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WHEN: Tuesday, December 7, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2009–0079]

Karnal Bunt; Regulated Areas in Arizona, California, and Texas

Correction

In rule document 2010–28347 beginning on page 68942 in the issue of Wednesday, November 10, 2010, make the following corrections:

§ 301.89–3 [Corrected]

1. On page 68945, in § 301.89–3 paragraph (g), in the first column, under the California heading, in the 13th line, "114.647877" should read "–114.647877".

a. In the second column, in the 20th line from the top, "114.603889" should read "–114.603889".

b. In the 29th line from the bottom, "D10–11" should read "D–10–11".

c. In the 26th line from the bottom, "D10–11" should read "D–10–11".

d. In the 21st line from the bottom, "114.623143" should read "–114.623143".

e. In the first line from the bottom, "114.961526" should read "–114.961526".

[FR Doc. C1–2010–28347 Filed 11–18–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1405

RIN 0560–AI00

Commodity Assessments; Loans, Purchases, and Other Operations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Commodity Credit Corporation (CCC) is amending regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to remove a provision concerning CCC fees for administrative costs to collect commodity assessments. The 2008 Farm Bill prohibits CCC from collecting these fees. As a result of this amendment, CCC, rather than States or commodity associations, will absorb the administrative costs of implementing and modifying commodity assessment collections.

DATES: *Effective Date:* November 19, 2010.

FOR FURTHER INFORMATION CONTACT: Frankie Coln, Price Support Division, Farm Service Agency (FSA), U.S. Department of Agriculture (USDA), Mail Stop 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512; telephone (202) 720–9011; fax (202) 690–3307; e-mail, *Frankie.coln@wdc.usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at 202–720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: Section 1616 of the 2008 Farm Bill (Pub. L. 110–246) prohibits CCC from charging any fee or related cost for the collection of commodity assessments. Therefore, this rule removes a provision relating to such fees. CCC has already implemented this policy and is not charging such fees.

Many States charge assessments on commodities marketed in that State and use the assessment to fund State level agricultural promotion activities. CCC has agreements with States to collect the assessments. When authorized by State law, CCC deducts the assessment from the proceeds of a Marketing Assistance Loan (MAL) on behalf of the State. In the past, CCC has charged fees to cover the administrative costs of collecting the assessment, including costs to modify the rate of the assessment or to develop the automation software to begin the collection of a newly mandated commodity assessment. The agreement between CCC and the States has required the States to indemnify CCC for the administrative costs of collecting the assessments.

CCC will continue to collect commodity assessments as part of the MAL program, but is no longer charging fees for the administrative costs. Therefore, the cost to MAL customers for CCC's administration of commodity assessments has decreased to zero. CCC estimates that this will save producers, their marketing associations, and the States about $15,000 per year.

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 Section 553 of title 5 of the United States Code 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.

Executive Order 12866

This final rule has been designated as not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule.

Environmental Evaluation

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The change to the regulations

removing a provision concerning CCC fee collection for administrative costs of implementing or modifying commodity assessment collections, as required by the 2008 Farm Bill, that are identified in this Final Rule is solely administrative. Therefore, FSA has determined that NEPA does not apply to this Final Rule and no environmental 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 final 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 national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not 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, or tribal governments, or the private sector. In addition, CCC 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.

Paperwork Reduction Act

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

E-Government Act Compliance

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

List of Subjects in 7 CFR part 1405

Loan programs—agriculture, Price support programs.

■ For the reasons set out above, CCC amends 7 CFR part 1405 as follows:

PART 1405—LOANS, PURCHASES, AND OTHER OPERATIONS

■ 1. The authority will continue to read as follows:

Authority: 7 U.S.C. 1515; 7 U.S.C. 7416a; 7 U.S.C. 7991(e); 15 U.S.C. 714b and 714c.

§ 1405.9 [Amended]

■ 2. Amend § 1405.9, in paragraph (c)(1), by removing the words "and for administrative costs", and adding, in their place, the words "but not for administrative costs".

Signed in Washington, DC, on November 15, 2010.

Jonathan Coppess,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–29249 Filed 11–18–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1136; Directorate Identifier 2010–SW–069–AD; Amendment 39–16522; AD 2010–24–04]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Sikorsky Model S–92A helicopters that currently requires cleaning and inspecting each main gearbox (MGB) assembly mounting foot pad and rib for a crack and corrosion. If you do not find a crack, the AD requires applying a corrosion preventive compound. If you find a crack, the AD requires replacing the MGB before further flight. If you find corrosion, bubbled paint, or paint discoloration, the AD requires you to repair the MGB before further flight. This amendment retains the current requirements and expands the applicability to include another part-numbered MGB assembly and MGB housing. This amendment is prompted by the need to expand the applicability to include another MGB assembly and MGB housing that is prone to the same cracks and corrosion as the MGB listed in the current AD. The actions specified by this AD are intended to prevent the loss of the MGB and subsequent loss of control of the helicopter.

DATES: Effective December 6, 2010.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of February 19, 2010 (75 FR 5684, February 4, 2010).

We must receive comments on this AD by January 18, 2011.

ADDRESSES: Use one of the following addresses to comment on this AD.

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

You may get the service information identified in this AD from Sikorsky Aircraft Corporation, *Attn:* Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.*

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://www.regulations.gov,* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–

5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael Schwetz, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7761, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: On December 18, 2009, we issued AD 2009–23–51, Amendment 39–16190 (75 FR 5684, February 4, 2010), to require cleaning and inspecting each MGB assembly mounting foot pad and rib for a crack and corrosion. If you do not find a crack, the AD requires applying a corrosion preventive compound. If you find a crack, the AD requires replacing the MGB before further flight. If you find corrosion, bubbled paint, or paint discoloration, the AD requires you to repair the MGB before further flight. That action was prompted by reports of cracks in the MGB mounting foot pads and foot ribs. That condition, if not corrected, could result in loss of the MGB and subsequent loss of control of the helicopter.

Since issuing that AD, we have determined the need to expand the applicability to include another MGB assembly and MBG housing, which introduced a six-stud attachment for the oil filter bowl and more edge distance on the right and left foot pads. This new housing configuration is added to the applicability of this AD because it is prone to the same cracks as the MGB listed in the current AD. The manufacturer is still investigating the root cause of these cracks. Contributing factors may include corrosion and the bushing press fit in the mounting foot bolt hole. The actions specified in this AD are interim actions until the root cause of the cracking is determined. After that determination, we anticipate further rulemaking.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky S–92A helicopters of the same type design, this AD supersedes AD 2009–23–51 to retain the same requirements and to expand the applicability to include the MGB assembly, part number (P/N) 92351–15000–044, with a MGB housing, P/N 92351–15110–046. This AD is being issued to prevent the loss of the MGB and subsequent loss of control of the helicopter. This AD requires an initial and at 10-hour time-in-service (TIS) intervals, cleaning and inspecting each MGB assembly mounting foot pad and rib for a crack and corrosion. If you do not find a crack, this AD requires applying a corrosion preventive compound. If you find a crack, this AD requires replacing the MGB before further flight. If you find corrosion, bubbled paint, or paint discoloration, this AD requires you to repair the MGB before further flight.

The short compliance time is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, because of the short compliance time, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate this AD will affect 44 helicopters of U.S. registry, and inspecting the MGB assembly mounting foot pads and foot ribs for corrosion or a crack will take about:

- 2 work hours to do the visual inspection, assuming 2200 (50 inspections X 44 helicopters) inspections per year for commercial and part 91 operators; and
- 24 work hours to remove and replace an MGB.

The average labor rate is $85 per work hour and required parts will cost about $590,000 per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $26,423,760 assuming all 44 helicopters will require an MGB replacement.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1136; Directorate Identifier 2010–SW–069–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this AD. Using the search function of the docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Regulatory Findings

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

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

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–23–51, Amendment 39–16190 (75 FR 5684, dated February 4, 2010), and by adding a new AD to read as follows:

2010–24–04 Sikorsky Aircraft Corporation: Amendment 39–16522; Docket No. FAA–2010–1136; Directorate Identifier 2010–SW–069–AD. Supersedes AD 2009–23–51; Amendment 39–16190; Docket No. FAA–2010–0066; Directorate Identifier 2009–SW–52–AD.

Applicability: Model S–92A helicopters, with main gearbox (MGB) assembly, part number (P/N) 92351–15000–042, –043, or –044, with MGB housing, P/N 92351–15110–042, –043, –044, –045, or –046, installed, certificated in any category.

Compliance: Required as indicated.

To prevent loss of an MGB and subsequent loss of control of the helicopter, do the following:

(a) Within 10 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 10 hours TIS, clean and inspect each MGB assembly mounting foot pad and rib for a crack and corrosion in the area depicted in Figure 1 and as shown in the examples in Figures 2, 3, and 4 of Sikorsky Alert Service Bulletin No. 92–63–020, dated September 11, 2009 (ASB). If no crack is found, apply the corrosion preventive compound to each foot pad and rib area.

Note 1: When conducting a visual inspection, use a bright, non-LED light.

(1) If you find a crack, replace the MGB before further flight.

(2) If you find corrosion, bubbled paint, or paint discoloration, before further flight, repair the affected area.

Note 2: Even though MGB assembly, P/N 92351–15000–044, with MGB housing, P/N 92351–15110–046, is not included in the ASB, following the Accomplishment Instructions in the ASB accomplishes the intent of this AD.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, *ATTN:* Michael Schwetz, Aviation Safety Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7761, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 6320: Main Rotor Gearbox.

(d) Do the inspections by following the specified portions of Sikorsky Alert Service Bulletin No. 92–63–020, dated September 11, 2009. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51 as of February 19, 2010 (75 FR 5684, February 4, 2010). Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.* Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) This amendment becomes effective on December 6, 2010.

Issued in Fort Worth, Texas, on November 9, 2010.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–29201 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation, and Enforcement

30 CFR Parts 201, 202, 203, 204, 206, 207, 208, 210, 212, 217, 218, 219, 220, 227, 228, 229, 241, 243, and 290

Office of Natural Resources Revenue

30 CFR Parts 1201, 1202, 1203, 1204, 1206, 1207, 1208, 1210, 1212, 1217, 1218, 1219, 1220, 1227, 1228, 1229, 1241, 1243, and 1290

[Docket No. MMS–2010–MRM–0033]

RIN 1010–AD70

Reorganization of Title 30, Code of Federal Regulations

Correction

In rule document 2010–24721 beginning on page 61051 in the issue of Monday, October 4, 2010, make the following corrections:

PART 1206—PRODUCT VALUATION [CORRECTED]

Amendment Table for Part 1206 [Corrected]

1. On page 61070, in the table, in the first column "Amend":

a. In the fourth row, "§ 1206.52(c)(2)" should read "§ 1206.52(c)(2)(i)".

b. In the 11th row, "§ 1206.53(e)(5) two times" should read "§ 1206.52(e)(5) two times".

c. In both the 15th and 16th rows, "§ 1206.52(c) introductory text" should read "§ 1206.53(c) introductory text".

2. On page 61071, in the table, in the third column "And adding in its place:":

a. In the 18th row from the bottom of the page, "part 207" should read "part 1207."

b. In the seventh row from the bottom of the page, the blank entry should read "ONRR."

3. On page 61072, in the table, in the third column "And adding in its place:", in the 22nd row, the blank entry should read "§ 1206.111".

4. On page 61073, in the table, in the third column "And adding in its place:", in the 16th row, "Associate Director" should read "Director".

PART 1208—SALE OF FEDERAL ROYALTY OIL [CORRECTED]

Amendment Table for Part 1208 [Corrected]

5. On page 61081, in the table, in the third column "And adding in its place:":

a. In the first row, "§ 208.8(a)" should read "§ 1208.8(a)".

b. In the fifth row, "§ 208.7(g)" should read "§ 1208.7(g)".

[FR Doc. C1–2010–24721 Filed 11–18–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 363

Securities Held in Treasury Direct

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: Treasury is enhancing TreasuryDirect to permit automatic purchases of savings bonds through a payroll savings plan.

DATES: *Effective date:* November 19, 2010.

ADDRESSES: You can download this Final Rule at the following Internet addresses: *http:\\www.publicdebt.treas.gov*, *http:\\www.gpo.gov*, or *http:\\www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Elisha Whipkey, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at

(304) 480–6319 or *elisha.whipkey@bpd.treas.gov.*

Susan Sharp, Attorney-Adviser, Ann Fowler, Attorney-Adviser, Dean Adams, Assistant Chief Counsel, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *susan.sharp@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: United States Savings Bonds are non-marketable Treasury securities which have been sold continuously since March 1935. Savings bonds were introduced as a means of encouraging broad public participation in government financing by making Treasury securities available in small denominations specially tailored to the small investor. Today, savings bonds continue to be an important savings and investment tool for individuals, and Treasury is committed to offering savings bonds to the public as efficiently as possible.

In order to reduce costs, enhance customer service, and minimize environmental impact, Treasury is discontinuing the issuance of definitive (paper) savings bonds through payroll savings plans. In order to provide a more efficient, electronic, automatic method for the purchase of savings bonds through payroll savings, Treasury is enhancing its TreasuryDirect system by adding a payroll savings function. TreasuryDirect is an online account system in which investors may hold and conduct transactions in eligible book-entry Treasury securities. The new payroll savings function will permit employees, through their employer or a financial institution, to credit funds on a recurring basis to purchase a payroll zero-percent certificate of indebtedness. When the payroll zero-percent certificate of indebtedness balance is sufficient, a savings bond will be automatically purchased in the amount, series, and registration previously selected by the employee.

Procedural Requirements

Executive Order 12866. This rule is not a significant regulatory action pursuant to Executive Order 12866.

Administrative Procedure Act (APA). Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

Regulatory Flexibility Act. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply to this rule because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment.

Paperwork Reduction Act (PRA). There is no new collection of information contained in this final rule that would be subject to the PRA, 44 U.S.C. 3501 *et seq.* Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The Office of Management and Budget already has approved all collections of information in 31 CFR Part 363 under OMB control number 1535–0138.

Congressional Review Act (CRA). This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.,* because it is a minor amendment that is expected to decrease costs for employers participating in a payroll savings plan; therefore, this rule is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule may take immediate effect after we submit a copy of it to Congress and the Comptroller General.

List of Subjects in 31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

■ Accordingly, for the reasons set out in the preamble, 31 CFR Chapter II, Subchapter B, is amended as follows:

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN TREASURYDIRECT®

■ 1. The authority citation for Part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.;* 31 U.S.C. 3121, *et seq.*

■ 2. Amend § 363.6 by removing the definition of "*Certificate of indebtedness*".

■ 3. In Part 363, revise all references to "certificate of indebtedness" to read "zero-percent certificate of indebtedness" wherever they appear.

■ 4. In Part 363, revise all references to "certificates of indebtedness" to read "zero-percent certificates of indebtedness" wherever they appear.

■ 5. Amend § 363.6 by adding definitions of "*Payroll Savings Plan,*" "*Payroll Zero-Percent Certificate of Indebtedness,*" and "*Zero-Percent Certificate of Indebtedness*" in alphabetical order to read as follows:

§ 363.6 Definitions.

* * * * *

Payroll Savings Plan is a method for the purchase of savings bonds using periodic ACH credits from your employer or financial institution to purchase a payroll zero-percent certificate of indebtedness until a sufficient amount of payroll zero-percent certificate of indebtedness is accumulated to enable the purchase of a savings bond in an amount, series, and registration that you previously selected using functionality in your TreasuryDirect account. *(See* also the definition of payroll zero-percent certificate of indebtedness.)

Payroll Zero-Percent Certificate of Indebtedness is a restricted form of the zero-percent certificate of indebtedness that is held separately from the zero-percent certificate of indebtedness and used only for purchases made through the payroll savings plan. (See also the definition for zero-percent certificate of indebtedness.)

* * * * *

Zero-Percent Certificate of Indebtedness is a one-day, non-interest-bearing security that automatically matures and is rolled over each day until you request that it be redeemed.

■ 6. Add § 363.30 to read as follows:

§ 363.30 What actions may Treasury take if funds used to purchase a security were credited or debited in error or through fraud?

(a) If Treasury sustains a loss because the funds used to purchase a security were debited from an account at a financial institution from which the TreasuryDirect account owner did not have the right to authorize such ACH debit entry, we reserve the right to redeem that security from the account and use the proceeds to reimburse Treasury for the loss. If such security has been transferred to another TreasuryDirect account, we reserve the right to reverse the transfer, redeem the security, and use the proceeds to reimburse Treasury for the loss. If such security has been redeemed or has matured and the proceeds paid to the account owner, we reserve the right to take any action that we deem appropriate, including redeeming other securities remaining in the account and using the proceeds to reimburse Treasury for the loss.

(b) If an employer or a third-party agent acting on behalf of one or more employers certifies, under penalty of perjury, that it has made an erroneous ACH credit entry to purchase a TreasuryDirect certificate of indebtedness, we reserve the right to redeem securities from the TreasuryDirect account to which the entry was made in the amount of the erroneous entry and return the funds. No action will be taken if the

certification is not received by Treasury within 45 days of the erroneous entry. We will only return funds if the erroneous entry was made to an account that does not belong to the intended recipient, is a duplicate payment, is in an amount that is greater than was authorized by the recipient, or was made in error because the employee was not in a pay status. We reserve the right to refuse to return an entry. By requesting that Treasury correct an erroneous entry, the employer agrees to indemnify Treasury for any loss that Treasury may incur as a result of the correction of the error and agrees to provide such information and assistance as Treasury may require.

(c) If a financial institution, except a financial institution acting on behalf of an employer, makes an erroneous ACH credit entry to a TreasuryDirect® account and provides a certification as to the circumstances of the erroneous entry within 6 months of the entry date, we will notify the account owner of the erroneous ACH credit entry and attempt to resolve the issue. We reserve the right to place a hold on and to redeem securities from the TreasuryDirect® account to which the ACH credit entry was made in the amount of the erroneous credit entry and return the funds to the financial institution. The financial institution agrees to indemnify Treasury for any loss that Treasury may incur as a result of the correction of the error and agrees to provide information and assistance as Treasury may require.

■ 7. Amend § 363.37 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

§ 363.37 How do I purchase and make payment for eligible Treasury securities through my TreasuryDirect® account?

* * * * *

(b) *Payment for savings bonds and marketable Treasury securities.* You can pay for eligible savings bonds and marketable Treasury securities by either a debit from your designated account at a United States financial institution using the ACH method, or by using the redemption proceeds of your zero-percent certificate of indebtedness. You can pay for savings bonds automatically using the redemption proceeds of your payroll zero-percent certificate of indebtedness through the payroll savings plan.

(c) *Payment for zero-percent certificate of indebtedness.* You can pay for a zero-percent certificate of indebtedness by:

(1) a credit from your financial institution or employer using the ACH method to your TreasuryDirect® account;

(2) a debit from your designated account at a financial institution using the ACH method, limited to $1000 or less per transaction; or

(3) using the proceeds of maturing securities held in your TreasuryDirect® account.

(d) *Payment for a payroll zero-percent certificate of indebtedness.* The only method available to purchase a payroll zero-percent certificate of indebtedness is to arrange for your employer or financial institution to send a credit by the ACH method to purchase a payroll zero-percent certificate of indebtedness in your TreasuryDirect® account.

■ 8. Amend § 363.45 by revising paragraph (f) to read as follows:

§ 363.45 What are the rules for judicial and administrative actions involving securities held in TreasuryDirect®?

* * * * *

(f) *Internal Revenue Service (IRS) levy.* We will honor an IRS notice of levy under section 6331 of the Internal Revenue Code:

(1) Against the owner, as owner is defined in § 363.6 of this part, including a levy against the owner in the capacity of nominee, transferee, or alter ego;

(2) Against a secondary owner, if the secondary owner has the right to conduct transactions in a security at the date and time the notice of levy is delivered to Public Debt; or

(3) Against an owner's property to which a federal tax lien is attached.

* * * * *

■ 9. Add §§ 363.59 and 363.60 to read as follows:

§ 363.59 What is a payroll savings plan?

A payroll savings plan is an automatic method of purchasing savings bonds. (See the definition in § 363.6.) You may open your payroll savings plan by selecting an amount, series, and registration for your savings bond purchases using functionality in your TreasuryDirect® account. Each bond purchase must be in a minimum amount of $25 with additional one-cent increments above that amount, up to a maximum amount of $5000, in any one transaction. The series may be either a Series EE or Series I savings bond. The registration may be any authorized form of registration for an electronic savings bond. You must also initiate a request to your employer or your financial institution to send credits on a recurring basis to your payroll savings plan through the ACH method to purchase a payroll zero-percent certificate of indebtedness. (See Subpart D for more information about a payroll zero-percent certificate of indebtedness.) When you have accumulated a sufficient amount of payroll zero-percent certificate of indebtedness to purchase a savings bond in the amount, series, and registration that you selected, the TreasuryDirect® system will automatically redeem your payroll zero-percent certificate of indebtedness and purchase your selected savings bond.

§ 363.60 How do I discontinue my participation in my payroll savings plan?

You may discontinue your participation in your payroll savings plan by arranging with your employer or financial institution to discontinue sending funds.

■ 10. Revise the heading for Subpart D to read as follows:

Subpart D—Zero-Percent Certificate of Indebtedness

■ 11. Add an undesignated center heading prior to § 363.130, to read as follows:

GENERAL

■ 12. Amend § 363.131 by revising the first sentence and adding a fifth sentence to read as follows:

§ 363.131 What is a TreasuryDirect® zero-percent certificate of indebtedness?

