet access is unavailable, paper applications (a signed original and two copies) and a flash drive with the application in MS Word and/or PDF format may be submitted to the Office of Education, Educational Partnership Program at the following address: NOAA Office of Education, Educational Partnership Program, 1315 East-West Highway, Room 10700, Silver Spring, Maryland 20910. Facsimile transmissions and electronic mail submission of full applications will not be accepted.

Information Contacts: For further information please contact Audrey Trotman (Federal Program Officer) for administrative and technical questions, telephone 301–713–9437 ext. 155, fax 301–713–9465, or e-mail *Audrey.Trotman@noaa.gov.* The alternative technical contact is Meka Laster, telephone 301–713–9437 ext. 147 or e-mail *Meka.Laster@noaa.gov.*

Eligibility: For the purpose of this program Minority Serving Institutions: Historically Black Colleges and Universities, Hispanic-Serving Institutions, Indian Tribally Controlled Colleges and Universities, Alaska Native-Serving Institutions, and Native Hawaiian-Serving Institutions, as identified on the 2007 United States Department of Education, Accredited Postsecondary Minority Institution list *(http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html* and *http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst-list-tab.html*) are eligible to apply. A proposed center's principal academic institution must be an accredited MSI with a PhD degree-granting program in a STEM field that supports NOAA's mission. Applications will not be accepted from non-profit organizations (except organizations that are classified as Institutions of Higher Education), foundations (except foundations that represent Institutions of Higher Education), auxiliary services or any other entity submitted on behalf of MSIs. Private and/or public sector and community college partnerships are encouraged. Partnerships with community colleges may be considered as a mechanism to build the undergraduate pipeline of four-year academic institutions. A Cooperative Science Center may partner with one or more institutions that have demonstrated education and research performance in NOAA-related sciences. While the center will be established at an MSI, consortia with non-minority serving institutions partners will not be restricted. If a cooperative agreement is awarded to a consortium of institutions, the consortium must propose a governance structure that includes a single director and one award. Where multi-institutional applications between majority and MSIs are submitted, no less than eighty percent (80%) of the total funds shall be awarded to the MSI(s). The MSI lead cannot issue sub-awards for more than twenty percent (20%) of the total project costs to majority institutions.

Cost Sharing Requirements: There is no statutory matching requirement for this funding.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Programs."

National Environmental Satellite Data and Information Service (NESDIS)

1. Climate Data Record Program Office for Fiscal Year 2011

Summary Description: The Climate Data Record Program (CDRP) seeks to support the development and stewardship of Climate Data Records (CDRs) for the atmosphere, cryosphere, oceans, and land surface. The Program follows the National Research Council's 2004 distinction between Fundamental and Thematic Climate Data Records, and is initially focused on Fundamental CDRs and Thematic CDRs related to Earth's water and energy cycles and sea level. The Program seeks CDRs that will provide demonstrable benefit to end users and society. The CDRP is managed by NOAA, but is informed by other government agencies such that its results represent a government-wide contribution to climate change detection, assessment, understanding, adaptation and/or mitigation.

Funding Availability: In FY 2007, the first year of SDS grants, the Project made eight awards totaling approximately $800K. In FY 2008, the Project expanded total funding to nearly $1,000K, which included funding for three new starts. In FY 2009, funding increased to $2.6M, with seven proposals being funded. In FY 2010, four additional proposals, totaling $1.2M, from the FY 2009 competition were funded. The grant selection abstracts for FY2007 through 2010 may be found at: *http://www.ncdc.noaa.gov/sds/sds-opportunities.html* For the present grants competition, the CDR Program expects to select proposals over a two year period (FY 2011 and FY 2012) for funding. The total anticipated Federal funding in FY 2011 is $2.5M for new awards. The anticipated number of new awards, pending adequate proposals of merit, is from 5- to 15. The CDR Program anticipates new funding availability in FY 2012 for additional awards from the present grants competition. The total anticipated Federal funding in FY 2012 and the number of additional awards will be dependent on the enacted budget. Please be advised that actual funding levels will depend upon the final FY 2011 and FY 2012 budget appropriations. Current plans assume that 100% of the total resources provided through the present FY 2011 CDRP Announcement will support extramural efforts that include the broad academic, non-profit, Federal and commercial communities. Past or current grantees funded under this announcement are eligible to apply for a new award, which builds on previous activities or areas of research not covered in the previous award. Current grantees should not request supplementary funding for ongoing research through this announcement. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives.