A TreasuryDirect® zero-percent certificate of indebtedness is a non-interest-bearing security that is issued daily, with a one-day maturity, which automatically rolls over at maturity until you request redemption. * * * The payroll zero-percent certificate of indebtedness is a restricted form of the zero-percent certificate of indebtedness that is held separately from the zero-percent certificate of indebtedness and used only for purchases made through the payroll savings plan.

§ 363.143 [Removed]

■ 13. Remove § 363.143.

§§ 363.138, 363.139, 363.140, 363.141, 363.142, 363.144, 363.145, 363.146 [Redesignated as §§ 363.141, 363.138, 363.142, 363.143, 363.144, 363.145, 363.139, and 363.140]

■ 14. Redesignate §§ 363.138, 363.139, 363.140, 363.141, 363.142, 363.144, 363.145, 363.146 as §§ 363.141, 363.138, 363.142, 363.143, 363.144, 363.145, 363.139, and 363.140 respectively.

■ 15. Add an undesignated center heading prior to § 363.141 to read as follows:

ZERO-PERCENT CERTIFICATE OF INDEBTEDNESS

■ 16. Revise newly redesignated § 363.141 to read as follows:

§ 363.141 How do I purchase a zero-percent certificate of indebtedness?

(a) *Primary and linked accounts.* You may purchase a zero-percent certificate of indebtedness through one or more of the following four methods:

(1) Payroll deduction, in which your employer sends funds through the ACH method to your TreasuryDirect® account;

(2) deposit by your financial institution, in which your financial institution sends funds by the ACH method to your TreasuryDirect® account on a recurring or one-time basis;

(3) through the Buy Direct function of your TreasuryDirect® account, in which you direct us to debit funds from your financial institution account to purchase a zero-percent certificate of indebtedness. This method is limited to an amount no greater than $1000 per transaction. When you use the Buy Direct function to debit funds to purchase all or a portion of a zero-percent certificate of indebtedness, you will not be permitted to schedule a redemption to your financial institution from the zero-percent certificate of indebtedness within five business days after the settlement date of the debit entry; and

(4) by using the proceeds from the redemption of a savings bond, the proceeds of a maturing security, or an interest payment from a security to purchase a zero-percent certificate of indebtedness.

(b) *Payroll savings plan.* You may purchase a payroll zero-percent certificate of indebtedness for your payroll savings plan through payroll deduction, in which your employer sends funds through the ACH method to your TreasuryDirect® payroll savings plan, or through a credit using the ACH method by your financial institution, in which your financial institution sends funds by the ACH method to your TreasuryDirect® payroll savings plan.

■ 17. Amend the heading of the newly redesignated § 363.144 by removing the phrase "for cash."

■ 19. Add an undesignated center heading after the newly redesignated § 363.145, to read as follows:

PAYROLL ZERO-PERCENT CERTIFICATE OF INDEBTEDNESS

■ 20. Add §§ 363.146 through 363.148, to read as follows:

§ 363.146 Who may purchase a payroll zero-percent certificate of indebtedness?

Only an individual TreasuryDirect® account owner may purchase a payroll zero-percent certificate of indebtedness, only through his or her primary account, and only through the payroll savings plan.

§ 363.147 How do I purchase a payroll zero-percent certificate of indebtedness?

You may purchase a payroll zero-percent certificate of indebtedness through your TreasuryDirect® account using your payroll savings plan. (See §§ 363.59 and 363.60 for more information on opening a payroll savings plan.) The only method of purchase for a payroll zero-percent certificate of indebtedness is a credit of funds from your employer or financial institution using the ACH method. You cannot purchase a payroll zero-percent certificate of indebtedness by using a debit from your financial institution.

§ 363.148 Can I redeem all or a portion of my accumulated payroll zero-percent certificate of indebtedness?

You may redeem all or a portion of your accumulated payroll zero-percent certificate of indebtedness to any financial institution that is of record in your TreasuryDirect® account.

Richard L. Gregg,

Fiscal Assistant Secretary.

[FR Doc. 2010–28853 Filed 11–18–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1039]

Drawbridge Operation Regulation; Upper Mississippi River, Dubuque, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Illinois Central Railroad Drawbridge across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter and when there is less impact on navigation; instead of scheduling work in the summer, when river traffic increases. This deviation allows the bridge to open on signal if at least 24 hours advance notice is given.

DATES: This deviation is effective from 12:01 a.m., December 13, 2010 to 7 a.m. March 1, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–1039 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1039 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Coast Guard; telephone 314–269–2378, e-mail *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Chicago, Central & Pacific Railroad requested a temporary deviation for the Illinois Central Railroad Drawbridge, across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa to open on signal if at least 24 hours advance notice is given for 79 days from 12:01 a.m., December 13, 2010 to 7 a.m., March 1, 2011 to allow the bridge owner time for preventive maintenance. The Illinois Central Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 20 (Mile 343.2 UMR), Lock No. 21 (Mile 324.9 UMR) and Lock No. 22 (Mile 301.2 UMR) until 4:30 p.m., March 4, 2011 will preclude any significant navigation demands for the drawspan opening.

The Illinois Central Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 19.9 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. The drawbridge will open if at least 24 hours advance notice is given. This temporary deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular

operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 10, 2010.

Eric A. Washburn,

Bridge Administrator.

[FR Doc. 2010–29166 Filed 11–18–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 167

[Docket No. USCG–2002–12702]

RIN 1625–AA48

Traffic Separation Schemes: In the Strait of Juan de Fuca and Its Approaches; in Puget Sound and Its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: In this interim rule with request for comments, the Coast Guard codifies traffic separation schemes in the Strait of Juan de Fuca and its approaches, in Puget Sound and its approaches, and in Haro Strait, Boundary Pass, and the Strait of Georgia. These traffic separation schemes (TSSs) were validated by a Port Access Route Study (PARS) conducted under the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1221–1232 and were adopted by the International Maritime Organization (IMO). They have been shown on National Oceanic and Atmospheric Administration (NOAA) charts since 2006, and are currently documented in the IMO publication "Ships' Routeing," Ninth Edition, 2008.

Codifying these internationally recognized traffic separation schemes provides better routing order and predictability, increases maritime safety, and reduces the potential for collisions, groundings, and hazardous cargo spills.

The Coast Guard is issuing this interim rule with a request for comments to permit the public to comment on changes made to some geographic positions located in Haro Strait, Boundary Pass, and the Strait of Georgia that were made after the notice of proposed rulemaking (NPRM).

DATES: This interim rule is effective January 18, 2011.

Comments and related material must be received by the Coast Guard on or before January 3, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2002–12702 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Mr. George Detweiler, U.S. Coast Guard Office of Waterways Management, telephone 202–372–1566, or e-mail *George.H.Detweiler@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit comments, please include the docket number for this rulemaking (USCG–2002–12702), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2002–12702" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2002–12702" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may view the document online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington,

DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

II. Abbreviations

ATBA Area To Be Avoided
CFR Code of Federal Regulations
CVTS Cooperative Vessel Traffic Service
FR **Federal Register**
IMO International Maritime Organization
IR Interim Rule
NOAA National Oceanic and Atmospheric Administration
NPRM Notice of Proposed Rulemaking
PARS Port Access Route Study
PWSA Ports and Waterways Safety Act
RNA Regulated Navigation Area
TSS Traffic Separation Scheme
TEU Twenty-Foot Equivalent Unit

III. Regulatory History

On August 27, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Traffic Separation Schemes: In the Strait of Juan de Fuca and its Approaches; in Puget Sound and its Approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia" in the **Federal Register** (67 FR 54981). The NPRM was originally assigned a Department of Transportation rulemaking identification number (RIN) 2115–AG45. It has been reassigned a Department of Homeland Security RIN 1625–AA48. The docket number has not changed. We received nine letters commenting on the proposed regulations discussed in the NPRM. We discuss our responses to these comments in Part V of this interim rule. The commenters did not request a public meeting, and we did not hold one.

IV. Basis and Purpose

A. General

The Ports and Waterways Safety Act (PWSA; 33 U.S.C. 1221–1232) grants the Coast Guard authority to establish traffic separation schemes (TSSs) where necessary, to provide safe access routes for vessels proceeding to or from United States ports. Before implementing a new TSS or modifying an existing TSS, we conduct a Port Access Route Study (PARS). Through the PARS process, we consult with affected parties to reconcile the need for safe access routes with the need to accommodate other reasonable uses of the waterway, such as oil and gas exploration, deepwater port construction, establishment of marine sanctuaries, and recreational and commercial fishing. If a PARS recommends a new or modified TSS, we must initiate a rulemaking to implement or modify the TSS. Once a TSS has been established, the right of navigation takes precedence over all other uses within the TSS.

The International Maritime Organization (IMO) follows a parallel structure. It receives proposals for vessel traffic measures from the country or countries with jurisdiction over the affected waterway. If the IMO adopts a proposal, it publishes the vessel traffic measure in its publication "Ships Routeing." In this way, the IMO serves as a clearing agent to ensure that vessel traffic measures are made available to the global maritime community through a single source. Additionally, when the IMO adopted the TSSs, it made the provisions of Rule 10 of the International Regulations for Avoiding Collisions at Sea (COLREGS) applicable to vessels using the TSSs.

B. TSS History

The IMO first adopted TSSs in the Strait of Juan de Fuca and its approaches on April 3, 1981, and implemented them January 1, 1982. The IMO adopted TSSs in Puget Sound and its approaches on December 1992, and implemented them on June 10, 1993. As discussed in C. below, on January 20, 1999, the Coast Guard published a PARS "Notice of Study" (64 FR 3145). We published a notice of preliminary study recommendations with request for comments on February 23, 2000 (65 FR 8917). On August 27, 2002, the Coast Guard published an NPRM (66 FR 6514) regarding the TSSs that are the subject of this rulemaking as discussed in Part III, "Regulatory History" above. However, these TSSs were never added to the CFR.

As described in the NPRM, the TSSs in the Strait of Juan de Fuca and its approaches; in Puget Sound and its approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia were implemented on December 1, 2002, per IMO Circular COLREG.2/Circ.51 dated May 31, 2002. To view the circular, visit the docket for this rulemaking at *http://www.regulations.gov.*

Canada and the United States submitted a joint proposal to the IMO in March 2004 requesting minor changes to some coordinates of the TSSs in Puget Sound and its approaches in Haro Strait, Boundary Pass, and the Strait of Georgia. The IMO approved the changes and they were implemented on July 1, 2005, per IMO Circular COLREG.2/Circ.55 dated December 15, 2004. To view the circular, visit the docket for this rulemaking at *http://www.regulations.gov.*

Canada and the United States submitted a second joint proposal to the IMO in March 2005, requesting additional minor changes to the Canadian portion of the TSSs in the Strait of Juan de Fuca and its approaches. The IMO approved the changes and they were implemented on December 1, 2006, per IMO Circular COLREG.2/Circ.57 dated May 26, 2006. To view the circular, visit the docket for this rulemaking at *http://www.regulations.gov.*

All TSSs that would be codified by this interim rule have been shown in their current configuration on NOAA charts since 2006 and are published in "Ships' Routeing," Ninth Edition, 2008, published by the IMO. NOAA adds or modifies TSSs on its charts after they are either added to the CFR by the Coast Guard or adopted by the IMO. The IMO Ships' Routeing instructions can be purchased from IMO through their Web site at *http://www.imo.org.*

C. Port Access Route Study (PARS)

The Coast Guard published a notice of study on January 20, 1999, (64 FR 3145). The study results can be found at Regulations.gov under docket number USCG–1999–4974. The purpose of the study was to review and evaluate the need for modifications to the vessel routing and traffic management measures in and around the Strait of Juan de Fuca, including Admiralty Inlet, Haro Strait, Boundary Pass, the Strait of Georgia, Rosario Strait, and adjacent waters. The study area also outlined both United States and Canadian TSSs and the Area to be Avoided (ATBA) "Off the Washington Coast." United States

and Canadian Coast Guards cooperatively manage portions of the study area. The countries accomplish joint waterway management primarily through the Cooperative Vessel Traffic Service (CVTS). A CVTS agreement entered into in 1979 sets forth the terms and conditions for joint management of the CVTS. Under the CVTS Agreement, vessel traffic centers located at Tofino and Victoria, British Columbia, Canada; and Seattle, Washington, manage vessel traffic transiting in the study area, regardless of the boundary between the two countries.

We developed the PARS using several related vessel traffic studies, waterways analysis and management system reports, and extensive consultations between the United States and Canadian governments. Officials from both governments embarked on an outreach program to present recommended changes in the study area and request comments from a wide group of waterway users and other potentially affected and interested groups, including the general public; representatives of the shipping industry, master mariners, ports, pilots, and environmental interests; U.S. Federal, State, and local government agencies; Canadian government agencies; and tribal governments. We took into account the responders' concerns, including impacts to industry and the environment, when conducting the PARS. The recommended changes also considered the increased burden to and the practical navigation aspects for the shipping industry. We published a notice of preliminary study recommendations with request for comments on February 23, 2000 (65 FR 8917). We published a notice of study results for the PARS on January 22, 2001 (66 FR 6514).

In the PARS, we concluded that the TSSs, as they existed prior to the NPRM, should be modified by:

1. Reconfiguring and extending seaward the TSS at the entrance to the Strait of Juan de Fuca;
2. Modifying the location, orientation, and dimensions of the Strait of Juan de Fuca TSS;
3. Relocating the pilot area and reconfiguring the traffic lanes and precautionary area off Port Angeles, Washington, to improve traffic flow and reduce risks;
4. Moving the vessel traffic lanes southeast of Victoria, British Columbia, farther offshore;
5. Establishing precautionary areas off of Discovery Island and around the Victoria Pilot Station;
6. Creating a new two-way route in Haro Strait and Boundary Pass and establishing a precautionary area off of Turn Point;
7. Expanding the precautionary area designated "RB," at the south end of Rosario Strait;
8. Revising and aligning the existing TSS in Georgia Strait with the existing TSS north of Rosario Strait and linking them with a new precautionary area off of East Point; and
9. Creating a new precautionary area in Georgia Strait west of Delta Port and the Tsawwassen Ferry terminal.

V. Discussion of NPRM Comments

As a follow-up to the PARS, the Coast Guard published an NPRM on August 27, 2002 (67 FR 54981). We received nine letters in response to the NPRM.

Five commenters disagreed with the proposed TSS in the Strait of Juan de Fuca and stated that:

(1) The proposed TSS would cause a net loss of over 30 percent of fishable waters;

(2) The proposed TSS represented a violation of certain tribal treaty rights that had been enjoyed by local tribes for decades; and

(3) The proposed TSS would affect a significant number of local tribes.

A sixth commenter disagreed with the modified TSS on the grounds that it would cause local tribes to lose a significant amount of fishable waters. Because of these comments, we entered into tribal consultations under Executive Order 13175. As a result of these consultations, the local tribes agreed to take no action that would prevent the TSSs as described in the IR from taking effect and the Coast Guard agreed to: (1) Make permanent existing interim Vessel Traffic Service measures related to the treaty longline fishery and treaty salmon fishery; and (2) implement a regulated navigation area (RNA) to further protect the tribes' interest in the area. The local tribes and the U.S. Government, acting through the Coast Guard, entered into a Settlement Agreement on April 19, 2006, to reflect the rights and obligations of the parties. An explanation of the consultation process and its results are further discussed in section VII. J., "Indian Tribal Governments."

Five commenters also proposed that we adopt a differently configured TSS, which they claimed would maintain safety while adding to the fishable area in the separation zone by 5 percent. A sixth commenter proposed that we revisit the TSS and come up with a new scheme that would not diminish fishable waters in the Strait of Juan de Fuca. We did not concur with the comments, but, as noted above, entered into tribal consultations. Ultimately, we did not reconfigure the TSSs as recommended by these commenters. An explanation of the consultation process and its results are further discussed in section VII. J., "Indian Tribal Governments."

One commenter agreed that a modified TSS is necessary in the Strait of Juan de Fuca, but disagreed with the new demarcation around Haro Strait. The same commenter proposed that the lane near the Haro Strait be widened so that faster ships would be able to pass slower ships in transit. We agreed with the commenter. The area referred to by the commenter is managed by the Canadian Coast Guard. Therefore, we worked with Canada and developed a mutually agreeable proposal that is currently shown on NOAA charts and IMO publications. The IR reflects changes to the demarcation around Haro Straight and a widening of the lane near Haro Straight.

One commenter assessed the TSS in the Strait of Juan de Fuca and asserted that the proposed lanes would not create any new safety problems in the Strait. The commenter also evaluated the tribes' proposals and concluded that the proposed lanes would not cause any extra safety hazards in the Strait. We concurred with this commenter and did not amend the TSSs in this area.

One commenter agreed with the proposed TSS in the Strait of Juan de Fuca, but advocated that we implement more stringent safety guidelines for oil tankers. This commenter also proposed that we provide charts of the modified TSSs in the Code of Federal Regulations (CFR). We did not concur with implementing more stringent safety guidelines for oil tankers in this rulemaking. Implementing more stringent safety guidelines for oil tankers is not within the scope of this rulemaking. The focus of this rule is on the codification of TSSs.

One commenter proposed including charts of the TSSs in the CFR. We did not concur with providing charts of the modified TSSs in the CFR. Providing charts of the TSSs in the CFR would be unwieldy, difficult to read, and would not be useful to mariners for navigational purposes. All TSSs codified in this rule are reflected on current NOAA charts and published in the IMO's "Ships' Routeing," Ninth Edition, 2008.

VI. Discussion of the Interim Rule (IR)

This rule codifies the TSSs in the Strait of Juan de Fuca and its approaches; in Puget Sound and its approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia. All TSSs codified in this rule

are shown on current NOAA charts and are published in "Ships' Routeing," Ninth Edition, 2008, International Maritime Organization. The TSSs codified in this rule, except as explained in paragraph 10 below, "Adjustment of TSSs in the IR," are based on the recommendations of the PARS study published on January 22, 2001 (66 FR 6514).

1. Reconfiguring and extending seaward the TSS at the entrance to the Strait of Juan de Fuca. In August 2002, all traffic entering the Strait of Juan de Fuca was funneled into the Strait through one of two short traffic lanes. The southwest inbound traffic lane directed traffic within 1 mile of Duntze Rock. This convergence near Buoy Juliet was close to the rocky shoreline of Cape Flattery, lay within the Olympic Coast National Marine Sanctuary, and funneled inbound southern traffic along the northern and western borders of the existing ATBA.

A large percentage of the slower traffic, including tugs and barges and small fishing vessels, usually transited inbound and outbound south of the designated traffic lanes when on coastwise voyages to and from the south. This practice eliminated the need for slower southbound traffic to cross the traffic lanes and the potentially dangerous overtaking situations arising from disparate transit speeds. However, under the configuration as of August 2002, this traffic scheme forced slower traffic to transit extremely close to Duntze Rock and infringed on either the ATBA or the inbound traffic lane.

Commercial and sport fishing areas were in and adjacent to the traffic lanes at the entrance to the Strait. Occasionally, fishing vessels in the area created a potentially hazardous conflict for vessels following the TSS, particularly during periods of reduced visibility.

This interim rule with request for comments extends the TSS at the entrance to the Strait approximately 10 nautical miles farther offshore and centers the separation zone on the international border at the entrance. This creates a "buffer zone" between the southernmost TSS lane and Duntze Rock and the nearby ATBA. This relocation provides ample maneuvering space for resolving conflicting routes as vessels converge toward the entrance of the Strait, which improves order and predictability for all entry and exit lanes. These changes, along with changes for the ATBA boundary, allow sufficient room for slower vessels to transit without conflicting with inbound traffic steering for the southern approach to the TSS. They also provide a greater margin of safety around the hazards of Duntze Rock and Tatoosh Island.

In reconfiguring and extending the TSSs beyond the configuration as it existed in August 2002, we considered the location of fishing areas off the entrance to the Strait. While it was not possible to completely segregate the TSS from the fishing areas, the changes minimize potential conflicts and improve the existing configuration. Reconfiguring and extending the routes provides predictability farther offshore, thereby reducing potentially hazardous conflicts between vessels following the TSS and vessels fishing at the entrance to the Strait.

2. Modifying the location, orientation, and dimensions of the TSS in the Strait of Juan de Fuca. In August 2002, over two-thirds of the TSS was located on the United States side of the International Boundary. The separation zone was approximately four nautical miles wide, of which approximately three nautical miles was in United States waters. This alignment of the TSS reduced the amount of navigable water available to vessels transiting, outbound or inbound, south of the TSS and placed inbound traffic following the lanes closer to land than vessels transiting in the outbound lanes.

In this interim rule with request for comments, the western segment of the TSS shifts one-half mile to the north and reduces the width of the entire separation zone to a maximum of three nautical miles. The minimum width of the separation zone and the width of the traffic lanes remains one nautical mile. This reduces the potential for powered groundings on the United States shoreline by creating a larger buffer between the TSS and shore. It also creates additional space for the existing in-shore vessel traffic that transits south of the TSS.

We considered the impact of the changes on the existing Canadian Practice Firing Range (Exercise Area WH). Exercises will continue to be conducted in a manner that does not conflict with commercial traffic following the TSS.

3. Relocating the Pilot Area and reconfiguring the traffic lanes and precautionary area off Port Angeles to improve traffic flow and reduce risks. In August 2002, five TSSs converged at the precautionary areas ("PA" and "ND") located to the north and east of Port Angeles. Ferries, recreational vessels, piloted deep-draft vessels, non-piloted deep-draft vessels, tugs and tows, naval vessels, and large and small commercial fishing vessels all interacted and competed for space at this convergence point in the traffic scheme.

The traffic configuration was designed primarily to deliver inbound vessels to the pilot stations located at Port Angeles, Washington; and Victoria, British Columbia. The configuration did not give adequate safety consideration to other waterway users. For example, the configuration did not separate the Port Angeles pilots' boarding area from either the through traffic following the TSS or the traffic choosing to follow the informal inshore traffic lanes. The August 2002 TSS routing leading to the Port Angeles pilot station was identified through casualty histories as a substantial cause for concern. Vessels bound for the Port Angeles pilots' station were required by the TSS to steer almost directly on Ediz Hook. To pick up a pilot, a vessel first had to execute a 60-degree turn and then slow to maneuvering speed, which created different impacts on the vessel's steering capability. At this point, a vessel was particularly vulnerable to currents and seas. If an engineering failure occurred during this operation, the vessel was at significant risk of a drift or powered grounding on Ediz Hook.

Since publication of the NPRM in August 2002 the pilot station has been relocated. Changing the traffic lane leading to the relocated pilot station eliminated the need for an incoming deep-draft vessel to steer directly toward Ediz Hook to pick up a pilot. The IR also adds a new east/west TSS leading east from precautionary area "PA" to establish a predictable route for vessels that do not require pilotage, thus reducing the risk of collision with vessels maneuvering to pick up a pilot.

4. Moving the vessel traffic lanes southeast of Victoria, British Columbia, farther off shore. In August 2002, on the Canadian side of the international boundary, outbound tugs and barges exited the TSS at Discovery Island. These vessels headed directly for the inshore routes south of Race Rocks, cutting across the inbound and outbound TSS lanes south of Victoria. Outbound fishing vessels, exiting Baynes Channel or passing east of Discovery Island, attempted to stay north of the TSS. However, vessels frequently entered the lanes near Trial Island, Discovery Island, and the pilot station. This behavior created unnecessary and potentially dangerous interactions between deep-draft vessels following the TSS and smaller vessels that choose to skirt or cut diagonally across the TSS.

In the IR we move the vessel traffic lanes to create an inshore buffer by decreasing the width of the TSS leading

from the Victoria Pilot Station to the turn south of Discovery Island while maintaining the same southern boundary on the inbound lane. This inshore buffer allows fishing vessels and other small, slow moving vessels to transit directly between Discovery Island and Race Rocks, then inshore north of the TSS, while avoiding the deep-draft TSS.

5. Establishing precautionary areas off Discovery Island and around the Victoria Pilot Station. In August 2002, the Victoria Pilot Station was located at the convergence of two TSSs where there was significant traffic congestion as vessels transited to and from the ports of Victoria and Esquimault. Likewise, three TSSs converged east and northeast of Discovery Island, where vessels often entered or exited the traffic scheme. Consequently, vessels had to proceed with caution in both these areas. To address the traffic congestion in these areas this IR establishes new precautionary areas "V", "HS," and "DI."

6. Creating a new two-way route in Haro Strait and Boundary Pass and establishing a precautionary area off Turn Point. In August 2002, there were no formal traffic lanes in Haro Strait and Boundary Pass. In recent years, the level of recreational boating has significantly increased. Also, there has been explosive growth in the number of small commercial vessels providing whale-watching tours off the western shore of San Juan Island. This growth in the number of whale-watching tours has resulted in an increased number of conflicts with deep-draft vessels.

Turn Point is one of the more navigationally challenging areas of Haro Strait and Boundary Pass. Transiting vessels must negotiate a blind right-angle turn close to shore and in the presence of strong currents. In addition, numerous secondary channels and passages route traffic into Haro Strait in the vicinity of Turn Point.

This rule establishes a two-way route in Haro Strait and Boundary Pass that connects the TSS in Puget Sound and its approaches and the TSS Haro Strait and Boundary Pass in the south. This rule increases order and predictability for vessel traffic in these waters. The route established by this IR reduces dangerous interactions between the deep-draft vessels following the TSS and smaller vessels that choose not to follow the TSS. The regulation moves the edge of the traffic lane to the east from Kellet Bluff to Turn Point and creates a flair, or pull out, south of Turn Point to provide maneuvering room for a vessel to safely negotiate the strong ebb currents. The regulation also creates a precautionary area around Turn Point where vessels must negotiate a sight-obscured, right-angle turn in the presence of strong currents and numerous small craft.

7. Expanding precautionary area "RB" at the south end of Rosario Strait. In August 2002, deep-draft vessels often could not precisely follow the TSS when approaching Rosario Strait from the south. Strong currents made it impossible for vessels to avoid the separation zone as they negotiated the slight turns in the TSS just south of precautionary area "RB." The small turns in the TSS approaching precautionary area "RB" could not be eliminated without placing the TSS uncomfortably close to other shoal water.

This rule replaces a small portion of the lane with an expansion of precautionary area "RB." The regulation enhances the safety of deep-draft transits by eliminating a routing measure where large ships cannot comply and replacing it with a precautionary area where ships must navigate with particular caution.

8. Revising and aligning the TSS in the Strait of Georgia with the exiting TSS north of Rosario Strait and linking them with a precautionary area off East Point. In August 2002, there were no routing measures connecting the TSS in the Strait of Georgia that terminated off Patos Island with the TSS north of Rosario Strait that terminated off Saturna Island. Furthermore, these two TSSs were not aligned. Traffic exiting the Strait of Georgia bound for Rosario Strait followed the TSS to its termination before angling back to the north to enter the TSS at Patos Island. Routing vessels in this manner crowded the area and created a possible conflict with traffic southbound for Boundary Pass. Finally, there was no precautionary area in the vicinity of East Point where traffic merged from several directions.

This rule creates a seamless and logical traffic scheme for this area. TSSs are aligned and connected to the new two-way route in Boundary Pass through the creation of a new precautionary area. By providing a contiguous TSS that connects the Strait of Georgia TSS with both the new Boundary Pass traffic lane and the old Patos Island TSS, this rule will allow traffic bound for Rosario Strait to follow the TSS without impeding traffic southbound for Boundary Pass. The new precautionary area highlights the need for potential crossing traffic in this area to exercise caution and provides oil tankers departing Cherry Point bound for Haro Strait with a predictable and safe location to enter the traffic scheme.

9. Creating a new precautionary area in Georgia Strait west of Delta Port and the Tsawwassen Ferry Terminal. The completion of the container facility at Delta Port significantly increased the volume of traffic entering and exiting the TSS in the Strait of Georgia. There has also been a considerable increase in traffic to and from the Tsawwassen Ferry Terminal. This rule establishes a precautionary area southwest of Delta Port and accommodates vessels departing Delta Port and the Tsawwassen Ferry Terminal, as they reach maneuvering speed before and while entering the TSS.

10. Adjustment of TSSs in the IR. This IR adjusts the configuration of certain TSSs as proposed in the NPRM. The TSSs have some coordinates located in United States waters and some coordinates located in Canadian waters. As discussed above, the United States and Canada cooperatively manage vessel traffic in this area. Since publication of the NPRM in August 2002, the United States and Canada have jointly submitted two proposals to make adjustments to geographical coordinates located in Canadian waters. Both proposals were approved and are reflected on current NOAA charts and published in the IMO's "Ships' Routeing," Ninth Edition, 2008.

Since publication of the NPRM there have been changes to some of the geographical coordinates located in both Canadian and U.S. waters. Issuing an IR allows the Coast Guard to codify the coordinates of the TSSs as currently shown on NOAA charts and IMO publications but also solicit public comment on the adjustments that occurred since publication of the NPRM.

As discussed above, the Coast Guard published a NPRM for the TSSs in 2002. Subsequently, the U.S. and Canada have jointly submitted two proposals to change some of the coordinates. Both proposals were adopted by the IMO (IMO Circular COLREG.2/Cir.55 dated December 15, 2004 and IMO Circular COLREG.2/Circ. 57 dated May 26, 2006). The Coast Guard did not publish a supplemental notice of proposed rulemaking (SNPRM) for these changes. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an SNPRM. Under the Administrative Procedure Act (APA) "good cause" exception in 5 U.S.C. 553(b)(B), an agency may dispense with notice and comment procedures if the agency finds that following these APA requirements would be "impracticable, unnecessary, or contrary to the public interest." *See* Jeffrey L. Lubbers, A Guide to Federal Agency Rulemaking

(4th ed.) 105–109 (2006) for a discussion of agency findings of good cause in lieu of notice and comment procedures.

"Unnecessary," for the purpose of the good cause exceptions to the requirements of the APA, refers to "the issuance of a minor rule in which the public is not particularly interested." United States Department of Justice, Attorney General's Manual On The Administrative Procedure Act at 31 (1947). Its use should be "confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public." *Utility Solid Waste Activities Group* v. *EPA,* 236 F.3d 749, 755 (DC Cir. 2001), citing *South Carolina* v. *Block,* 558 F.Supp. 1004,1016 (D.S.C. 1983). Participation in a TSS by a ship's master is completely voluntary. Participation in a voluntary scheme does not impose a new requirement on mariners and therefore incorporation of the TSSs into the CFR is insignificant in nature and impact.

Including the TSSs in the CFR at this point is also inconsequential to the maritime industry and to the public because the maritime industry and the public have been aware of, and in fact actively using, the proposed TSSs for at least four years. The IR merely seeks to incorporate into the CFR the same TSSs that have been in use since 2006 when the current configurations first appeared on NOAA charts and in IMO publications. There have been no comments, complaints, or requests for modification regarding the TSSs since that time. As the agency charged with the establishment of TSSs, the Coast Guard would be aware of any such comments, complaints or requests.

Courts prefer supplemental notice and comment when the public is likely to have new or different information.[1] The proposed TSSs are unchanged from the current familiar configuration. Therefore, as there is little or no likelihood that the public has new or different information than what is currently available, there is no reason to delay reaching a timely and final decision by engaging in an unnecessary second round of public comment.

Additional notice and comment is contrary to the public interest: As stated above, courts prefer supplemental notice and comment.[2] However, they have also made clear that this preference should be balanced against the public's interest in reaching a timely and final decision without unnecessary or duplicative rounds of public comment.[3]

In the current rule, the public's interest to reach a timely and final decision without unnecessary or duplicative rounds of public comment outweighs the preference for additional notice and comment because the public is not likely to have new or different information. In fact, not only is it unlikely the public will have any new or different information, but the public is no longer interested in changes to this rule. As far as the public is concerned, these TSSs have been in active use for over four years. There have been no comments, complaints, or requests for modification. Therefore, an SNPRM is contrary to the public interest in that it defeats the public's interest in reaching a timely and final decision.

The table of changes below highlights those coordinates that have changed since the NPRM. If we receive comments on those changes, we will consult with the Canadian Coast Guard regarding those comments.

TABLE OF CHANGES

Section No. in the NPRM	Geographical position coordinates	
	Proposed in the NPRM	IR adjustment
167.1301(b)	48°31.09′ N; 125°04.67′ W	48°32.09′ N; 125°04.67′ W.
	48°31.93′ N; 125°09.00′ W	48°32.09′ N; 125°08.98′ W.
167.1303	48°31.09′ N; 125°04.67′ W	48°32.09′ N; 125°04.67′ W (point listed twice).
	48°31.09′ N; 125°00.00′ W	48°32.09′ N; 125°00.00′ W.
167.1311(b)(1)	48°31.09′ N; 124°47.13′ W	48°32.09′ N; 124°49.90′ W.
	48°31.09′ N; 125°00.00′ W	48°32.09′ N; 125°00.00′ W.
167.1311(b)(2)	48°31.09′ N; 124°47.13′ W	48°32.09′ N; 124°49.90′ W (point listed twice).
	48°31.09′ N; 125°00.00′ W	48°32.09′ N; 125°00.00′ W.
167.1322(c)(1)	48°27.79′ N; 123°07.80′ W	48°28.72′ N; 123°08.53′ W.
	48°27.58′ N; 123°08.10′ W	48°28.39′ N; 123°08.64′ W.
167.1322(c)(3)	48°28.15′ N; 123°07.31′ W	48°29.28′ N; 123°08.35′ W.
167.1322(c)(5)	48°27.43′ N; 123°08.94′ W	48°27.86′ N; 123°08.81′ W.
167.1331	All geographical positions are changed. A new precautionary area "DI" has been added to the regulations.	
167.1332(e)	49°00.37′ N; 123°13.32′ W	49°02.20′ N; 123°16.28′ W.
	48°58.18′ N; 123°16.74′ W	49°00.00′ N; 123°19.69′ W.
167.1332(f)	48°59.53′ N; 123°14.66′ W	49°01.39′ N; 123°17.53′ W.
	49°03.80′ N; 123°21.24′ W	49°03.84′ N; 123°21.30′ W.
	49°03.14′ N; 123°22.26′ W	49°03.24′ N; 123°22.41′ W.
	48°58.90′ N; 123°15.63′ W	49°03.24′ N; 123°22.41′ W.
		49°00.75′ N; 123°18.52′ W.
167.1332(g)	49°00.37′ N; 123°13.32′ W	49°02.20′ N; 123°16.28′ W.
167.1332(h)	48°58.18′ N; 123°16.74′ W	49°00.00′ N; 123°19.69′ W.

VII. Regulatory Analyses

We developed this interim 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.

[1] *Idaho Farm Bureau Fed'n* v. *Babbit,* 58 F.3d 1392 (9th Cir. 1995).

[2] *Idaho Farm Bureau Fed'n* v. *Babbit,* supra.

[3] *AFL–CIO* v. *Office of Personnel Management,* 618 F. Supp. 1254 (D.D.C. 1985); and *Public Citizen Health Research Group* v. *F.D.A.,* 724 F. Supp. 1013, 1022 (D.D.C. 1989).

A. Regulatory Planning and Review

This interim 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.

Public comments on the NPRM are summarized in Part V of this preamble. Since the publication of the NPRM, some geographical coordinates in Canadian waters were modified. The local tribal governments and the Coast Guard have reached an agreement relative to the TSSs as described in this preamble. An explanation of the consultation process and its results are further discussed in section VII.J., "Indian Tribal Governments." We anticipate that the modifications to the TSSs made in consultation with the Indian Tribal governments do not alter our assessment of economic impacts in the NPRM.

We received no further public comments and have made no other changes that would alter our assessment of economic impacts in the NPRM. We have found no additional data or information that would change our findings in the NPRM. We have adopted the assessment in the NPRM for this interim rule.

As previously discussed, the TSSs codified in this IR are reflected on current NOAA charts and published in the IMO's publication "Ships' Routeing," Ninth Edition, 2008.

As discussed in the NPRM, this rulemaking may result in a slight increase in transit time because it codifies the extension of the TSS at the entrance of the Strait of Juan de Fuca approximately 10 miles farther offshore. The additional 10-mile transit coming to or from the Strait of Juan de Fuca through the southwestern approach may result in a minimal increase in regulatory costs to industry.

We anticipate no increased costs for vessels traveling within the Strait of Juan de Fuca and adjacent waterways, nor any increased costs due to modifications of the TSSs in Puget Sound and its approaches.

The expected benefits associated with codifying the existing TSSs include a potential reduction in the instances of groundings, collisions, and other vessel casualties, as well as an increase in vessel traffic efficiency.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this interim rule has 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.

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no public comments and have made no changes that would alter our assessment of impacts to small entities in the NPRM. We have found no additional data or information that would change our findings in the NPRM. See the "Small Entity" section of the NPRM for additional details.

Therefore, the Coast Guard certifies, under 5 U.S.C. 605(b), that this interim rule does not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. 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 this rule so that they can better evaluate its effects on them and participate in the rulemaking. If you believe this rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult George Detweiler, Coast Guard, Marine Transportation Specialist, at 202–372–1566. The U.S. Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the U.S. Coast Guard.

D. 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).

E. 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.

The PWSA authorizes the Secretary of Homeland Security to issue regulations to designate TSSs to protect the marine environment. In enacting the PWSA in 1972, Congress found that advance planning and consultation with the affected States and other stakeholders was necessary in the development and implementation of a TSS. Throughout the history of the development of the TSSs in the Strait of Juan de Fuca and its approaches; in Puget Sound and its approaches; and in Haro Strait, Boundary Pass, and the Strait of Georgia, we consulted with the affected State and Federal pilots' associations, vessel operators, users, United States and Canadian Vessel Traffic Services, Canadian Coast Guard and Transport Canada representatives, environmental advocacy groups, Native American tribal groups, and all affected stakeholders.

Presently, there are no Washington State laws or regulations concerning the same subjects as those contained in this rule. We understand that the State does not contemplate issuing any such regulations. It should be noted that, by virtue of the PWSA authority, the TSSs in this rule preempt any State rule on the same subject.

In order for TSSs to apply to foreign-flagged vessels on the high seas, the IMO must adopt and implement the TSSs. The individual States of the United States are not represented at the IMO; that is the role of the Federal government. The U.S. Coast Guard is the principal agency responsible for advancing the interests of the United States at the IMO. We recognize the interests of all local stakeholders as we work with the IMO to advance the goals of these TSSs.

F. 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. 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.

H. 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.

I. 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.

J. Indian Tribal Governments

At least four Native American tribes, the Jamestown S'Klallam Tribe, Lower Elwha Kallam Tribe, Makah Tribe, and Port Gamble S'Klallam Tribe (the Tribes), have traditionally fished in the Strait of Juan de Fuca and its approaches. The TSSs in the Strait, as it existed when we published a notice of study on January 20, 1999 (64 FR 3145), provided a broad separation zone, which allowed ample room for the Tribes' traditional longline and drift gillnet fisheries between the inbound and outbound vessel traffic lanes.

We published a Notice of Preliminary Study Recommendations with request for comments on February 23, 2000 (65 FR 8917). That notice contained the recommendation that the broad separation zone be narrowed and aligned with the international border. Implementation of that recommendation would straighten the routes for vessels transiting the TSS and move them farther north of Olympic Peninsula. The Tribes objected to this recommendation because they believed it would significantly decrease the area available to fish by leaving insufficient room to deploy their nets without interfering with, or being interfered by, deep-draft vessels transiting the Strait. To address their concerns, we met with the Tribes in March and August of 2000 and February of 2001. The meetings were intended to gather the Tribes' recommendations on how to improve the TSSs, yet minimize the impact on their longline and drift gillnet fisheries. Following these meetings, the Tribes submitted recommendations to widen the separation zone. Based on these submittals and discussions at the meetings, we reassessed the PARS recommendation and widened the proposed zone enough to support the Tribes' longline and drift gillnet fisheries.

On August 27, 2002, we published an NPRM in the **Federal Register** (67 FR 54981), which proposed amending the then existing TSSs in the Strait. The decision to amend the then existing TSSs was based on a 1999–2000 PARS conducted by the Thirteenth Coast Guard District Office, Seattle, Washington. We used the PARS process, which included many consultations and meetings with various maritime entities, including the Tribes, to develop the proposals presented in the NPRM. When developing the proposed changes to the TSSs, we considered the location of the usual and accustomed fishing grounds off the entrance to and in the Strait of Juan de Fuca. We knew then that it was not possible to completely segregate the TSSs from the fishing grounds, but believed that the recommended changes would minimize potential conflicts and improve the TSSs configurations. We also believed that the proposed changes would provide better routing order and predictability, particularly offshore, thus reducing conflicts between vessels fishing at or near the entrance to the Strait and other vessel traffic. Based on the recommendations of the PARS, we submitted a proposal to the IMO, which included changes to the TSSs at the entrance to and in the Strait. The IMO adopted the changes, which were scheduled to take effect on December 1, 2002.

As discussed in Part V. "Discussion of Comments" above, the Tribes submitted comments to the NPRM docket stating that the proposed changes to the TSSs would substantially alter and diminish the Tribes' present and future fish harvests, as well as significantly reduce access to their usual and accustomed fishing areas. The Tribes asserted that this diminished access to the usual and accustomed fishing areas would diminish catches. They stated that diminished catches would impose substantial economic and non-economic costs on the Tribes and would constitute a substantial impact on the Tribes' treaty-protected rights to take fish at all usual and accustomed fishing areas. On November 8, 2002, out of concern that the proposed changes were scheduled to take effect on December 1, 2002, the Tribes sent the United States a request to meet and confer.

After discussions between the Tribes and the U.S. Coast Guard, the Tribes agreed to take no action to prevent the TSSs, as amended by the PARS and adopted by IMO, from taking effect on December 1, 2002. The Tribes and the U.S. Coast Guard further agreed to enter into additional consultations and to make best efforts to arrive at a mutually acceptable TSS in the Western Strait of Juan de Fuca. We agreed that if agreement on a revised TSS was not reached by March 15, 2003, the U.S. Coast Guard would take the necessary measures both to suspend TSS between Buoy Juliet and the precautionary area of Port Angeles [as amended by the PARS and adopted by IMO] and to implement a domestic TSS that would return the southern boundary of the traffic separation zone to its original location.

The first consultation meeting between the Tribes and the United States acting through the U.S. Coast Guard was held on December 18, 2002, at the Point No Point Treaty Council offices. Additional consultation meetings also took place. These consultation meetings resulted in mutually agreeable, interim VTS measures that were intended to allow treaty fishing within the original TSS while the parties negotiated a more permanent solution to the TSS issue. The interim VTS measures were used in 2003 to ensure the successful completion of the treaty longline and drift gillnet fisheries.

At the consultation meeting on October 10, 2003, the parties agreed that implementation of the interim VTS measures on a permanent basis would better serve the interests of both the Tribes and the U.S. Coast Guard than revisions to the TSSs. The Tribes asked the U.S. Coast Guard to enter into a settlement agreement to provide the Tribes with assurance that the interim VTS measures that had been successfully used in 2003 would be made permanent, while providing procedures that would allow changes to these permanent VTS measures with the agreement of all affected Parties should it become necessary to do so.