Statutory Authority: 49 U.S.C. 44720(b) and 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.440, Environmental Sciences, Applications, Data, and Education.

Application Deadline: Letters of Intent (LOI) should be received at the CDRP Office no later than 5 p.m. Eastern Time, September 15, 2010. Applicants who have not received a response to their LOI within four weeks should contact the CDRP Grants Manager. Applicants are encouraged, but not required, to submit LOIs. Full proposals must be received no later than 5 p.m. Eastern Time, November 10, 2010.

Proposals received after that time will not be considered for funding. For applications submitted through Grants.gov, the system will generate a date time receipt that will be the basis of determining timeliness for applications. Hard copy applications will be date and time stamped when they are received. **Please Note:** Validation or rejection of your application by Grants.gov may take up to 2 business days after submission. Please consider this process in developing your submission timeline.

Address for Submitting Proposals: Applications must be submitted through Grants.gov *(http://www.grants.gov,)* unless an applicant does not have Internet access or is a agency. If an applicant does not have Internet access, please contact the CDRP Grants Manager, Linda S. Statler, for hard copy instructions (see Section VII of the FFO announcement for contact information). Federal agencies must submit applications by E-mail to the CDRP Grants Manager, Linda S. Statler (see Section VII below for E-mail address). In cases where a proposal includes both and personnel in the budget, the respective personnel should submit duplicate proposal narratives, but unique budget sheets, through the respective submission channels. The overall Team leader, as well as the submitting investigator for each piece or should be clearly identified on the cover sheet of each submission. The overall Team leader submission should itemize the lead's budget including any subcontract costs, but also state the overall Team cost that includes the costs of all and team members.

Information Contacts: CDRP Grants Manager: Linda S. Statler, NOAA Climate Data Record Program Office, 151 Patton Ave, Asheville, NC 28801; Phone: 828–271–4657; E-mail: *Linda.S.Statler-at-noaa.gov.* CDRP Program Manager: Jeff Privette, NOAA Climate Data Record Program Office, 151 Patton Ave, Asheville, NC 28801; Phone: 828–271–4331; E-mail: *Jeff.Privette-at-noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education; other nonprofits; for profits; commercial organizations; international organizations; state, local and Indian tribal governments; and agencies. Applications from and applicants will be competed against each other. **Please Note:** Before non-NOAA applicants may be funded, they must demonstrate that they have legal authority to receive funds from another agency in excess of their appropriation. The only exception to this is governmental research facilities for awards issued under the authority of 49 U.S.C. 44720(b). Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: This competition does not have Cost Sharing requirements. However, applicants are welcome to describe applicable cost-sharing when relevant.

Intergovernmental Review: Applications under the CDR Program are not subject to Executive Order 12372, "Intergovernmental Review of Programs."

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2011 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register** (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet *http://www.dunandbradstreet.com.*

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA Federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216-6-TOC.pdf,* NEPA Questionnaire, *http://www.nepa.noaa.gov/questionnaire.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc-ceq.htm* . Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases, if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

Compliance With Department of Commerce Bureau of Industry and Security Export Administration Regulations

(a) This clause applies to the extent that this financial assistance award involves access to export-controlled information or technology.

(b) In performing this financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

(c) Definitions.

(1) Deemed export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such

release is "deemed' to be an export to the home country of the foreign national. 15 CFR 734.2(b)(2)(ii).