On April 19, 2006, the United States, acting through the U.S. Coast Guard, and the Tribes, signed a settlement agreement. The document, entitled "Settlement Agreement Between the United States of America and the Jamestown S'Klallam Tribe, Lower Elwha Klallam Tribe, Makah Tribe, and Port Gamble S'Khallam Tribe," is available in the docket for this IR, and can be found by following the instructions listed above in section I.B., "Viewing comments and documents." A provision of the settlement agreement required the U.S. Coast Guard to create regulations establishing a regulated navigation area (RNA), to be published

in 33 CFR part 165. We have reviewed this rule under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Rulemakings that are determined to have "tribal implications" under that Order (*i.e.,* those that 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) require the preparation of a tribal summary impact statement. This rule will not have implications of the kind envisioned under the Order because it will not impose substantial direct compliance costs on tribal governments, preempt tribal law, or substantially affect lands or rights held exclusively by, or on behalf of, those governments.

Whether or not the Executive Order applies in this case, it is the policy of the Department of Homeland Security and the U.S. Coast Guard to engage in meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications under the Presidential Memorandum of November 5, 2009, (74 FR 57881, November 9, 2009), and to seek out and consult with Native Americans on all of its rulemakings that may affect them. We regularly consulted and collaborated with the Tribes throughout the PARs and this rulemaking. We entered into a settlement agreement to mitigate the effects of this rule on the Tribes and their use of their historical fishing grounds. We invite your comments on how the codification of the existing TSSs might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

K. 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.

L. 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.

M. 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 that 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 section 2.B.2, figure 2–1, paragraph (34)(i) of the Instruction. This rule involves navigational aids, which include TSSs. 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 167

Harbors, Marine safety, Navigation (water), and Waterways.

■ Accordingly, 33 CFR Part 167 is amended as follows:

PART 167—OFFSHORE TRAFFIC SEPARATION SCHEMES

■ 1. The authority citation for part 167 continues to read as follows:

Authority: 33 U.S.C. 1223; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add §§ 167.1300 through 167.1303 to read as follows:

§ 167.1300 In the approaches to the Strait of Juan de Fuca: General.

The traffic separation scheme for the approaches to the Strait of Juan de Fuca consists of three parts: the western approach, the southwestern approach, and precautionary area "JF." These parts are described in §§ 167.1301 through 167.1303. The geographic coordinates in §§ 167.1301 through 167.1303 are defined using North American Datum (NAD 83).

§ 167.1301 In the approaches to the Strait of Juan de Fuca: Western approach.

In the western approach to the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°30.10′ N	125°09.00′ W
48°30.10′ N	125°04.67′ W
48°29.11′ N	125°04.67′ W
48°29.11′ N	125°09.00′ W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°32.09′ N	125°04.67′ W
48°32.09′ N	125°08.98′ W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°27.31′ N	125°09.00′ W
48°28.13′ N	125°04.67′ W

§ 167.1302 In the approaches to the Strait of Juan de Fuca: Southwestern approach.

In the southwestern approach to the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°23.99′ N	125°06.54′ W
48°27.63′ N	125°03.38′ W
48°27.14′ N	125°02.08′ W
48°23.50′ N	125°05.26′ W

(b) A traffic lane for north-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°22.55′ N	125°02.80′ W
48°26.64′ N	125°00.81′ W

(c) A traffic lane for south-westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°28.13′ N	125°04.67′ W
48°24.94′ N	125°09.00′ W

§ 167.1303 In the approaches to the Strait of Juan de Fuca: Precautionary area "JF."

In the approaches to the Strait of Juan de Fuca, precautionary area "JF" is established and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*

48°32.09′ N	125°04.67′ W
48°30.10′ N	125°04.67′ W
48°29.11′ N	125°04.67′ W
48°28.13′ N	125°04.67′ W
48°27.63′ N	125°03.38′ W
48°27.14′ N	125°02.08′ W
48°26.64′ N	125°00.81′ W
48°28.13′ N	124°57.90′ W
48°29.11′ N	125°00.00′ W
48°30.10′ N	125°00.00′ W
48°32.09′ N	125°00.00′ W
48°32.09′ N	125°04.67′ W

■ 3. Add §§ 167.1310 through 167.1315 to read as follows:

§ 167.1310 In the Strait of Juan de Fuca: General.

The traffic separation scheme in the Strait of Juan de Fuca consists of five parts: the western lanes, southern lanes, northern lanes, eastern lanes, and precautionary area "PA." These parts are described in §§ 167.1311 through 167.1315. The geographic coordinates in §§ 167.1311 through 167.1315 are defined using North American Datum (NAD 83).

§ 167.1311 In the Strait of Juan de Fuca: Western lanes.

In the western lanes of the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°29.11′ N	125°00.00′ W
48°29.11′ N	124°43.78′ W
48°13.89′ N	123°54.84′ W
48°13.89′ N	123°31.98′ W
48°14.49′ N	123°31.98′ W
48°17.02′ N	123°56.46′ W
48°30.10′ N	124°43.50′ W
48°30.10′ N	125°00.00′ W

(b) A traffic lane for north-westbound traffic.

(1) The traffic lane is established between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°16.45′ N	123°30.42′ W
48°15.97′ N	123°33.54′ W
48°18.00′ N	123°56.07′ W
48°32.00′ N	124°46.57′ W
48°32.09′ N	124°49.90′ W
48°32.09′ N	125°00.00′ W

(2) An exit from this lane between points 48°32.00′ N, 124°46.57′ W and 48°32.09′ N, 124°49.90′ W. Vessel traffic may exit this lane at this location or may remain in the lane between points 48°32.09′ N, 124°49.90′ W and 48°32.09′ N, 125°00.00′ W en route to precautionary area "JF," as described in § 167.1315.

(c) A traffic lane for south-eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°28.13′ N	124°57.90′ W
48°28.13′ N	124°44.07′ W
48°12.90′ N	123°55.24′ W
48°12.94′ N	123°32.89′ W

§ 167.1312 In the Strait of Juan de Fuca: Southern lanes.

In the southern lanes of the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°10.82′ N	123°25.44′ W
48°12.38′ N	123°28.68′ W
48°12.90′ N	123°28.68′ W
48°12.84′ N	123°27.46′ W
48°10.99′ N	123°24.84′ W

(b) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°11.24′ N	123°23.82′ W
48°12.72′ N	123°25.34′ W

(c) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°12.94′ N	123°32.89′ W
48°09.42′ N	123°24.24′ W

§ 167.1313 In the Strait of Juan de Fuca: Northern lanes.

In the northern lanes of the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°21.15′ N	123°24.83′ W
48°16.16′ N	123°28.50′ W
48°15.77′ N	123°27.18′ W
48°20.93′ N	123°24.26′ W

(b) A traffic lane for southbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°21.83′ N	123°25.56′ W
48°16.45′ N	123°30.42′ W

(c) A traffic lane for northbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°20.93′ N	123°23.22′ W
48°15.13′ N	123°25.62′ W

§ 167.1314 In the Strait of Juan de Fuca: Eastern lanes.

In the eastern lanes of the Strait of Juan de Fuca, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°13.22′ N	123°15.91′ W
48°14.03′ N	123°25.98′ W
48°13.54′ N	123°25.86′ W
48°12.89′ N	123°16.69′ W

(b) A traffic lane for westbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°14.27′ N	123°13.41′ W
48°14.05′ N	123°16.08′ W
48°15.13′ N	123°25.62′ W

(c) A traffic lane for eastbound traffic between the separation zone and a line connecting the following geographical positions:

Latitude	*Longitude*
48°12.72′ N	123°25.34′ W
48°12.34′ N	123°18.01′ W

§ 167.1315 In the Strait of Juan de Fuca: Precautionary area "PA."

In the Strait of Juan de Fuca, precautionary area "PA" is established and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°12.94′ N	123°32.89′ W
48°13.89′ N	123°31.98′ W
48°14.49′ N	123°31.98′ W
48°16.45′ N	123°30.42′ W
48°16.16′ N	123°28.50′ W
48°15.77′ N	123°27.18′ W
48°15.13′ N	123°25.62′ W
48°14.03′ N	123°25.98′ W
48°13.54′ N	123°25.86′ W
48°12.72′ N	123°25.34′ W
48°12.84′ N	123°27.46′ W
48°12.90′ N	123°28.68′ W
48°12.94′ N	123°32.89′ W

■ 4. Add §§ 167.1320 through 167.1323 to read as follows:

§ 167.1320 In Puget Sound and its approaches: General.

The traffic separation scheme in Puget Sound and its approaches consists of three parts: Rosario Strait, approaches to Puget Sound other than Rosario Strait, and Puget Sound. These parts are described in §§ 167.1321 through 167.1323. The North American Datum (NAD 83) defines the geographic coordinates in §§ 167.1321 through 167.1323.

§ 167.1321 In Puget Sound and its approaches: Rosario Strait.

In Rosario Strait, the following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°48.98′ N	122°55.20′ W

48°46.76′ N	122°50.43′ W
48°45.56′ N	122°48.36′ W
48°45.97′ N	122°48.12′ W
48°46.39′ N	122°50.76′ W
48°48.73′ N	122°55.68′ W

(b) A traffic lane for northbound traffic located within the separation zone described in paragraph (a) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°49.49′ N	122°54.24′ W
48°47.14′ N	122°50.10′ W
48°46.35′ N	122°47.50′ W

(c) A traffic lane for southbound traffic located within the separation zone described in paragraph (a) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°44.95′ N	122°48.28′ W
48°46.76′ N	122°53.10′ W
48°47.93′ N	122°57.12′ W

(d) Precautionary area "CA" contained within a circle of radius 1.24 miles centered at geographical position 48°45.30′ N, 122°46.50′ W.

(e) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°44.27′ N	122°45.53′ W
48°41.72′ N	122°43.50′ W
48°41.60′ N	122°43.82′ W
48°44.17′ N	122°45.87′ W

(f) A traffic lane for northbound traffic located within the separation zone described in paragraph (e) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°44.62′ N	122°44.96′ W
48°41.80′ N	122°42.70′ W

(g) A traffic lane for southbound traffic located within the separation zone described in paragraph (e) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°44.08′ N	122°46.65′ W
48°41.25′ N	122°44.37′ W

(h) Precautionary area "C" contained within a circle of radius 1.24 miles centered at geographical position 48°40.55′ N, 122°42.80′ W.

(i) A two-way route between the following geographical positions:

Latitude	*Longitude*
48°39.33′ N	122°42.73′ W
48°36.08′ N	122°45.00′ W
48°26.82′ N	122°43.53′ W
48°27.62′ N	122°45.53′ W
48°29.48′ N	122°44.77′ W
48°36.13′ N	122°45.80′ W
48°38.38′ N	122°44.20′ W
48°39.63′ N	122°44.03′ W

(j) Precautionary area "RB" bounded as follows:

(1) To the north by the arc of a circle of radius 1.24 miles centered on geographical position 48°26.38′ N, 122°45.27′ W and connecting the following geographical positions:

Latitude	*Longitude*
48°25.97′ N	122°47.03′ W
48°25.55′ N	122°43.93′ W

(2) To the south by a line connecting the following geographical positions:

Latitude	*Longitude*
48°25.97′ N	122°47.03′ W
48°24.62′ N	122°48.68′ W
48°23.75′ N	122°47.47′ W
48°25.20′ N	122°45.73′ W
48°25.17′ N	122°45.62′ W
48°24.15′ N	122°45.27′ W
48°24.08′ N	122°43.38′ W
48°25.55′ N	122°43.93′ W

§ 167.1322 In Puget Sound and its approaches: Approaches to Puget Sound other than Rosario Strait.

(a) The traffic separation scheme in the approaches to Puget Sound other than Rosario Strait consists of a northeast/southwest approach, a northwest/southeast approach, a north/south approach, and an east/west approach and connecting precautionary areas.

(b) In the northeast/southwest approach consisting of two separation zones, two precautionary areas ("RA" and "ND"), and four traffic lanes, the following are established:

(1) A separation zone that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°24.13′ N	122°47.97′ W
48°20.32′ N	122°57.02′ W
48°20.53′ N	122°57.22′ W
48°24.32′ N	122°48.22′ W

(2) Precautionary area "RA," which is contained within a circle of radius 1.24 miles centered at 48°19.77′ N, 122°58.57′ W.

(3) A separation zone that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°16.25′ N	123°06.58′ W
48°16.57′ N	123°06.58′ W
48°19.20′ N	123°00.35′ W
48°19.00′ N	123°00.17′ W

(4) A traffic lane for northbound traffic that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (b)(1) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°23.75′ N	122°47.47′ W
48°19.80′ N	122°56.83′ W

(5) A traffic lane for northbound traffic that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (b)(3) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°15.70′ N	123°06.58′ W
48°18.67′ N	122°59.57′ W

(6) A traffic lane for southbound traffic that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (b)(1) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°24.62′ N	122°48.68′ W
48°20.85′ N	122°57.80′ W

(7) A traffic lane for southbound traffic that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (b)(3) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°19.70′ N	123°00.53′ W
48°17.15′ N	123°06.57′ W

(8) Precautionary area "ND," which is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°11.00′ N	123°06.58′ W
48°17.15′ N	123°06.57′ W
48°14.27′ N	123°13.41′ W
48°12.34′ N	123°18.01′ W
48°12.72′ N	123°25.34′ W
48°11.24′ N	123°23.82′ W
48°10.82′ N	123°25.44′ W
48°09.42′ N	123°24.24′ W
48°08.39′ N	123°24.24′ W
48°11.00′ N	123°06.58′ W

(c) In the northwest/southeast approach consisting of two separation zones, two precautionary areas ("RA" and "SA"), and four traffic lanes, the following are established:

(1) A separation zone that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°28.72′ N	123°08.53′ W

48°25.43′ N	123°03.88′ W
48°22.88′ N	123°00.82′ W
48°20.93′ N	122°59.30′ W
48°20.82′ N	122°59.62′ W
48°22.72′ N	123°01.12′ W
48°25.32′ N	123°04.30′ W
48°28.39′ N	123°08.64′ W

(2) A separation zone that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°18.83′ N	122°57.48′ W
48°13.15′ N	122°51.33′ W
48°13.00′ N	122°51.62′ W
48°18.70′ N	122°57.77′ W

(3) A traffic lane for northbound traffic that connects with precautionary "RA," as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (c)(1) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°29.28′ N	123°08.35′ W
48°25.60′ N	123°03.13′ W
48°23.20′ N	123°00.20′ W
48°21.00′ N	122°58.50′ W

(4) A traffic lane for northbound traffic that connects with precautionary area "RA," as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (c)(2) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°19.20′ N	122°57.03′ W
48°13.35′ N	122°50.63′ W

(5) A traffic lane for southbound traffic that connects with precautionary "RA," as described in paragraph (b)(2) of this section, and is located between the separation zone described in paragraph (c)(1) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°27.86′ N	123°08.81′ W
48°25.17′ N	123°04.98′ W
48°22.48′ N	123°01.73′ W
48°20.47′ N	123°00.20′ W

(6) A traffic lane for southbound traffic connecting with precautionary area "RA," as described in paragraphs (b)(2) of this section, and is located between the separation zone described in paragraph (c)(2) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°18.52′ N	122°58.50′ W
48°12.63′ N	122°52.15′ W

(7) Precautionary area "SA," which is contained within a circle of radius 2 miles centered at geographical position 48°11.45′ N, 122°49.78′ W.

(d) In the north/south approach between precautionary areas "RB" and "SA," as described in paragraph (b)(2) and (c)(7) of this section, respectively, the following are established:

(1) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°24.15′ N	122°44.08′ W
48°13.33′ N	122°48.78′ W
48°13.38′ N	122°49.15′ W
48°24.17′ N	122°44.48′ W

(2) A traffic lane for northbound traffic located between the separation zone described in paragraph (d)(1) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°24.08′ N	122°43.38′ W
48°13.10′ N	122°48.12′ W

(3) A traffic lane for southbound traffic located between the separation zone described in paragraph (d)(1) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°24.15′ N	122°45.27′ W
48°13.43′ N	122°49.90′ W

(e) In the east/west approach between precautionary areas "ND" and "SA," as described in paragraphs (b)(8) and (c)(7) of this section, respectively, the following are established:

(1) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°11.50′ N	122°52.73′ W
48°11.73′ N	122°52.70′ W
48°12.48′ N	123°06.58′ W
48°12.23′ N	123°06.58′ W

(2) A traffic lane for northbound traffic between the separation zone described in paragraph (e)(1) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°12.22′ N	122°52.52′ W
48°12.98′ N	123°06.58′ W

(3) A traffic lane for southbound traffic between the separation zone described in paragraph (e)(1) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°11.73′ N	123°06.58′ W
48°10.98′ N	122°52.65′ W

§ 167.1323 In Puget Sound and its approaches: Puget Sound.

The traffic separation scheme in Puget Sound consists of six separation zones and two traffic lanes connected by six precautionary areas. The following are established:

(a) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°11.08′ N	122°46.88′ W
48°06.85′ N	122°39.52′ W
48°02.48′ N	122°38.17′ W
48°02.43′ N	122°38.52′ W
48°06.72′ N	122°39.83′ W
48°10.82′ N	122°46.98′ W

(b) Precautionary area "SC," which is contained within a circle of radius 0.62 miles, centered at 48°01.85′ N, 122°38.15′ W.

(c) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°01.40′ N	122°37.57′ W
47°57.95′ N	122°34.67′ W
47°55.85′ N	122°30.22′ W
47°55.67′ N	122°30.40′ W
47°57.78′ N	122°34.92′ W
48°01.28′ N	122°37.87′ W

(d) Precautionary area "SE," which is contained within a circle of radius 0.62 miles, centered at 47°55.40′ N, 122°29.55′ W.

(e) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
47°54.85′ N	122°29.18′ W
47°46.52′ N	122°26.30′ W
47°46.47′ N	122°26.62′ W
47°54.80′ N	122°29.53′ W

(f) Precautionary area "SF," which is contained within a circle of radius 0.62 miles, centered at 47°45.90′ N, 122°26.25′ W.

(g) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
47°45.20′ N	122°26.25′ W
47°40.27′ N	122°27.55′ W
47°40.30′ N	122°27.88′ W
47°45.33′ N	122°26.60′ W

(h) Precautionary area "SG," which is contained within a circle of radius 0.62 miles, centered at 47°39.68′ N, 122°27.87′ W.

(i) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
47°39.12′ N	122°27.62′ W
47°35.18′ N	122°27.08′ W
47°35.17′ N	122°27.35′ W
47°39.08′ N	122°27.97′ W

(j) Precautionary area "T," which is contained within a circle of radius 0.62 miles, centered at 47°34.55′ N, 122°27.07′ W.

(k) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
47°34.02′ N	122°26.70′ W
47°26.92′ N	122°24.10′ W
47°23.07′ N	122°20.98′ W
47°19.78′ N	122°26.58′ W
47°19.98′ N	122°26.83′ W
47°23.15′ N	122°21.45′ W
47°26.85′ N	122°24.45′ W
47°33.95′ N	122°27.03′ W

(l) Precautionary area "TC," which is contained within a circle of radius 0.62 miles, centered at 47°19.48′ N, 122°27.38′ W.

(m) A traffic lane for northbound traffic that connects with precautionary areas "SC," "SE," "SF," "SG," "T," and "TC," as described in paragraphs (b), (d), (f), (h), (j), and (k) of this section, respectively, and is located between the separation zones described in paragraphs (a), (c), (e), (g), (i), and (k) of this section, respectively, and a line connecting the following geographical positions:

Latitude	*Longitude*
48°11.72′ N	122°46.83′ W
48°07.13′ N	122°38.83′ W
48°02.10′ N	122°37.32′ W
47°58.23′ N	122°34.07′ W
47°55.83′ N	122°28.80′ W
47°45.92′ N	122°25.33′ W
47°39.68′ N	122°26.95′ W
47°34.65′ N	122°26.18′ W
47°27.13′ N	122°23.40′ W
47°23.33′ N	122°20.37′ W
47°22.67′ N	122°20.53′ W
47°19.07′ N	122°26.75′ W

(n) A traffic lane for southbound traffic that connects with precautionary areas "SC," "SE," "SF," "SG," "T," and "TC," as described in paragraphs (b), (d), (f), (h), (j), and (k) of this section, respectively, and is located between the separation zones described in paragraphs (a), (c), (e), (g), (i), and (k) of this section, respectively, and a line connecting the following geographical positions:

Latitude	*Longitude*
48°10.15′ N	122°47.58′ W
48°09.35′ N	122°45.55′ W
48°06.45′ N	122°40.52′ W
48°01.65′ N	122°30.03′ W
47°57.47′ N	122°35.45′ W
47°55.07′ N	122°30.35′ W
47°45.90′ N	122°27.18′ W
47°39.70′ N	122°28.78′ W
47°34.47′ N	122°27.98′ W
47°26.63′ N	122°25.12′ W
47°23.25′ N	122°22.42′ W
47°20.00′ N	122°27.90′ W

■ 5. Add §§ 167.1330 through 167.1332 to read as follows:

§ 167.1330 In Haro Strait, Boundary Pass, and the Strait of Georgia: General.

The traffic separation scheme in Haro Strait, Boundary Pass, and the Strait of Georgia consists of a series of traffic separation schemes, two-way routes, and five precautionary areas. These parts are described in §§ 167.1331 and 167.1332. The geographic coordinates in §§ 167.1331 and 167.1332 are defined using North American Datum (NAD 83).

§ 167.1331 In Haro Strait and Boundary Pass.

In Haro Strait and Boundary Pass, the following are established:

(a) Precautionary area "V," which is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°23.15′ N	123°21.12′ W
48°23.71′ N	123°23.88′ W
48°21.83′ N	123°25.56′ W
48°21.15′ N	123°24.83′ W
48°20.93′ N	123°24.26′ W
48°20.93′ N	123°23.22′ W
48°21.67′ N	123°21.12′ W
48°23.15′ N	123°21.12′ W

(b) A separation zone that connects with precautionary area "V," as described in paragraph (a) of this section, and is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°22.25′ N	123°21.12′ W
48°22.25′ N	123°17.95′ W
48°23.88′ N	123°13.18′ W
48°24.30′ N	123°13.00′ W
48°22.55′ N	123°18.05′ W
48°22.55′ N	123°21.12′ W

(c) A traffic lane for eastbound traffic located between the separation zone described in paragraph (b) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°21.67′ N	123°21.12′ W
48°21.67′ N	123°17.70′ W
48°23.10′ N	123°13.50′ W

(d) A traffic lane for westbound traffic located between the separation zone described in paragraph (b) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°25.10′ N	123°12.67′ W
48°23.15′ N	123°18.30′ W
48°23.15′ N	123°21.12′ W

(e) Precautionary area "DI," which is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°23.10′ N	123°13.50′ W
48°24.30′ N	123°09.95′ W
48°26.57′ N	123°09.22′ W
48°25.10′ N	123°12.67′ W
48°23.10′ N	123°13.50′ W

(f) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°25.96′ N	123°10.65′ W
48°27.16′ N	123°10.25′ W
48°28.77′ N	123°10.84′ W
48°29.10′ N	123°11.59′ W
48°25.69′ N	123°11.28′ W

(g) A traffic lane for northbound traffic located between the separation zone described in paragraph (f) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°26.57′ N	123°09.22′ W
48°27.86′ N	123°08.81′ W

(h) A traffic lane for southbound traffic located between the separation zone described in paragraph (e) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°29.80′ N	123°13.15′ W
48°25.10′ N	123°12.67′ W

(i) Precautionary area "HS," which is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°27.86′ N	123°08.81′ W
48°29.28′ N	123°08.35′ W
48°30.55′ N	123°10.12′ W
48°31.60′ N	123°10.65′ W
48°32.83′ N	123°13.45′ W
48°29.80′ N	123°13.15′ W
48°27.86′ N	123°08.81′ W

(j) A two-way route between the following geographical positions:

Latitude	*Longitude*
48°31.60′ N	123°10.65′ W
48°35.21′ N	123°12.61′ W
48°38.37′ N	123°12.36′ W
48°39.41′ N	123°13.14′ W
48°39.41′ N	123°16.06′ W
48°32.83′ N	123°13.45′ W

(k) Precautionary area "TP," which is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°41.06′ N	123°11.04′ W
48°42.23′ N	123°11.35′ W
48°43.80′ N	123°10.77′ W
48°43.20′ N	123°16.06′ W
48°39.41′ N	123°16.06′ W
48°39.32′ N	123°13.14′ W
48°39.76′ N	123°11.84′ W

(l) A two-way route between the following geographical positions:

Latitude	*Longitude*
48°42.23′ N	123°11.35′ W
48°45.51′ N	123°01.82′ W
48°47.78′ N	122°59.12′ W
48°48.19′ N	123°00.84′ W
48°46.43′ N	123°03.12′ W
48°43.80′ N	123°10.77′ W

§ 167.1332 In the Strait of Georgia.

In the Strait of Georgia, the following are established:

(a) Precautionary area "GS," which is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°52.30′ N	123°07.44′ W
48°54.81′ N	123°03.66′ W
48°49.49′ N	122°54.24′ W
48°47.93′ N	122°57.12′ W
48°47.78′ N	122°59.12′ W
48°48.19′ N	123°00.84′ W
48°52.30′ N	123°07.44′ W

(b) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°53.89′ N	123°05.04′ W
48°56.82′ N	123°10.08′ W
48°56.30′ N	123°10.80′ W
48°53.39′ N	123°05.70′ W

(c) A traffic lane for north-westbound traffic located between the separation zone described in paragraph (b) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°54.81′ N	123°03.66′ W
48°57.68′ N	123°08.76′ W

(d) A traffic lane for south-eastbound traffic between the separation zone described in paragraph (b) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
48°55.34′ N	123°12.30′ W
48°52.30′ N	123°07.44′ W

(e) Precautionary area "PR," which is bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
48°55.34′ N	123°12.30′ W
48°57.68′ N	123°08.76′ W
49°02.20′ N	123°16.28′ W
49°00.00′ N	123°19.69′ W

(f) A separation zone bounded by a line connecting the following geographical positions:

Latitude	*Longitude*
49°01.39′ N	123°17.53′ W
49°03.84′ N	123°21.30′ W
49°03.24′ N	123°22.41′ W
49°00.75′ N	123°18.52′ W

(g) A traffic lane for north-westbound traffic located between the separation zone described in paragraph (f) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
49°02.20′ N	123°16.28′ W
49°04.52′ N	123°20.04′ W

(h) A traffic lane for south-eastbound traffic between the separation zone described in paragraph (f) of this section and a line connecting the following geographical positions:

Latitude	*Longitude*
49°02.51′ N	123°23.76′ W
49°00.00′ N	123°19.69′ W

Dated: November 9, 2010.

Dana A. Goward,

U.S. Coast Guard, Director of Marine Transportation Systems Management.

[FR Doc. 2010–29165 Filed 11–18–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 482 and 485

[CMS–3228–F]

RIN 0938–AQ06

Medicare and Medicaid Programs: Changes to the Hospital and Critical Access Hospital Conditions of Participation To Ensure Visitation Rights for All Patients

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule will revise the Medicare conditions of participation for hospitals and critical access hospitals (CAHs) to provide visitation rights to Medicare and Medicaid patients. Specifically, Medicare- and Medicaid-participating hospitals and CAHs will be required to have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital or CAH may need to place on such rights as well as the reasons for the clinical restriction or limitation.

DATES: *Effective Date:* These regulations are effective on January 18, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Cooper, (410) 786–9465. Danielle Shearer, (410) 786–6617. Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION:

I. Background

On April 15, 2010, the President issued a Presidential Memorandum on Hospital Visitation to the Secretary of Health and Human Services. The memorandum may be viewed on the Web at: *http://www.whitehouse.gov/the-press-office/presidential-/memorandum-/hospital-/visitation.* As part of the directives of the memorandum, the Department, through the Office of the Secretary, tasked CMS with developing proposed requirements for hospitals (including Critical Access Hospitals (CAHs)), that would address the right of a patient to choose who may and may not visit him or her. In the memorandum, the President pointed out the plight of individuals who are denied the comfort of a loved one, whether a family member or a close friend, at their side during a time of pain or anxiety after they are admitted to a hospital. The memorandum indicated that these individuals are often denied this most basic of human needs simply because the loved ones who provide them comfort and support do not fit into a traditional concept of "family."

Section 1861(e)(1) through (9) of the Social Security Act—(1) Defines the term"hospital"; (2) lists the statutory requirements that a hospital must meet to be eligible for Medicare participation; and (3) specifies that a hospital must also meet other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the facility. Under this authority, the Secretary has established in the regulations at 42 CFR part 482 the requirements that a hospital must meet in order to participate in the Medicare program. This authority extends as well to the separate requirements that a CAH must also meet to participate in the Medicare program, established in the regulations at 42 CFR part 485. Additionally, section 1820 of the Act sets forth the conditions for designating certain hospitals as CAHs. Section 1905(a) of the Act provides that Medicaid payments may be applied to hospital services. Regulations at 42 CFR 440.10(a)(3)(iii) require hospitals to meet the Medicare CoPs to receive payment under States' Medicaid programs.

While the existing hospital conditions of participation (CoPs) in our regulations at 42 CFR part 482 do not address patient visitation rights specifically, there is a specific CoP regarding the overall rights of hospital patients contained in § 482.13. We note that the existing CoPs for CAHs in our regulations do not address patient rights in any form. The hospital CoP for patient rights at § 482.13 specifically requires hospitals to—(1) Inform each patient or, when appropriate, the patient's representative (as allowed under State law) of the patient's rights; (2) ensure the patient's right to participate in the development and implementation of the plan of care; (3) ensure the patient's (or his or her representative's) right to make informed decisions about care; (4) ensure the patient's right to formulate advance

directives and have hospital staff comply with these directives (in accordance with the provisions at 42 CFR 489.102); (5) ensure the patient's right to have a family member or representative of his or her choice and his or her own physician notified promptly of admission to the hospital; (6) inform each patient whom to contact at the hospital to file a grievance; and (7) ensure that the hospital's grievance process has a mechanism for timely referral of patient concerns regarding quality of care or premature discharge to the appropriate Utilization and Quality Control Quality Improvement Organization (QIO). (Additional information regarding the Medicare beneficiary patient's right to file a grievance or a complaint with a QIO may be found at the HHS Centers for Medicare & Medicaid Services Web site: *http://www.cms.gov/QualityImprovementOrgs/*.) The hospital patient rights CoP also guarantees a patient's right to privacy; care in a safe setting; freedom from all forms of harassment and abuse; and confidentiality of patient records. In addition, this CoP contains detailed standards on the use of restraint and seclusion in the hospital, including provisions regarding the training of staff on appropriate restraint and seclusion of patients as well as a requirement for the hospital to report any and all deaths associated with the use of restraint or seclusion.

As the President noted in his memorandum to the Secretary, many States have already taken steps to ensure that a patient has the right to determine who may and may not visit him or her, regardless of whether the visitor is legally related to the patient. In addressing the President's request to ensure patient visitation rights, we focused on developing requirements to ensure that hospitals and CAHs protect and promote patient visitation rights in a manner consistent with that in which hospitals are currently required to protect and promote all patient rights under the current CoPs. Therefore, we proposed a visitation rights requirement for hospitals and CAHs as a CoP in the Medicare and Medicaid programs. In addition to addressing the President's directives regarding patient rights, we are also ensuring that all hospitals and CAHs fully inform patients (or their representatives) of this right, and that all patients are guaranteed full participation in designating who may and who may not visit them. Therefore, we solicited public comment on how to best implement this requirement. In the proposed rule we noted that, at a minimum, the requirement should exclude a hospital or CAH from requiring documentation when the patient has the capacity to speak or otherwise communicate for himself or herself; where patient representation automatically follows from a legal relationship recognized under State law (for example, a marriage, a civil union, a domestic partnership, or a parent-child relationship); or where requiring documentation would discriminate on an impermissible basis.

In the April 15, 2010 Presidential Memorandum, the President also emphasized the consequences that restricted or limited visitation has for patients. Specifically, when a patient does not have the right to designate who may visit him or her simply because there is not a legal relationship between the patient and the visitor, physicians, nurses, and other staff caring for the patient often miss an opportunity to gain valuable patient information from those who may know the patient best with respect to the patient's medical history, conditions, medications, and allergies, particularly if the patient has difficulties recalling or articulating, or is totally unable to recall or articulate, this vital personal information. Many times, these individuals who may know the patient best act as an intermediary for the patient, helping to communicate the patient's needs to hospital staff. We agree that restricted or limited hospital and CAH visitation can effectively eliminate these advocates for many patients, potentially to the detriment of the patient's health and safety.

An article published in 2004 in the *Journal of the American Medical Association* (Berwick, D.M. and Kotagal, M.: "Restricted visiting hours in ICUs: time to change." *JAMA.* 2004; Vol. 292, pp. 736–737) discusses the health and safety benefits of open visitation for patients, families, and intensive care unit (ICU) staff and debunks some of the myths surrounding the issue (physiologic stress for the patient; barriers to provision of care; exhaustion of family and friends) through a review of the literature and through the authors' own experiences working with hospitals that were attempting a systematic approach to liberalizing ICU visitation as part of a collaborative with the Institute for Healthcare Improvement. The authors of the article ultimately concluded that "available evidence indicates that hazards and problems regarding open visitation are generally overstated and manageable," and that such visitation policies "do not harm patients but rather may help them by providing a support system and shaping a more familiar environment" as they "engender trust in families, creating a better working relationship between hospital staff and family members."

II. Provisions of the Proposed Rule and Response to Comments

We published a proposed rule in the **Federal Register** on May 26, 2010 (75 FR 29479). In that rule, we proposed to revise the Medicare hospital and CAH CoPs to provide visitation rights to Medicare and Medicaid patients.

We provided a 60-day public comment period in which we received approximately 7,600 timely comments from individuals, advocacy organizations, legal firms, and health care facilities. Of the approximately 7,600 timely comments, more than 6,300 were versions of a form letter that all expressed the same sentiment of strong support for the proposed regulation. The remaining comments, with very few exceptions, also expressed strong support for the concept and overall goals of the proposed regulation. Summaries of the public comments are set forth below.

Hospital Visitation Rights

We proposed a visitation rights requirement for hospitals as a new standard within the patient rights CoP at § 482.13. In that provision, we specified that hospitals would be required to have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights as well as the reasons for the clinical restriction or limitation. As part of these requirements, the hospital must inform each patient, or his or her representative where appropriate, of the patient's visitation rights, including any clinical restriction or limitation on those rights, when the patient, or his or her representative where appropriate, is informed of the other rights specified in § 482.13. We also proposed that, as part of his or her visitation rights, each patient (or representative where appropriate) must be informed of his or her right, subject to his or her consent, to receive the visitors whom he or she designates, whether a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and of the right to withdraw or deny such consent at any time. We solicited public comment on the style and form that patient notices or disclosures would need to follow so that patients would be best informed of these rights.

We also proposed that hospitals would not be permitted to restrict, limit,

or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability. In addition, we proposed to require hospitals to ensure that all visitors designated by the patient (or representative where appropriate) enjoy visitation privileges that are no more restrictive than those that immediate family members would enjoy.

Visitation Rights With Respect to CAHs

We proposed to apply the same visitation requirements to CAHs by revising the CoPs for CAHs. Because the CoPs for CAHs do not contain patient rights provisions, we proposed to add a new standard on patient visitation rights at § 485.635(f) within the existing CoP on provision of services.

Comment: The vast majority of commenters expressed support for the proposed regulation. Of those commenters who submitted positive comments, many also included a rationale for their positive support. Many commenters noted the harm in keeping loved ones apart, and expressed support for the rule based on the need for compassionate treatment of all patients and loved ones. One commenter indicated it is shameful and embarrassing to ask for "special" treatment to visit a sick loved one, when it is not the hospital's decision to make in the first place. Another commenter felt there was "no excuse" for hospitals to make such visitation decisions. One commenter stated that affording the right of an individual to choose their visitors or seek comfort is a crucial step towards challenging discrimination and improving health outcomes. A few commenters supported the proposed regulation based on the doctrine of the separation of Church (in the form of the personal religious beliefs of hospital staff) and State (in the form of official hospital policies and procedures). Other commenters supported the proposed regulation, citing the benefits that they personally experienced when their loved one was ill and they were granted access, even without having an advance directive naming them as the patient's representative. Still others described scenarios where an individual was permitted to visit a patient only because the individual lied about his or her relationship to the patient (such as claiming to be a biological relation).

Many commenters supported the rule because they believed that denying access to hospitalized loved ones is cruel and inhumane; some commenters even described such a denial as a form of punishment. The commenters expressed the sentiment that visitation is a moral issue and a basic human right, and that regardless of sexual identity or recognized marital status, one person being permitted to visit and care for another should not require a law.

Other commenters noted that some current visitation policies in facilities are discriminatory, unjust, and deny basic equal rights to some patients. Several commenters noted that facilities should be focused on providing medical treatment in keeping with the tenets of the Hippocratic oath, rather than dictating what constitutes an appropriate visitor. Commenters agreed that equal visitation rights are critical to the safety, welfare and equal treatment of persons who may unexpectedly find themselves under the care of a hospital or CAH.

Response: We thank the commenters for their support, and agree that all patients must be ensured the right to choose their own visitors. We agree that all Medicare- and Medicaid-participating hospitals and CAHs must have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital or CAH may need to place on such rights as well as the reasons for the clinical restriction or limitation.

Comment: A few commenters approved of the proposed regulation, and suggested that fines, civil penalties, and/or jail time should be imposed upon hospitals and individuals that deny loved ones access to patients on an impermissible basis. Others suggested that a list of non-compliant facilities should be made available to the public.

Response: As a CoP for hospitals and CAHs, noncompliance with this provision could result in the provider's termination from the Medicare program. Medicare is the single largest health care payer in the country; therefore, being terminated from participation in the Medicare program, and therefore unable to receive Medicare payments, is a very serious consequence that all participating hospitals endeavor to avoid. Hospitals and CAHs that have been terminated from Medicare participation may also not receive Medicaid payments. Therefore, we believe that hospitals and CAHs already have a very strong incentive, absent fines and other consequences, to comply with this requirement. In addition, CMS does not have the legal authority to impose other types of sanctions for non-compliant hospitals or CAHs outside of the existing scheme. Because, at this time, no quality measures have been developed relating to compliance with this requirement, CMS is not in a position to publicly report this data. However, should a quality measure be developed in the future, this information could be included on the Hospital Compare Web site (*http://www.hospitalcompare.hhs.gov/*).

Comment: Many commenters were confused by the use of the term "representative" in this section. Commenters were unclear about whether the patient's representative for visitation purposes needed to be the patient's legal representative for decision-making purposes.

Response: We agree that using the term "representative" in this rule is confusing and may be misleading. For purposes of exercising visitation rights, we do not believe that the individual exercising the patient's visitation rights needs to be the same individual who is legally responsible for making medical decisions on the patient's behalf, though it is certainly possible for both roles to be filled by the same individual. To avoid potential confusion, we have replaced the word "representative" with the term "support person." The term "support person" will, we believe, allow for a broader interpretation of the requirement and increase flexibility for patients and providers alike. A support person could be a family member, friend, or other individual who is there to support the patient during the course of the stay. This concept is currently expressed in standard RI.01.01.01 of The Joint Commission guidelines for hospitals, and we believe that it appropriately reflects our broad interpretation of the individual who may exercise a patient's visitation rights on his or her behalf.

Comment: Commenters were uniformly supportive of the requirement for hospitals and CAHs to have written policies and procedures on visitation. Commenters were also strongly supportive of a clear, formalized, written notice process for informing the patient and, as appropriate, would-be visitors and/or family and friends, of the patient's visitation rights. Some commenters recommended specific times as to when notice should be given, such as upon admission, as early as possible in the admissions process, and/or whenever copies of the visitation policy are requested. Other commenters suggested that the notice of visitation rights be limited to a single page. Several other commenters requested that the notice also be provided orally and in an accessible manner in accordance with Title VI of the 1964 Civil Rights Act, in order to ensure the communication of the content in an appropriate manner. Still other

commenters suggested that the notice of visitation rights should be posted in public spaces and in the patient's room.

Response: We thank the commenters for their support of the need to notify patients or their support person about their rights. We agree that hospitals and CAHs should be required to notify patients or their support person, in writing, of the patient's rights, including their right to receive visitors of their choosing. In accordance with the current requirements at § 482.13(a), Notice of rights, hospitals must inform patients or their support person, where appropriate, of the patient's rights in that hospital before care is furnished to a patient whenever possible. This requirement for providing the notice of patient rights, now including the right to designate and receive visitors, before care is initiated meets the concerns of some commenters regarding the timing of the notice. Therefore, we are retaining the current requirements of § 482.13(a) related to the timing of the notice of rights, and are finalizing the requirements of § 482.13(h)(1) and (2) specifically related to the written notice of visitation rights. Likewise, we are modifying the requirement of proposed § 485.635(f)(1) to require CAHs to notify patients of their visitation rights in advance of furnishing patient care whenever possible.

While we are finalizing the written notice of visitation rights requirement under the authority of sections 1861(e)(9) and 1820 of the Act, we agree with commenters that there are other legal requirements, most notably those under Title VI of the Civil Rights Act of 1964, that are related to this provision. Our requirement is compatible with recent guidance on Title VI of the Civil Rights Act of 1964. The Department of Health and Human Services' (HHS) guidance related to Title VI of the Civil Rights Act of 1964, "Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (August 8, 2003, 68 FR 47311) applies to those entities that receive Federal financial assistance from HHS, including Medicare- and Medicaid-participating hospitals and CAHs. This guidance may assist hospitals and CAHs in ensuring that patient rights information is provided in a language and manner the patient understands.

Providing each patient or support person with the written notice of visitation rights before the start of care sufficiently achieves the goal of informing patients; therefore, we are not requiring such notice to be posted within the facility. This rule does not prohibit hospitals and CAHs from posting information about their visitation policies of their own volition. Furthermore, we are not requiring facilities to provide the notice of rights in any particular format or to individuals other than the patient or support person. Facilities are already providing a notice of rights to patients in accordance with the requirements of the current rule and contemporary standards of practice. In order to facilitate prompt compliance and minimize the burden upon facilities, it is essential to allow them the flexibility to adapt their current notice procedures and documents to include this new notice of visitation rights requirement and to continue the strong focus on patients, rather than the many visitors who may pass through a facility in any given day.

Comment: In addition to notifying patients of their visitation rights, some commenters suggested that the notice should include information about any restrictions on those visitation rights, including common examples of situations when visitation may be restricted, and any specific restrictions applicable to the patient. Additionally, the following items were proposed as elements of the disclosure notice:

- Recitation of the specific language from the regulation (that "hospitals cannot restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability");
- Accompanying notice related to a patient's right to complete an advance directive or other designation of a health care agent to represent the patient;
- Accompanying notice about the grievance process that a patient (or a visitor) may follow to appeal a denial of visitation; and
- Contact information for a dedicated hospital staff person who can resolve visitation conflicts.