(2) Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 *et seq.*), implemented by the DOC Bureau of Industry and Security, or the International Traffic I Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

(d) The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted, or licensed, as required by applicable laws, Executive Orders, and/or regulations.

(e) Nothing in the terms of this financial assistance award is intended to change, supersede, or waive any of the requirements of applicable laws, Executive Orders or regulations.

(f) The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under the financial assistance award that may involve access to export-controlled information technology.

NOAA Implementation of Homeland Security Presidential Directive—12

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to premises for more than 180 days or access to an information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive-12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a controlled facility or access to an information system.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424 and 424A, 424B, 424C, 424D, and SF–LLL has been approved by OMB under the respective control numbers 4040–0004, 0348–0044, 4040–0007, 0348–0041, 4040–0009, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

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

Dated: July 12, 2010.

Tammy Journet,

Deputy Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration (NOAA).

[FR Doc. 2010–17294 Filed 7–15–10; 8:45 am]

BILLING CODE 3510–12–P

Federal Register

Friday,
July 16, 2010

Part V

The President

Memorandum of July 13, 2010—Implementation of the National HIV/AIDS Strategy

Federal Register
Vol. 75, No. 136
Friday, July 16, 2010

Presidential Documents

Title 3—

The President

Memorandum of July 13, 2010

Implementation of the National HIV/AIDS Strategy

Memorandum for the Heads of Executive Departments and Agencies

As we approach 30 years from the onset of the HIV/AIDS epidemic in the United States, new actions are needed to prevent HIV infection and better serve people living with HIV. The actions we take now will build upon a legacy of global leadership, national commitment, and sustained efforts on the part of Americans from all parts of the country and all walks of life to end the HIV epidemic in the United States and around the world. I am committed to renewing national leadership to fight HIV/AIDS here at home, as we continue our efforts to fight HIV/AIDS around the world. My Administration has engaged in an extensive process to engage Americans and listen to their ideas for improving our national response to HIV/AIDS.

Today I am releasing a National HIV/AIDS Strategy for the United States (Strategy) and a National HIV/AIDS Strategy Federal Implementation Plan (Federal Implementation Plan), which identifies specific actions to be taken by Federal agencies to implement the Strategy's goals. While agencies already undertake many actions to address HIV/AIDS, successful implementation of the Strategy will require new levels of coordination, collaboration, and accountability. This will require the Federal Government to work in new ways across agency lines, as well as in enhanced and innovative partnerships with State, tribal, and local governments. Government cooperation at all levels, moreover, is not enough. Success will require the commitment of all parts of society, including businesses, faith communities, philanthropic organizations, scientific and medical communities, educational institutions, people living with HIV, and others. It is also necessary to sustain public commitment to ending the epidemic, and this calls for regular communications between governments at all levels to identify the challenges we face and report the progress we are making. To these ends, I hereby direct the following:

Section 1. *Role of the White House Office of National AIDS Policy (ONAP).*

(a) The Director of the ONAP, in consultation with the Office of Management and Budget (OMB), shall be responsible for setting the Administration's domestic HIV/AIDS priorities and monitoring the implementation of the Strategy. The Director of the ONAP shall convene regular meetings with representatives of executive departments and agencies (agencies) to coordinate HIV/AIDS-related policies, programs, and activities.

(b) The Director of the ONAP shall annually report to the President on the implementation of the Strategy, including progress in meeting key targets and taking key actions identified in the Strategy and the Federal Implementation Plan.

Sec. 2. *Lead Responsible Agencies.* While the Strategy requires a Government-wide effort in order to succeed fully, certain agencies have primary responsibilities and competencies in implementing the Strategy.

(a) *Designation of Lead Agencies.* Lead agencies for implementing the Strategy shall be:

(i) the Department of Health and Human Services;

(ii) the Department of Justice;

(iii) the Department of Labor;

(iv) the Department of Housing and Urban Development;

(v) the Department of Veterans Affairs; and

(vi) the Social Security Administration.