Response: We agree that the notice of visitation rights should include information related to reasonable, clinically necessary restrictions or limitations on those rights. Therefore, we are finalizing § 482.13(h)(1) and § 485.635(f)(1), which require hospitals and CAHs to "inform each patient (or support person, where appropriate) of his or her visitation rights, including any clinical restriction or limitation on such rights." In order to improve compliance with this requirement and minimize the burden on providers, it is necessary to allow hospitals and CAHs flexibility in meeting this requirement. These facilities can consider the usefulness of providing examples, developing medical condition-specific notices tailored to the common needs of different patient populations, and/or reciting the text of this rule as they develop their visitation rights notice.

We also agree that hospitals should notify patients of their advance directive rights and their right to access the hospital's grievance system, and information on how to do so. This information is currently required to be provided to patients or their support person in accordance with § 482.13(a) and (b).

Comment: Several commenters suggested that CMS identify (and create, where necessary) best practices for training staff and administrators on cultural competency and the benefits of open visitation policies. Several commenters suggested that hospitals should be required to train their staff in discrimination prevention and cultural competency, to better assure that the rights of patients are promoted and protected.

Response: We thank the commenters for their suggestions. However, we believe that it is outside the scope of this rule for CMS to identify or create best practices for training various healthcare facility staff on cultural competency and the benefits of open visitation policies. We believe that the establishment of these rules will lead hospitals and CAHs to actively seek out and implement best practices and other recommendations for training staff on these issues in order to fully comply with the CoPs and continue participation in the Medicare and Medicaid programs. We encourage hospitals to address issues of cultural competencies specific to the needs of their unique patient populations as part of their quality assessment and performance improvement programs. In the future, CMS may use subregulatory guidance and technical assistance programs (such as Medicare Learning Network at *http://www.cms.gov/MLNGenInfo/*) to make known best practice information that is developed by other entities and organizations.

Comment: Several commenters suggested that complaints regarding the patient's visitation rights should be subject to a grievance process, and that the right to file a grievance should be readily available to the patient as well as any would-be visitor.

Response: If a patient believes that his or her visitation rights have been violated, the patient or his or her representative may file a grievance with the hospital using the hospital's internal grievance resolution process. We note that CAHs are not currently required to have an internal complaint process;

nonetheless, they may have such a process in place for quality improvement, State licensure, accreditation, or other reasons. If the patient believes that the quality of their care was negatively impacted by a violation of his or her rights, the patient may also file a complaint with the State survey agency responsible for oversight of the facility, or the body responsible for accrediting the facility (if applicable). In the case of Medicare beneficiaries, complaints may also be filed with the QIO in that State. These external complaint processes are available to both hospital and CAH patients. We believe that these current complaint resolution mechanisms offer the necessary protections for patients who believe that their rights have been violated. Likewise, if a visitor believes that a hospital or CAH is not complying with the requirements of this rule, the visitor may file a complaint with the State survey agency responsible for oversight of the facility, as well as the body responsible for accrediting the facility (if applicable).

Comment: A few commenters requested examples of how the new regulation will be implemented in facilities.

Response: This final rule requires hospitals and CAHs to notify a patient or support person of his or her visitation rights, and sets forth the need for all hospitals and CAHs to establish non-discriminatory visitation policies that treat all visitors equally, consistent with the designations of patients or support persons. This applies to all patients, regardless of their payment source. These are broad expectations and rights that afford facilities the flexibility to revise current practices and procedures as necessary to meet these expectations. As such, we are not in a position to provide specific examples of how the regulation will be implemented in any facility because we do not know the particular circumstances of each facility, their current policies and practices, their particular patient populations, etc.

Comment: Several commenters suggested additional protected categories that should be added so that hospitals and CAHs are explicitly prohibited in regulation from discriminating against additional specified populations. Commenters stated that the protected categories in the proposed rule should be expanded to also include: marital status, family composition, age, primary language and immigration status. In addition, commenters suggested that the proposed rule make explicit that institutional or individual conscience cannot be used to deny a visitor access to the patient.

Response: As revised, we believe that this rule makes clear that hospitals must establish and implement visitation policies that grant full and equal visitation access to all individuals designated by the patient or support person, consistent with patient preferences. Patients (or their support persons) may designate anyone as an approved visitor, and a hospital or CAH may not discriminate against any approved visitors(and may impose only reasonable, clinically necessary restrictions or limitations on visitation). We believe that this regulatory policy is responsive to the concerns of commenters while still adhering to the specific instructions of the President's April 15, 2010 memorandum to the Secretary. Therefore, we are not expanding the list of explicitly protected classes at this time.

Comment: Several commenters stated that they feared crossing state lines because not all States recognize the legal status of relationships in the same way. Without such consistent recognition of legal status, an individual may be recognized as the default decision making authority by one State, but may not be recognized as such by another State. A few commenters also stated that, while traveling, it could be difficult to obtain the documentation required to verify the legal status of a relationship, particularly in emergency situations. Commenters noted that, even if documentation of a legal relationship as recognized in a certain State was available while traveling and medical attention was needed, people may not seek treatment because they fear that their legal relationship documentation may not be recognized by the State in which they are traveling.

Response: We understand the concerns of commenters in this area. These concerns highlight the need for individuals to establish an advance directive as described in 42 CFR Part 489. As a legal document expressing the patient's preferences in one or more areas related to medical treatment, an advance directive can designate the individual who is permitted to represent the patient, should the patient become incapacitated. Although section 1866(f)(1) of the Act defers to State law (whether statutory or established by the courts) to govern the establishment and recognition of advance directives, we believe that this type of document continues to be a generally viable option for patients seeking to document, in writing, their representative and/or support person designation and treatment preferences. Consistent with provisions concerning the establishment and recognition of advance directives, all States continue to have the right to determine the legal relationships that will be recognized by State law and practice, to the extent that they do so in accordance with constitutional principles. We do not have the authority in this rule to compel one State to recognize a legal relationship that is established in another State. That said, we remind hospitals and CAHs that this rule does require full and equal visitation for all visitors who are designated by the patient or support person, consistent with the patient's preferences. It is our understanding that, even where one State does not recognize a legal relationship recognized by another State, the law of that State generally does not prohibit a private actor in that State—such as a hospital or CAH—from recognizing that legal relationship. Thus, there generally appear to be no barriers to such a hospital or CAH recognizing a legal relationship recognized by another State, even if its own State does not recognize that legal relationship.

Comment: A few commenters expressed concern that the validity of an adoption in one State may not be recognized by another State in cases where a minor is the patient. Commenters feared being required to verify proof of parenthood at the height of a medical emergency if located in a different state than where adoption occurred. Concern about the minor patient's representative having the right to make decisions about medical care "as allowed under State law" was also noted by few commenters. Commenters felt that, as the language in the regulation stands, it may allow hospitals to deny the ability of adoptive parents to act as a minor patient's representative, even though the adoptive relationship is recognized under the laws of a different State. Other commenters expressed concern about the ability of non-biological parents to make decisions for their child in the absence of a legal adoption. Commenters expressed these same concerns with respect to the ability to visit a minor child.

Response: A legal adoption in one State is generally recognized as a legal parent-child relationship in another State, along with all of the default decision-making authorities that such a legal relationship confers upon a legal parent. This legal relationship continues to exist even if that parent and minor crosses State lines into another State in which that parent would have been prohibited from adopting that child. As a legal parent and representative of the minor child, the legal parent is, in accordance with the requirements of

this final rule, able to designate those individuals who are permitted to visit the child. Thus, this rule ensures the representative's ability to ensure visitation access for other individuals.

Under this rule, issues of non-biological and non-adoptive parents acting as the minor child's decision maker are governed by State law. While we do not have the authority in this final rule to compel a State to generally recognize such parents as legal parents, we note that some States in fact recognize "de facto" or "functional" or "equitable" parenthood, *i.e.,* recognize non-biological and non-adoptive parents as legal parents. Nothing in this rule prohibits a hospital or CAH from recognizing non-biological and non-adoptive parents as legal parents for purposes of the visitation policies set forth in this rule.

Comment: Several commenters stated that they supported the proposed visitation regulation because it is critical for patients to be able to choose their own visitors, particularly for those patients who belong to blended families. Commenters described "families of choice"—strong relationships with friends and other people who support the patient and who can be contacted during times of need. Accordingly, commenters stated that, when a patient is incapacitated, the patient's representative (which we now refer to as a support person) should not be chosen solely based on an individual's legal relationship with the patient. Commenters noted the lack of protection for "families of choice," which do not necessarily fit a traditional definition of a family, one based on bloodlines, marriage, or adoption, make it difficult for visitors to gain access to sick loved ones. Commenters noted that these representatives and sources of support should enjoy full visitation rights as any biological family member of the patient would.

Response: We appreciate the support of commenters, as it confirms our understanding that this visitation rights rule will help ensure that patients have access to their chosen loved ones while the patient is being cared for in a hospital or CAH. We also agree that oral designation of a support person, regardless of a particular relationship's legal status, should be sufficient for establishing the individual who may exercise the patient's visitation rights on his or her behalf, should the patient be unable to do so. In the absence of a verbal support person designation, hospitals and CAHs would look to their established policies and procedures for establishing a support person for the purpose of exercising a patient's visitation rights. As discussed later in this section, there are numerous sources of information and documentation that may be appropriate to establish the appropriateness of an individual to exercise an incapacitated patient's visitation rights on his or her behalf. We note that this section does not apply to designation of an individual as the patient's representative for purposes of medical decision making, as this designation may be governed by State law and regulation.

Comment: Many commenters submitted personal anecdotes related to their hospital and CAH visitation experiences. Some stated that they were denied information about or access to a sick loved one while in the hospital. In contrast, some commenters requested examples of situations where patient visitation rights have been violated. Other commenters noted that if they were to be hospitalized in the future, they would like for their spouse or domestic partner to be able to make medical decisions on their behalf. Several commenters stated that they had prepared advance directive documentation in the event something should warrant a hospital visit for themselves and/or a spouse or domestic partner, while others expressed concern about advance directives, stating that they cannot rely on those directives being honored in all health care settings, institutions, or States uniformly, based on their marital/relationship status. Still other commenters appeared to believe that this final rule removes the need for advance directives to designate healthcare decision makers.

Response: We appreciate all of the experiences and concerns shared by the commenters, and we encourage those commenters who sought examples of patient visitation rights being denied to refer to the many detailed personal examples that were submitted to us (*see http://www.regulations.gov.* In the "key word or I.D." entry field, enter the docket ID (CMS–2010–0207). Then, select "public submissions" from the drop-down menu under "select document type"). Numerous comments reaffirmed our understanding of the current practice in some medical institutions that denies patients access to their loved ones in times of need. The commenters also confirmed our understanding of the public's deeply-held desire to be with loved ones in such medical institutions, which further validates the need for this final rule. We also appreciate the comments related to advance directives, and encourage individuals to establish written advance directives that document the selection of a designated patient representative, support person, and/or the patient's choices about specific medical conditions and treatments. We believe that such documentation will help ensure that the patient's wishes are honored. We acknowledge that the Act defers to State law to govern advance directive issues, and that such deference may be a source of concern to commenters. However these advance directive issues are beyond the purview of this rule.

Comment: We received numerous comments affirming our general position that, when a patient can speak for himself or herself, a hospital or CAH does not need to require written documentation of a patient representative. That is, the commenters supported our contention that oral designation of "representative" status is sufficient. Comments also suggested that no proof should be required in cases where the patient provides oral confirmation that he or she would like to receive any particular visitor. Furthermore, the commenters advocated against a formal documentation process, whereby the hospital would be asked to obtain a list of permitted and non-permitted visitors from each patient. They stated that, as a practical matter, it would be simpler for the hospital to recognize as welcome or not any particular potential visitor, per the patient's wishes, when that patient make his or her wishes known.

Response: We agree that an oral designation of a support person (formerly known as a "representative") is sufficient for establishing the individual who may exercise the patient's visitation rights on his or her behalf, should the patient be unable to do so. We also agree that the patient's or support person's oral consent to admit a visitor or to deny a visitor is sufficient evidence of their wishes, and that further proof of those wishes should not be required. However, hospitals and CAHs are permitted to record such information in the patient's record for future reference, if they so choose.

Comment: Some commenters submitted comments related to the rare cases in which hospitals may need to require written documentation of patient representation. Of these, some commenters suggested that documentation should be required only in cases where more than one person claims to be the patient's spouse, domestic partner or surrogate. Others suggested that proof should be required only if the patient is incapacitated. Other commenters suggested dropping "proof" requirements altogether in an emergency situation and/or if the

patient is unconscious or otherwise incapacitated. A few commenters stated that the visitor should not have to leave the bedside of the patient to obtain proper documentation, while others stated that proof should not be required of same-sex couples where it is not required of similarly-situated different-sex couples. Other comments to this effect went further, suggesting that hospitals requiring documentation from a same-sex couple but not a different-sex couple in the same situation would be engaging in discrimination on an impermissible basis (*i.e.* on the basis of sexual orientation).

Response: We agree with those commenters who stated that a hospital or CAH must apply its documentation policy equally for all patients and support persons. In accordance with the comments submitted with respect to this rule, we believe that documentation to establish support person status for the purpose of exercising a patient's visitation rights should be required only in the event that the patient is incapacitated and two or more individuals claim to be the patient's support person. Since the visitation rights provision is new, we do not believe that States have established separate laws and regulations that would require documentation to establish an individual as the support person in other circumstances. While we acknowledge the desire of the individuals who claim to be the patient's support person to remain at the patient's bedside, we recognize that this is not possible in every situation. In these situations, such individuals may need to leave the area in order to obtain written documentation of the patient's wishes. Individuals may wish to maintain such documentation on their person and/or maintain such documentation in an electronic database, such as an advance directive registry, that grants access to health care facilities in order to avoid leaving the patient's bedside to obtain proof of support person status.

Comment: A few comments spoke to matters beyond a support person's ability to visit and designate other visitors, suggesting that, where the patient is unable to communicate and decisions related to providing or withdrawing medical care are necessary, documentation should be required, unless the patient designated the representative for health care decision making before being unable to communicate.

Response: We agree that situations related to medical decision making are governed by State law, whether established under legislative or judicial authority. We note that issues of surrogate medical decision making fall outside the scope of this rule on visitation policies. Hospitals and CAHs must always comply with their State laws and regulations, and we remind facilities that their policies and procedures related to requiring documentation of support person status must be applied in a non-discriminatory manner.

Comment: Comments were received regarding what forms of proof might suffice to establish the appropriateness of a visitor where the patient is incapacitated or otherwise unable to designate visitors, and a representative in accordance with State law or a patient-designated support person is not available to exercise the patient's rights on his or her behalf. Comments also suggested that these forms of "proof" could also be used to help establish a support person's status as such.

The following forms of "proof" were suggested:

- An advance directive naming the individual as a support person, approved visitor or designated decision maker (regardless of the State in which the directive is established);
- Shared residence;
- Shared ownership of a property or business;
- Financial interdependence;
- Marital/Relationship status;
- Existence of a legal relationship recognized in another jurisdiction, even if not recognized in another jurisdiction, including: Parent-child, civil union, marriage, domestic partnership;
- Acknowledgment of a committed relationship (e.g. an affidavit); and
- Written documentation of the patient's chosen individual(s) even if it is not a legally recognized advance directive.

Response: We agree that any of these forms of proof could be sufficient for hospitals and CAHs to establish the appropriateness of a visitor when a patient is incapacitated and no representative or support person is available to exercise a patient's visitation rights on his or her behalf. We also agree that these forms of proof may be helpful for establishing support person status for the purpose of exercising the patient's visitation rights when the patient is incapacitated. In order to obtain this information, hospitals and CAHs may choose to examine licenses, State identification cards, bank statements, deeds, lease agreements, etc. These lists of proof and documentation are not intended to be exhaustive of all potential sources of information regarding patient visitation or support person preferences. Our overall expectation is that hospitals and CAHs will use this information to guide the establishment of flexible policies and procedures that balance the dual needs of ensuring patient safety and ensuring patient access to loved ones.

Comment: A few commenters suggested that the final rule should ensure that patients have the right to exclude certain visitors to assure their well-being, and that the patient's support person should have the highest level of authority to do so.

Response: We agree that the patient's right to choose visitors also includes the right to deny visitors. We included this concept at proposed § 482.13(h)(2) and § 485.635(f)(2), stating, "Inform each patient (or representative, where appropriate) of his or her visitation rights * * * and his or her right to withdraw or deny such consent at any time." We continue to believe that this is an appropriate provision and are finalizing it as such. Patients, or their support person acting on their behalf, have the right to deny visitors.

Comment: Some commenters suggested that the regulation should include an explicit requirement granting the patient's support person direct access to the patient. One commenter suggested that health care proxies or powers of attorney that are legally recognized in one State also be recognized by hospitals and CAHs in other States for the purpose of establishing visitation rights.

Response: We agree that the patient's representative and/or support person, as the individual responsible for exercising the patient's rights on the patient's behalf when the patient is incapacitated or otherwise unable to do so directly, should be granted direct access to the patient. This basic concept is embodied throughout the current hospital regulations, including through the requirement at § 482.13(a) and (b) that the patient or patient's representative must be informed of the patient's rights and how to exercise those rights. We also agree that using the information provided in an advance directive or other written document, whether it is or is not legally recognized by the State, may be useful for hospitals and CAHs when trying to determine appropriate visitors when a patient is unable to communicate his or her own wishes and a legal representative as established consistent with State law or a support person is not available to exercise the patient's visitation rights on his or her behalf.

Comment: A number of commenters expressed the concern that the regulation's reference to State law, as it pertains to the hospital's recognition of

a patient's representative, could be interpreted as inappropriately limiting the designation of a representative, and suggested that we remove "as allowed under State law" from the regulation.

Response: As previously discussed, we agree that using the term "representative," with its implicit links to state law, is too narrow for this regulation. Therefore, we have replaced the term "representative" with the term "support person," which is intended to broadly describe the family member, friend, or other individual who supports the patient during his or her hospital or CAH stay and may exercise the patient's visitation rights on his or her behalf. Issues of legal representation and health care decision making are beyond the purview of this final rule. We remind all hospitals and CAHs that these issues are generally addressed in State law (including case law). All Medicare-participating providers, including hospitals and CAHs, are required to remain in full compliance with the laws and regulations of their State, in addition to these Federal requirements.

Comment: A few commenters noted that they were denied access to visit a loved one by the patient's representative, although they believed that such a denial was not in the best interest of the patient. The commenters cited their ability to provide pertinent medical information about the patient as a primary reason for allowing them access to the patient despite the decision of the patient's representative. A few comments also noted the impact of the well-recognized legal concept of "substituted judgment" as requiring patients' families and representatives to make medical decisions based on the patient's values and interests and not their own.

Response: As the individual responsible for making decisions on the patient's behalf, the patient representative has the authority to exercise a patient's right to designate and deny visitors just as the patient would if he or she were capable of doing so. The designation of and exercise of authority by the patient's representative is governed by State law, including statutory and case law. Many State courts have addressed the concept of substituted judgment, whereby the patient representative is expected to make medical decisions based on the patient's values and interests, rather than the representative's own values and interests. State courts have also developed a body of closely related law around the matter of a representative acting in the patient's best interest. Such case law regarding substituted judgment and best interest may be a resource for hospitals and CAHs as they establish policies and procedures intended to address these difficult situations. Hospitals and CAHs may also choose to utilize their own social work and pastoral counseling resources to resolve such conflicts to assure the patient's well-being.

Comment: Some commenters suggested that we replace the term "immediate family," as proposed at § 482.13(h)(4) and § 485.635(f)(4), with a broader requirement that does not distinguish among different types of relationships. Some commenters asserted that the regulation, as proposed, would be difficult to define, measure, and enforce. Furthermore, some commenters stated that the regulation, as proposed, created the appearance of a hierarchy of family relationship status that could put other chosen family members and loved ones at risk of unequal treatment.

Response: We agree that the proposed language may have been difficult to define, measure, and enforce, and that amending the requirement would further clarify our intent to assure equal visitation privileges for all visitors in accordance with the patient's preferences. Therefore, we have amended the requirements at § 482.13(h)(4) and § 485.635(f)(4) to state, "Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences." This revised requirement is patient-centered and will, we believe, ensure that all visitors are treated in a fair and equal manner by a hospital or CAH.

Comment: Many commenters suggested that we broaden the context in which the word "family" is used. Commenters presented a variety of options, citing sources such as the Joint Commission, the Office of Personnel Management for the United States government, and current practices in New York State. All of these commenters suggested a broad concept of family, including any individual who plays a significant role in the patient's life, such as spouses, domestic partners, significant others (whether different-sex or same-sex), and other individuals not legally related to the patient. Commenters also provided a list of specific types of family relationships, and described the challenges that can be faced with respect to each.

Response: We believe that both the preamble to the proposed rule and the language of the proposed requirements broaden the definition of "family" in the context of hospital and CAH visitation rights of patients. The language of the proposed rule (*see* 75 FR 36612) provides examples of visitors very similar to those given by the commenters ("a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend"). Most importantly, the proposed requirements go beyond these examples by specifying that the patient has the right to designate all visitors, regardless of type of relationship, and, while patient-designated visitors may obviously include those mentioned, the requirements do not place limits on who may be designated as a visitor by the patient. This final rule maintains the policies articulated in the proposed rule in this regard.