(b) *Lead Agency Implementation Plans.* Within 150 days of the date of this memorandum, the head of each lead agency shall submit a report to the ONAP and the OMB on the agency's operational plans for implementing the Strategy. The plans shall assign responsibilities to agency officials, designate reporting structures for actions identified in the Federal Implementation Plan, and identify other appropriate actions to advance the Strategy. The plans shall also include steps to strengthen coordination in planning, budgeting for, and evaluating domestic HIV/AIDS programs within and across agencies. Lead agencies are encouraged to consider, and reflect in their plans, steps to streamline grantee reporting requirements and funding announcements related to HIV/AIDS programs and activities.

(c) *Ongoing Responsibilities of Lead Agencies.* The head of each lead agency shall:

(i) designate an official responsible for coordinating the agency's ongoing efforts to implement the Strategy;

(ii) develop a process for sharing progress reports, including status updates on achieving specific quantitative targets established by the Strategy, with relevant agencies and the ONAP on an annual basis, or at such other times as the ONAP requests; and

(iii) in consultation with the OMB, use the budget development process to prioritize programs and activities most critical to meeting the goals of the Strategy.

Sec. 3. *Role of the Secretary of Health and Human Services.* The Secretary of Health and Human Services (Secretary), or the Secretary's designee, shall be responsible for improving coordination of domestic HIV/AIDS programs and activities across the Federal Government.

(a) *Coordination within the Department of Health and Human Services.* The Secretary, or the Secretary's designee, shall develop and implement specific plans and procedures for improving intra-departmental coordination and collaboration on HIV/AIDS care, research, and prevention services.

(b) *Coordination with Other Agencies.* The Secretary, or the Secretary's designee, shall be responsible for convening interagency efforts to improve coordination of HIV/AIDS programs and activities. This may include collaboration with governmental and nongovernmental entities to achieve the Federal Government's implementation and research priorities in the areas of highest impact.

(c) *Presidential Advisory Council on HIV/AIDS (PACHA).* PACHA, which was established by Executive Order 12963 of June 14, 1995 (Presidential Advisory Council on HIV/AIDS), as amended, shall monitor the implementation of the Strategy and make recommendations to the Secretary and to the Director of the ONAP, as appropriate, concerning implementation.

Sec. 4. *Responsibilities of Other Agencies.* All agencies that support HIV/AIDS programs and activities shall ensure that, to the extent permitted by law, they are meeting the goals of the Strategy.

(a) *Department of Defense.* Within 150 days of the date of this memorandum, the Secretary of Defense shall submit to the ONAP and the OMB a plan for aligning the health-care services provided by the Department of Defense with the Strategy, to the extent feasible and permitted by law. The plan shall address, in particular, HIV/AIDS prevention, care, and treatment.

(b) *Department of State.* Within 150 days of the date of this memorandum, the Secretary of State shall submit to the ONAP and the OMB recommendations for improving the Government-wide response to the domestic HIV/AIDS epidemic, based on lessons learned in implementing the President's Emergency Plan for AIDS Relief (PEPFAR) program.

(c) *Equal Employment Opportunity Commission (Commission).* Within 150 days of the date of this memorandum, the Chair of the Commission shall submit to the ONAP and the OMB recommendations for increasing employment opportunities for people living with HIV and a plan for addressing employment-related discrimination against people living with HIV, consistent with the Commission's authorities and other applicable law.

Sec. 5. *General Provisions.*

(a) The heads of executive departments and agencies shall assist and provide information to the Director of the ONAP, consistent with applicable law, as may be necessary to implement the Strategy. Each agency shall bear its own expense for carrying out activities to implement the Strategy.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof, or to other executive branch officials; or

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

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

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

Sec. 6. *Publication.* The Secretary is authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
WASHINGTON, July 13, 2010

[FR Doc. 2010–17620
Filed 7–15–10; 11:15 am]
Billing code 4150–42–P

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Federal Register

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Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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