Comment: Commenters from the provider community expressed broad support for the rule's recognition of the need for clinically necessary or reasonable restrictions or limitations on visitation. In addition to supporting the overall concept of "necessary restrictions," some commenters stated that restrictions must be enforced uniformly and restrictions must be clearly communicated, along with their medical basis, to would-be visitors and/or the patient. These commenters stressed that such additional measures would reduce the opportunity for discrimination and increase understanding. These comments reflect the concerns of some commenters that an allowance for "reasonable" restrictions would be too broad. There were concerns among some of the commenters that a hospital or CAH might apply this exception capriciously and without adequate clinical justification, and that such a broad exception might also allow for restrictions rooted in discriminatory attitudes toward lesbian, gay, bisexual, and transgender people or their families.

Several commenters asked for clarification on the language in the proposed regulation that would allow for a hospital or CAH to place limitations or restrictions on a patient's visitation rights when it determined that it was clinically reasonable or necessary to do so. A commenter requested that one of the examples of a clinically reasonable restriction on visitation, which was used in the preamble ("when the patient is undergoing care interventions"), be stricken entirely from this rule. This commenter was concerned that a hospital or CAH might apply this example too broadly when restricting visitation for a patient, and that the reasons for applying it might be more logistical than clinical (*e.g.,* it may be used by overworked staff to justify a restriction or limitation).

The commenters provided numerous examples of legitimate reasons for

restricting or limiting visitors, including:

○ Any court order limiting or restraining contact;

○ Behavior presenting a direct risk or threat to the patient, hospital staff, or others in the immediate environment;

○ Behavior disruptive of the functioning of the patient care unit;

○ Reasonable limitations on the number of visitors at any one time;

○ Patient's risk of infection by the visitor;

○ Visitor's risk of infection by the patient;

○ Extraordinary protections because of a pandemic or infectious disease outbreak;

○ Substance abuse treatment protocols requiring restricted visitation;

○ Patient's need for privacy or rest;

○ Need for privacy or rest by another individual in the patient's shared room.

Response: We appreciate the support of commenters for this provision of the proposed rule, and agree that this list, though not exhaustive, is an appropriate way to begin considering clinically appropriate restrictions on visitation privileges.

In his April 15, 2010 memorandum on hospital visitation rights, the President directed the Secretary to initiate appropriate rulemaking that "should take into account the need for hospitals to restrict visitation in medically appropriate circumstances as well as the clinical decisions that medical professionals make about a patient's care or treatment." In crafting the language of the requirements, we took this Presidential directive into account, and thoroughly weighed the rights of a patient to receive visitors of his or her choosing against the obligation and duty of a hospital or CAH to provide the best possible care to all of its patients. We firmly believe that the requirements must allow hospitals and CAHs some flexibility regarding patient visitation so that healthcare professionals may exercise their best clinical judgment when determining when visitation is, and is not, appropriate. We believe that the best clinical judgment takes into account all aspects of patient health and safety, including any negative impact that patients, visitors, and staff may have on other patients in the hospital or CAH.

In the preamble to the proposed rule, we provided three broad examples of clinically reasonable areas where hospitals and CAHs might impose restrictions or limitations on visitors: When the patient is undergoing care interventions; when there may be infection control issues; and when visitation may interfere with the care of other patients. There are other, similarly obvious areas where restriction or limitation of visitation would also be appropriate, and which commenters also pointed out: Existing court orders restricting contact of which the hospital or CAH is aware; disruptive, threatening, or violent behavior of any kind; patient need for rest or privacy; limitations on the number of visitors during a specific period of time; minimum age requirements for child visitors; and inpatient substance abuse treatment programs that have protocols limiting visitation. While all of these instances can be discussed individually, it may be more useful to group all of these examples, plus those examples that we mentioned in the preamble, under an even broader category of clinically appropriate and reasonable restriction or limitation on visitation: When visitation would interfere with the care of the patient and/or the care of other patients. Whether the reason for limiting or restricting visitation is infection control, disruptive behavior of visitors, or patient or roommate need for rest or privacy, all of these reasons may be considered as clinically reasonable and necessary when viewed in light of a hospital's or CAH's overarching goal of advancing the care, safety, and well-being of all of its patients. As we discussed in the preamble, we believe that current clinical thinking, along with some evidence in this area, supports the role of visitation in advancing the care, safety, and well-being of patients. However, we must caution commenters that visitation is but one aspect of patient care. Hospitals and CAHs must balance all aspects of care for all patients. Through the hospital and CAH CoPs, CMS expects all hospitals and CAHs to provide care to patients in a safe manner that follows nationally recognized guidelines and standards. As part of this expectation, CMS recognizes that hospitals and CAHs must be allowed some degree of flexibility when developing policies and procedures for patient care and safety, and in order to comply with the CoPs. We remind hospitals and CAHs that, when establishing and implementing visitation policies and procedures, the burden of proof is upon the hospital or CAH to demonstrate that the visitation restriction is necessary to provide safe care.

As it is written, the requirement does allow a hospital or CAH a degree of flexibility when developing and imposing policies that may limit or restrict visitation. However, the rule does require that a hospital or CAH must contain these policies in written form, including the reasons for such restrictions, and must inform a patient (or his or her support person) of its policies regarding clinical limitations or restrictions on visitation rights.

However, while we agree that a hospital or CAH must communicate its policy on limited or restricted visitation to patients when apprising them of their rights (and the requirement is written as such), we do not believe that a hospital or CAH must delineate each of the clinical reasons that may warrant imposition of this policy because it may be impossible to anticipate every instance that may give rise to such a situation. We do believe that hospitals and CAHs should clearly communicate how such policies are aimed at protecting the health and safety of all patients. Additionally, in situations where it may be necessary for patient visitation to be limited or restricted, hospitals and CAHs have a duty to the patient to clearly explain the reasons for such restrictions or limitations.

Further, we disagree that the example given in the preamble of a clinically reasonable or necessary restriction or limitation on visitation ("when the patient is undergoing care interventions") should be stricken from the rule entirely. This language was not included in the proposed requirements nor is it being finalized here; it was used merely as an example. However, we are aware that in some hospitals and CAHs throughout the nation, there still exists an unwritten policy of "clearing the room" of all visitors when a patient is undergoing an intervention. It should be noted here that there are often valid reasons for doing this. For instance, many patients prefer privacy during this time; many visitors are not prepared to witness the physical aspects of some patient care interventions and procedures; the physical limitations of the patient's room can make the intervention difficult to perform with visitors in the room; and, when performing interventions or procedures that require aseptic technique, additional persons or visitors in the room may compromise the healthcare professional's ability to control for infection. CMS believes that it is in the patient's best interest to allow those healthcare professionals responsible for the care of the patient to make these clinical decisions regarding restricting or limiting visitation when the patient is undergoing a procedure or intervention.

However, we must emphasize here that we strongly encourage hospitals and CAHs to be aware of, and sensitive to, the needs of any patient who may request that at least one visitor be allowed to stay in the room to provide

support and comfort when undergoing a procedure, and to make a best effort at accommodating such requests if the clinical situation allows for it. Despite the hospital culture of "clearing the room" for patient care interventions that may still exist in some hospitals and CAHs, we believe that many more hospitals and CAHs are making a best effort at recognizing and honoring the need of many patients to have a loved one close by while undergoing a potentially frightening and painful procedure. In this regard, we respectfully disagree with the comment stating that staff may justify such restrictions or limitations for logistical, rather than clinical, reasons. This comment voices a concern that "overworked staff" would apply restrictions or limitations for logistical reasons and implies that logistical reasons are more conveniences for the staff than they are clinical reasons for the patient. In the hospital setting, the logistical and the clinical are often one and the same, and the logistics of the situation must sometimes be taken into account by healthcare professionals in order to ensure the best clinical outcomes for patients. Of the examples given above for restricting or limiting visitation during a care intervention, it can be argued that all are both clinical and logistical in nature, with each impacting the other. Again, CMS believes that, in the interests of patient safety, such decisions are best left to the healthcare professionals responsible for the care of the patient, and should not be dictated through overly prescriptive regulations.

Comment: Several commenters stated that written documentation of patient representation in the form of legally valid advance directives, such as durable powers of attorney and healthcare proxies, (as opposed to oral designation of the support person by the patient) should be required only in the very rarest of cases—such as when more than one person claims to be a patient's spouse, domestic partner, or surrogate. In all other cases, oral confirmation of an individual acting as the support person should suffice. Commenters suggested that a hospital or CAH may not require documentation in a discriminatory manner.

Response: In the preamble, we specifically asked for comments on how to best identify those rare cases where hospitals and CAHs should be permitted to ask for written documentation to establish the support person as such in order to allow the support person the right to designate visitors if the patient is unable to do so. We appreciate the comments offered on this issue. We agree that this practice would most clearly be justified in those rare cases where the hospital or CAH faces a dispute among two or more persons claiming to be the patient's support person, and the patient is incapacitated.

Comment: One provider urged CMS to be cautious about fashioning "overly prescriptive" policies in the interpretive guidelines.

Response: We appreciate the commenter's warning, and agree that being overly prescriptive may stifle the flexibility that we intend hospitals and CAHs to exercise when establishing and implementing full and equal visitation for all visitors in accordance with patient preferences. We note that the Interpretive Guidelines for the CoPs, which will be updated to reflect these new requirements, fall outside of the scope of this rulemaking process and are not addressed here.

Comment: A very small number of commenters suggested that CMS should not adopt this proposed rule, believing that there does not exist a pressing need for it to exist, and that adding the additional patient rights information to the existing notice of patient rights disclosure would serve only to increase hospital costs, lengthen the admission process, and further overwhelm patients.

Response: While we recognize the commenters' concern regarding the large amount of information that is provided to patients and the time that it takes to do so, we continue to believe that it is better to apprise patients and their support person of the patient's rights, and to ensure this practice through the requirements of the conditions of participation. We also continue to believe that this regulation will address a very real problem that negatively impacts patient outcomes and that runs contrary to our goal of safe and effective care for every patient, every time. Furthermore, we continue to believe that the flexible structure of these requirements minimizes the cost impact of this final rule.

Comment: Several commenters made ambiguous statements that did not speak to either support for or disagreement with the proposed rule.

Response: While we believe that statements such as "Please come into the new millennium" may be in support of the proposed regulation, encouraging CMS to adopt regulations that address changing social norms and contemporary situations, we were unable to classify these comments as such due to their ambiguous nature. Nonetheless, we thank the commenters for expressing their thoughts on this proposed regulation and will make all efforts to assure that the final regulation is fair and balanced to protect patient rights, as well as patient health and safety.

Comment: Several commenters in favor of the regulation proposed that all hospitals, whether they are receiving Federal funding from CMS or not, respect this directive and its intention.

Response: While we agree that the intent and spirit of this regulation should be honored by all hospitals and CAHs, even those that do not receive Medicare or Medicaid funds, we do not have the authority to enforce these requirements upon non-Medicare or Medicaid hospitals and CAHs. CMS's authority to enforce this and other CMS regulations stems from the agreement that hospitals and CAHs enter into with CMS whereby those hospitals and CAHs agree to abide by Medicare's regulations in exchange for their ability to participate in the Medicare and Medicaid programs, see and treat Medicare and Medicaid patients, and be paid by Medicare or Medicaid for the care and services furnished to those Medicare and Medicaid patients. Absent that voluntary agreement, CMS lacks authority to enforce its rules upon non-participating providers and suppliers.

Comment: Several commenters suggested that the requirements of this rule should apply to hospices, nursing homes, ambulatory surgical centers (ASCs), and intermediate care facilities for the mentally disabled (ICF/MRs). Commenters noted that the need for and the benefits that flow from visitation are just as important—and sometimes even more so—for patients in hospices and nursing homes than for those in hospitals. Many commenters asserted that the standards and rules for all facilities should be consistent.

Response: While we agree that the benefits of visitation go beyond hospital and CAH patients, and we appreciate the suggestions that this rule should apply to other types of Medicare and Medicaid providers, such revisions would fall outside the scope of this rule. We note that the current regulations for hospices (§ 418.52, § 418.100, and § 418.110 in particular) and nursing homes (§ 483.10(j)) already require generous visitation privileges for all patients, and that these generous allowances minimize the need for new regulations at this time. We also believe that the short-term nature of ASC services, which must be less than 24 hours in duration, and the fact surgery centers generally require each patient to be accompanied by a responsible adult for discharge purposes, naturally minimize the need for open visitation regulations in ASCs. However, we will

continue to consider modifying the requirements for these provider types in the future to ensure consistent requirements and patient rights across providers.

Each of these providers is required by regulation to have an internal system to handle patient grievances. If patients of these providers believe that their rights have been violated, they may file a complaint using their provider's internal grievance system. All patients may also file a complaint with the state survey agency and/or the agency that accredits the provider (if applicable). Furthermore, Medicare beneficiaries may file quality of care complaints with the QIO in that state. We believe that these robust complaint options help assure that patient complaints are documented, investigated, and resolved in an appropriate manner.

Informed Decisions

The President's Memorandum also directed the Secretary to ensure that patients' representatives have the right to make informed decisions regarding patients' care.

The hospital CoPs at 42 CFR 482.13(b)(2) state: "The patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care. The patient's rights include being informed of his or her health status, being involved in care planning and treatment, and being able to request or refuse treatment. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate."

We believe that the ability of a patient to designate a support person who can act on behalf of the patient is critical to the assurance of the patient's health and safety. Regardless of whether a patient is incapacitated, the designation of a support person, who is likely to be especially familiar with the patient, including his or her medical history, conditions, medications, and allergies, can serve as an invaluable asset to the patient and caregivers during the development and revision of the course of treatment and associated decision making.

In the proposed rule, we explained that the requirement at § 482.13(b)(2) was intended to ensure the patient's right to designate a representative for health care decision-making purposes. We solicited public comment on whether, as a health and safety measure, this requirement effectively addresses any inappropriate barriers to a patient's ability to designate a representative for visitation purposes, and consistently ensures the right to designate a representative (for all purposes) for all patients in all Medicare- and Medicaid-participating hospitals.

Comment: Several commenters noted suggestions to ensure that all patients are able to designate a decision-maker, have that designation respected, and receive meaningful representation by that individual regardless of whether the State in which the patient is hospitalized recognizes a formal legal relationship between the two persons. This would include hospitals' obligations to provide patients with designation forms. In urgent situations, commenters suggested that patients have the right to orally designate a representative for decision-making purposes. One commenter suggested that CMS should create a model advance directive rule that States could use to revise their current legislation and regulations related to advance directives.

Response: We thank commenters for their suggestions regarding the designation of a representative by a patient. With respect to designations in advance directives, § 1866(f)(1) of the Act defers to State law (whether statutory or established by the courts) to govern the establishment and recognition of advance directives (which can be used by the patient to designate a representative). Thus, we do not have the authority in this rule to change this aspect of advance directives policy. We believe, however, that an advance directive remains a viable and important option for those seeking to document treatment preferences, informed decision-making regarding care, designation of a representative, and designation of a support person (who may be the representative). And we encourage hospitals to consider advance directives established in other States as a viable source of information about patient preferences, including visitation preferences. It is not within the scope of this regulation to draft sample legislation that could guide State laws and regulations on advance directives.

Comment: Commenters expressed various concerns related to the current requirements for the establishment and implementation of advance directives, State requirements for designating a patient's representative for decision-making purposes, methods for producing a copy of an existing advance directive in a time of need (including the hospital's role in obtaining a copy), and the practicalities involved with establishing advance directives. These commenters highlighted the complexities of establishing, accessing, and implementing advance directives in a variety of circumstances, and focused particular attention on the role of advance directives in establishing patient "representative" status.

Response: We appreciate the comments received in regard to advance directive issues. We refer readers to the statutory language at § 1866(f)(3) of the Act, which defines an advance directive as "a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated." All CMS regulations related to advance directives, including those advance directives that designate a patient's representative for health care decision making, are based on this statute which, in turn, defers to State laws in all forms to govern the establishment and implementation of such documents. As such, CMS does not have the legal authority to broadly preempt, through regulation or other administrative action, those State laws that relate to advance directives.

In regard to current CMS regulations related to advance directives, we note that the provider agreement regulations at § 489.102, referenced by § 482.13, specify very limited instances in which services or procedures specified in a State-recognized advance health care directive may be refused. Section 489.102(c)(2) is limited to refusals to provide services or procedures called for in an advance health care directive, as described in § 489.102(a)(1)(ii)(C), which refers specifically to "the range of medical conditions or procedures affected by the conscience objection." We believe that this narrow window allowing for certain objections to the content of an advance directive would not allow a health care provider to refuse to honor those portions of a State-recognized advance directive that designate an individual as the patient's representative, support person, or health care decision-maker, since such designation is not a medical condition or procedure.

Comment: Some commenters noted a variety of barriers that inhibit the establishment of an advance directive. Such barriers include the cost associated with obtaining legal counsel to help establish an advance directive that is legal in the patient's State, a lack of knowledge about the need for and benefits of an advance directive, an overall cultural apathy towards advance care planning as indicated by the low percentage of the population that has an advance directive, and the

disadvantages faced by non-English-proficient individuals.

Response: In the proposed rule, we solicited comment on whether the current requirement (at § 482.13(b)(2), which is intended to ensure a patient's right to designate a representative to make informed decisions about his or her care) effectively addresses any inappropriate barriers to a patient's ability to designate a representative, and whether it consistently ensures the right to designate a representative for all patients in all Medicare- and Medicaid-participating hospitals. We also stated our intention to consider public comments received in response to this request as we consider any revision to the current regulation that would eliminate any inappropriate restriction or limitation on a patient's ability to designate a representative that may be permitted under the existing regulation.

In light of our direct solicitation of comments on this issue, we greatly appreciate the comments offered here regarding various barriers that a patient may experience when attempting to designate a representative for health care decision-making purposes. We will give due consideration to these comments when we contemplate future rulemaking in this area of the CoPs.

Comment: Commenters observed that in addition to establishing an advance directive, patients, representatives, and support persons must also be able to produce the document in a time of urgent need. These commenters also observed that being able to do so may be challenging and inconvenient for people, given the nature of urgent medical situations.

Response: Urgent situations are, by nature, unplanned. As such, patients, representatives, and support persons may not have ready access to the necessary medical documentation at the time that the urgent situation occurs. In addition to keeping such documentation in a readily accessible physical location, we are aware of the existence of advance directive registries that store advance directives and other legal documents in an electronic format that can be retrieved by individuals and health care facilities alike. Such document storage and access facilities may be an appropriate source of the proper documentation in urgent situations.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Condition of Participation: Patient's Rights (§ 482.13)

Section § 482.13(h) requires a hospital to have written policies and procedures regarding the visitation rights of patients, including any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights and the reasons for the clinical restriction or limitation. Specifically, the written policies and procedures must contain the information listed in § 482.13(h)(1) through (h)(4). The burden associated with this requirement is the time and effort necessary for a hospital to develop written policies and procedures with respect to visitation rights of patients and to distribute that information to the patients.

We believe that most hospitals already have established policies and procedures regarding visitation rights of patients. Therefore, we are adding only a minimal amount of additional burden hours to comply with this requirement. Additionally, we believe that most hospitals include the visitation policies and procedures as part of their standard notice of patient rights. The burden associated with the notice of patient rights is currently approved under OMB control number 0938–0328. We will be submitting a revision of the currently approved information collection request to account for the following burden.

We estimate that 4,860 hospitals must comply with the aforementioned information collection requirements. We further estimate that it will take each hospital 0.25 hours to comply with the requirement in proposed § 482.13(h). The total estimated annual burden associated with this requirement is 1,215 hours at a cost of $71,746.

B. ICRs Regarding Condition of Participation: Provision of Services (§ 485.635)

Section 485.635(f) requires a CAH to have written policies and procedures regarding the visitation rights of patients, including any clinically necessary or reasonable restriction or limitation that the CAH may need to place on such rights and the reasons for the clinical restriction or limitation. Specifically, the written policies and procedures must contain the information listed in § 485.635(f)(1) through (f)(4). The burden associated with this requirement is the time and effort necessary for a CAH to develop written policies and procedures with respect to visitation rights of patients and to distribute the information to the patients.

We believe that most CAHs already have established policies and procedures regarding visitation rights of patients. These policies and procedures are most likely included as part of a CAH's patient care policies as required for CAHs under § 485.635. Therefore, we are adding a minimal amount of additional burden hours to comply with this requirement. We will be submitting a revision of the ICR currently approved under OMB control number 0938–1043 to account for the burden associated with the requirements in § 485.635.

We estimate that 1,314 CAHs must comply with the aforementioned information collection requirements. We further estimate that it will take each CAH 0.25 hours to comply with the requirement at § 482.13(h). The total estimated annual burden associated with this requirement is 329 hours at a cost of $19,398.

TABLE 1—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS

Regulation section(s)	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
§ 482.13	0938–0328	4,860	4,860	.25	1,215	59.05	71,746	0	71,746

TABLE 1—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS—Continued

Regulation section(s)	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
§ 485.635	0938–1034	1,314	1,314	.25	329	58.96	19,398	0	19,398
Total		6,174	6,174		1,544				91,144

IV. Regulatory Impact Statement

We have examined the impact of this proposed rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the $100 million economic threshold and therefore is not considered a major rule under the Congressional Review Act.

We believe that the benefits of this rule will amply justify its relatively minimal costs. Executive Order 12866 explicitly requires agencies to consider non-quantifiable benefits, including "distributive impacts" and "equity," and the benefits of the final rule, in these terms, will be significant. In the words of Executive Order 12866, these benefits are "difficult to quantify, but nevertheless essential to consider."

More specifically, the benefits of this rule include: (1) Ensuring the protection of a patient's ability to designate who may and may not visit the patient;

(2) broadening patient participation in the care received (a benefit that would have, among other things, significant emotional benefits for many patients); and

(3) creating a more patient-designated support system, with potentially large improvements in hospital and CAH experiences and health outcomes for patients.

The cost of implementing these changes will largely be limited to the one-time cost related to the revisions of hospital and CAH policies and procedures as they relate to the requirements for patient visitation rights. There will also be the one-time cost of producing a printed page detailing the patient visitation rights that will be provided to patients upon admission. We have estimated the total cost of revising the policies and procedures related to patient visitation rights as well as the total cost of producing a printed page detailing these rights that will be provided to hospital and CAH patients upon admission. No burden is being assessed on the communication of these revisions to hospital and CAH staff or on the distribution of the visitation rights to patients that will be required by this rule, as these practices are usual and customary business practices.

CMS data, as of March 31, 2010, indicated that there were 4,860 hospitals and 1,314 CAHs (for a total of 6,174) in the United States. We prepared the cost estimates for hospitals and CAHs together since both types of providers will be required to perform the same functions. Regarding the costs of revising hospital and CAH policies and procedures as related to the proposed patient visitation rights requirements, this function will be performed by the hospital or CAH administrator at an hourly salary (including a 35 percent benefits) of $59.05 (based on wage estimates for a Medical and Health Services Manager in the May 2009 National, State, Metropolitan, and Nonmetropolitan Area Occupational Employment and Wage Estimates report from the Bureau of Labor Statistics) and that this function will require approximately 15 minutes of an administrator's time to accomplish. Therefore, the total one-time cost for all hospitals and CAHs would be $59.05 × .25 hours × 6,174 total hospitals/CAHs = $91,144.

The most recent CMS figures from 2008 also indicate that there were 37,529,270 total hospital (and CAH) patient admissions in that year. Using that as an estimate, we then calculated the total cost for hospitals and CAHs to produce a one-page printed disclosure form detailing the patient visitation rights that would be provided to all patients upon admission. We estimated the cost of production to be 2 cents per page. Therefore, the total estimated cost for all hospitals and CAHs to produce this one-page printed patient visitation rights disclosure form and provide it to all patients upon admission (based on the most recent hospital admission figures) will be 37,529,270 total hospital patient admissions × $0.02 = $750,585 for the first year. We will anticipate that this form would be incorporated into hospital and CAH admission materials for subsequent years; therefore, we have no way to estimate the future costs to provide this form, but expect the costs to be minimal once all hospitals and CAHs have incorporated this disclosure of patient visitation rights. In conclusion, the total first-year cost for all hospitals and CAHs to meet the requirements of the patient visitation rights will be $841,729. We believe that the annual benefits of the rule, though not susceptible to quantification, far exceed that amount.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because the Secretary has determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b)

of the Act because the Secretary has determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This rule will have no consequential effect on State, local, or tribal governments in the aggregate or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Because this regulation will not impose any substantial costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 482

Grant programs—Health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—Health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 1. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

■ 2. Section 482.13 is amended by adding a new paragraph (h) to read as follows:

§ 482.13 Condition of participation: Patient's rights.

* * * * *

(h) *Standard: Patient visitation rights.* A hospital must have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the hospital may need to place on such rights and the reasons for the clinical restriction or limitation. A hospital must meet the following requirements:

(1) Inform each patient (or support person, where appropriate) of his or her visitation rights, including any clinical restriction or limitation on such rights, when he or she is informed of his or her other rights under this section.

(2) Inform each patient (or support person, where appropriate) of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.

(3) Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

(4) Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

■ 3. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

■ 4. Section 485.635 is amended by adding a new paragraph (f) to read as follows:

§ 485.635 Condition of participation: Provision of services.

* * * * *

(f) *Standard: Patient visitation rights.* A CAH must have written policies and procedures regarding the visitation rights of patients, including those setting forth any clinically necessary or reasonable restriction or limitation that the CAH may need to place on such rights and the reasons for the clinical restriction or limitation. A CAH must meet the following requirements:

(1) Inform each patient (or support person, where appropriate) of his or her visitation rights, including any clinical restriction or limitation on such rights, in advance of furnishing patient care whenever possible.

(2) Inform each patient (or support person, where appropriate) of the right, subject to his or her consent, to receive the visitors whom he or she designates, including, but not limited to, a spouse, a domestic partner (including a same-sex domestic partner), another family member, or a friend, and his or her right to withdraw or deny such consent at any time.

(3) Not restrict, limit, or otherwise deny visitation privileges on the basis of race, color, national origin, religion, sex, gender identity, sexual orientation, or disability.

(4) Ensure that all visitors enjoy full and equal visitation privileges consistent with patient preferences.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program). (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

Dated: October 21, 2010.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: November 15, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–29194 Filed 11–17–10; 11:15 am]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register
Vol. 75, No. 223
Friday, November 19, 2010

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 630

RIN 3206–AM11

Absence and Leave; Qualifying Exigency Leave

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management is issuing proposed regulations to implement an amendment to the Family and Medical Leave Act (FMLA) that creates an additional qualifying reason for leave. Under this amendment, eligible Federal employees may take up to 12 administrative workweeks of FMLA leave without pay due to a qualifying exigency. Qualifying exigencies arise out of the fact that a covered family member is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty status. These regulations would help employees manage family affairs when a family member is on covered active duty.

DATES: Comments must be received on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by RIN number "3206–AM11" using either of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

Mail: Jerome D. Mikowicz, Deputy Associate Director, Pay and Leave, U.S. Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Doris Rippey by telephone at (202) 606–2858; by fax at (202) 606–0824; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Office of Personnel Management (OPM) is issuing proposed regulations to implement section 565(b)(1) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111–84, October 28, 2009). Section 565(b)(1) amended 5 U.S.C. 6382(a)(1) by inserting a new subparagraph (E) that adds qualifying exigencies to the circumstances or events that entitle Federal employees to up to 12 administrative workweeks of Family and Medical Leave Act (FMLA) unpaid leave during any 12-month period. The proposed regulations would amend OPM's current regulations at part 630, subpart L, to cover qualifying exigencies when the spouse, son, daughter, or parent of the employee is on covered active duty in the Armed Forces or has been notified of an impending call or order to covered active duty. OPM proposes eight categories of qualifying exigencies: short-notice deployments, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities not encompassed in the other categories when the agency and employee agree they qualify as exigencies, including the timing and duration of the leave.

Background

The FMLA is divided into two titles that are governed by two different agencies; the Department of Labor (DOL) is responsible for the rules and regulations for title I of the FMLA (mostly the non-Federal sector), and OPM is responsible for the rules and regulations for title II of the FMLA (mostly Federal employees). Under title II of the FMLA (5 U.S.C. 6387), OPM is required to prescribe regulations that are consistent, to the extent appropriate, with regulations prescribed by the Secretary of Labor to carry out title I of the FMLA.

FY 2008 NDAA. Section 585 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110–181, January 28, 2008) amended the FMLA provisions for both title I and title II of the FMLA to provide a specific military family leave entitlement (referred to by OPM as "leave to care for a covered servicemember") for an employee who (1) is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative) of a covered servicemember with a serious injury or illness, and (2) provides care for such servicemember. The legislation provided 26 weeks of FMLA leave during a single 12-month period to care for a servicemember who was injured in the line of duty while on active duty. The legislation also provided a second military family leave entitlement—qualifying exigency leave—to title I employees, but remained silent on this entitlement for title II employees. Therefore, Federal employees were not provided the authority to use qualifying exigency leave in the FY 2008 NDAA legislation.

DOL issued its final regulations on November 17, 2008, (73 FR 67934) to implement the military family leave entitlements in the FY 2008 NDAA, as well as other changes that were part of a systemwide review of DOL's FMLA regulations. Following DOL's issuance of these regulations, OPM issued proposed FMLA regulations on August 26, 2009, (74 FR 43064, at *http://edocket.access.gpo.gov/2009/pdf/E9-20610.pdf*) concerning care for a covered servicemember.

FY 2010 NDAA. Before OPM could issue its final FMLA regulations implementing leave to care for a covered servicemember, section 565(b) of the FY 2010 NDAA made further changes to the FMLA. In summary, the FY 2010 NDAA amendments (1) provide a new entitlement to qualifying exigency leave for Federal employees covered by OPM's FMLA regulations parallel to the entitlement provided to employees covered by DOL's FMLA regulations, and (2) expand the coverage for the 26-week entitlement for family members to care for a covered servicemember undergoing medical treatment, recuperation, or therapy, for a serious injury or illness by amending the definitions of *covered servicemember* and *serious injury or illness.* These changes have a broad impact on the 26-week entitlement that requires changes to DOL's final FMLA regulations and OPM's proposed FMLA regulations. OPM must wait for DOL to implement proposed and final regulations on the expanded FMLA coverage provisions before we can implement corresponding regulations for the Federal Government. However, the FY 2010 NDAA did not

alter the qualifying exigency portion of the FY 2008 NDAA for employees covered by title I of DOL's regulations. Therefore, it is possible for OPM to issue proposed regulations implementing the qualifying exigency portion of the FY 2010 NDAA without having to wait for any further action on the part of DOL.

The military family leave amendments to the FY 2010 NDAA were effective upon enactment (October 28, 2009). Until OPM issues final regulations, agencies should follow OPM's guidance in CPM 2010–06 on March 5, 2010, at *http://www.chcoc.gov/Transmittals/TransmittalDetails.aspx?TransmittalId=2884.*

DOL Regulations on Qualifying Exigency Leave

The DOL regulations implementing title I of the FMLA are set out at 29 CFR part 825. The DOL provisions regarding qualifying exigency leave are prescribed at §§ 825.100, 825.101, 825.112, 825.126, 825.127, 825.200, 825.202, 825.203, 825.300, 825.302, 825.303, 825.305, 825.309, and 825.313. Supplementary information on the DOL regulations regarding qualifying exigency leave may be found in the DOL proposed regulations published on February 11, 2008, at 73 FR 7876 (*http://edocket.access.gpo.gov/2008/pdf/E8-2062.pdf*), and final regulations published on November 17, 2008, at 73 FR 67934 (*http://edocket.access.gpo.gov/2008/pdf/E8-26577.pdf*). (*See* in particular § 825.126 (Leave Because of a Qualifying Exigency) at 73 FR 67954.) To the extent appropriate, OPM is adopting the qualifying exigency portion of the DOL regulations to apply to the Federal workforce.

Exception to DOL Regulations

OPM's proposed regulations on qualifying exigency leave are parallel to DOL's final FMLA regulations with only minor adaptations to make them applicable to Federal employees. The one exception stems from a change to 5 U.S.C. 6381 made by the FY 2010 NDAA, which has not yet been incorporated into DOL's FMLA regulations. This change removes the definition of *active duty* from the statute and adds a definition of *covered active duty.* The new definition now covers duty of a servicemember who is deployed to a foreign country in either a regular component or a reserve component of the Armed Forces. (The previous definition covered only members of reserve components.)

OPM's proposed regulations published on August 26, 2009, at 74 FR 43064, included a definition of *active duty* that was derived from DOL's definition based on the FY 2008 NDAA statutory definition. Because the FY 2010 NDAA replaced the definition of *active duty* with *covered active duty* and this term is relevant to the qualifying exigency entitlement, we are proposing to add *covered active duty* to the definitions at 5 CFR 630.1202.

Additions to the FMLA Definitions

In § 630.1202, we propose to add new definitions to our existing FMLA regulations for *covered active duty* or *call to covered active duty status, covered military member,* and *son or daughter on covered active duty or call to covered active duty status.*

The definitions of *son or daughter on covered active duty or call to covered active duty status* and *covered active duty or call to covered active duty status* mostly parallel the DOL regulations at 29 CFR 825.126. The new definitions reflect the changes authorized in the FY 2010 NDAA that provide additional benefits to employees covered under both title I and title II. In summary, the coverage changed to add members of a regular component of the Armed Forces on active duty or call to active duty when deployed to a foreign country and members of reserve components on active duty or call to active duty during deployment to a foreign country in support of a contingency operation.

Amendment to FMLA Leave Entitlement

Section 565(b) of the FY 2010 NDAA amended the FMLA provisions at 5 U.S.C. 6382(a)(1) by adding new subparagraph (E) to provide Federal employees with an entitlement of up to 12 administrative workweeks of unpaid FMLA leave during any 12-month period for any qualifying exigency arising out of the fact that the spouse or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

Therefore, we propose to amend our regulations at § 630.1203(a) to add a new paragraph (5) that includes a qualifying exigency among the list of reasons for which an employee is entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period.

New Section To Cover Qualifying Exigency Leave

We are adding a new § 630.1204, which is similar to a new section added to the DOL regulations at 29 CFR 825.126. Proposed § 630.1204(a) lists the qualifying exigencies for which eligible Federal employees may take up to 12 administrative workweeks of unpaid FMLA leave during a 12-month period. The qualifying exigencies fall under eight categories:

Short-notice deployment. Employees may take qualifying exigency leave to address any issue that arises when a covered military member receives notice of an impending call or order to active duty for 7 calendar days or fewer prior to the date of deployment. Up to 7 calendar days of leave may be taken beginning on the date the member receives the notice of a call or order to active duty.

Military events and related activities. Employees may take qualifying exigency leave to attend certain official ceremonies, programs, or events sponsored by the military, as well as family support and assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross. These events and activities must be related to the covered active duty or call to covered active duty status of a covered military member.

Childcare and school activities. Employees may take qualifying exigency leave when the covered active duty or call to covered active duty status of a covered military member makes it necessary for the employee to arrange for alternative childcare; provide childcare on an urgent, immediate need basis; enroll or transfer a child to a new school or daycare facility; or attend meetings with school or daycare officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors. The child must be a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence.

Financial and legal arrangements. Employees may take qualifying exigency leave for financial or legal matters related to the covered military member's absence while on covered active duty or call to covered active duty status. Under this category, leave may be taken to prepare and execute financial and healthcare powers of attorney, transfer bank account signature authority, enroll in the Defense Enrollment Eligibility Reporting System, obtain military identification cards, prepare or update a will or living trust, or for other financial and legal arrangements related to the covered military member's absence.

Employees may also take leave under this category to act as the covered military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status or within 90 days following the date of termination of covered active duty status.

Counseling. Employees may take qualifying exigency leave for counseling by someone other than a healthcare provider, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member. This counseling may be for the employee, the covered military member, or a child (as previously described under "Childcare and school activities").

Rest and recuperation. Employees may take up to 5 days of qualifying exigency leave to spend time with a covered military member for each instance of short-term rest and recuperation leave during the period of deployment.

Post-deployment activities. Employees may take qualifying exigency leave to attend arrival ceremonies, reintegration briefings and events, and any other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty. Employees may also take leave under this category to address issues that arise from the death of a covered military member while on covered active duty status, such as making funeral arrangements.

Additional activities. Employees may take qualifying exigency leave to address other events that arise from the covered military member's covered active duty or call to covered active duty status if both the agency and employee agree the leave qualifies as an exigency and agree to the timing and duration of the leave.

Additional Changes to FMLA Regulations for Qualifying Exigency Leave

The proposed regulations make the following additional changes to the FMLA provisions in subpart L of 5 CFR part 630 to implement other FY 2010 NDAA amendments regarding use of qualifying exigency leave and to conform to DOL regulations:

Intermittent or reduced leave schedule. The proposed regulations revise § 630.1205(b) (formerly § 630.1204(b)) to clarify that employees may take qualifying exigency leave intermittently or on a reduced leave schedule basis, subject to the notification requirements in § 630.1207 (formerly § 630.1206) and the certification requirements in new § 630.1209.

Notice of leave. The proposed regulations add a new paragraph (c) to § 630.1207 (formerly § 630.1206) that requires an employee to notify his or her agency of future qualifying exigency leave needs, when foreseeable. The employee must provide notice as soon as practicable, regardless of how far in advance the leave is foreseeable.

Certification. The proposed regulations add a new § 630.1209, "Certification for leave taken because of a qualifying exigency." This section permits agencies to (1) require employees to provide documentation of the family member's covered active duty status, (2) require certification of qualifying exigency leave use, and (3) verify certain information regarding meetings, appointments, or active duty status with third-party sources.

Active duty orders. The proposed regulations require an employee, upon request from the agency, to provide a copy of the covered military member's active duty orders or other documentation issued by the military that indicates that the covered military member is on covered active duty or call to covered active duty status and the dates of the covered military member's active duty service. This information needs to be provided to the agency only once. A copy of new active duty orders or other documentation issued by the military must be provided to the agency if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status of the same or a different covered military member.

Required information. An agency may require that leave for any qualifying exigency specified in § 630.1204 be supported by a certification from the employee, which includes the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts should include information on the type of qualifying exigency for which leave is requested and any available written documentation that supports the request for leave. The documentation may include, for example, a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs.

(2) The approximate date on which the qualifying exigency commenced or will commence.

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for the absence.

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced leave schedule basis, an estimate of the frequency and duration of the qualifying exigency.

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting.

Verification. The agency may not request additional information from the employee if an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency. However, if the qualifying exigency involves meeting with a third party, the agency may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the agency. An agency also may contact an appropriate unit of the Department of Defense, without seeking the employee's permission, to request verification that a covered military member is on covered active duty or call to covered active duty status; however, no additional information may be requested.

Certification Form

DOL has developed an optional form (Form WH-384) for employees covered by DOL's FMLA regulations to use in obtaining a certification that meets the qualifying exigency certification requirements. (*See http://www.dol.gov/whd/forms/WH–384.pdf.*) Form WH–384 requests documentation to confirm that a covered servicemember's active duty (or call to active duty) is in support of a contingency operation. However, under the FY 2010 NDAA FMLA amendments, the active duty of a covered servicemember in a regular component of the Armed Forces does not need to be in support of a

contingency operation for qualifying exigency leave purposes. Until DOL updates Form WH–384, agencies that wish to use the form for their qualifying exigency certifications should provide separate instructions regarding the active duty documentation requirements for servicemembers in a regular component of the Armed Forces. Agencies that do not wish to use Form WH–384 may use another document containing the same basic information. We welcome any comments on whether an updated Form WH–384 would be sufficient for qualifying exigency certifications by Federal agencies or whether OPM should develop a similar optional form for this purpose.

Interaction with Basic FMLA

All other provisions of OPM's FMLA regulations at subpart L of part 630 that apply to the leave entitlements under § 630.1203(a) will also apply to qualifying exigency leave.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 630

Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 630 as follows:

PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; 630.205 also issued under Pub. L. 108–411, 118 Stat 2312; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410 and Pub. L. 108–411, 118 Stat 2312; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L. 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

2. In § 630.1202, add the definitions of "Covered active duty or call to covered active duty status," "Covered military member," and "Son or daughter on covered active duty or call to covered active duty status" alphabetically to read as follows:

§ 630.1202 Definitions.

* * * * *

Covered active duty or *call to covered active duty status* means—

(1) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty); and

(2) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to any of the following sections of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress:

(i) Section 688, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the Retired Reserve retired after 20 years for length of service, and members of the Fleet Reserve or Fleet Marine Corps Reserve;

(ii) Section 12301(a), which authorizes ordering all reserve component members to active duty in the case of war or national emergency declared by Congress, or when otherwise authorized by law;

(iii) Section 12302, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty in time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law;

(iv) Section 12304, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty;

(v) Section 12305, which authorizes the suspension of promotion, retirement, or separation rules for certain Reserve components;

(vi) Section 12406, which authorizes calling the National Guard into Federal service in certain circumstances; or

(vii) Chapter 15, which authorizes calling the National Guard and State militia into Federal service in the case of insurrections and national emergencies.

Covered military member means the employee's spouse, son, daughter, or parent on covered active duty or call to covered active duty status.

* * * * *

Son or daughter on covered active duty or call to covered active duty status means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.

* * * * *

3. In § 630.1203, add a new paragraph (a)(5), revise the first sentence of paragraph (b), and revise the last sentence of paragraph (h) to read as follows:

§ 630.1203 Leave entitlement.

(a) * * *

(5) Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.

(b) An employee must invoke his or her entitlement to family and medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1207 and 630.1208. * * *

* * * * *

(h) * * * An employee's notice of his or her intent to take leave under § 630.1207 may suffice as the employee's confirmation.

4. Redesignate current §§ 630.1204 through 630.1211 as §§ 630.1205 through 630.1212, respectively, and add a new § 630.1204 to read as follows:

§ 630.1204 Qualifying exigency leave.

(a) Eligible employees may take FMLA leave while the employee's spouse, son, daughter, or parent (the "covered military member") is on covered active duty or call to covered active duty status for one or more of the following qualifying exigencies:

(1) *Short-notice deployment.* To address any issue that arises from the fact that a covered military member is notified of an impending call or order to covered active duty seven or fewer calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of up to 7 calendar days beginning on the date a covered military member is notified of an impending call or order to covered active duty.

(2) *Military events and related activities.* (i) To attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a covered military member; and

(ii) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of a covered military member.

(3) *Childcare and school activities.* (i) To arrange for alternative childcare when the covered active duty or call to covered active duty status of a covered military member necessitates a change in the existing childcare arrangement for a child;

(ii) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of a covered military member for a child;

(iii) To enroll in or transfer to a new school or day care facility a child, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a covered military member; and

(iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a child when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a covered military member.

(v) For purposes of paragraphs (a)(3)(i) through (a)(3)(iv) of this section, "child" means a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time the FMLA leave is to commence

(4) *Financial and legal arrangements.* (i) To make or update financial or legal arrangements to address the covered military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

(ii) To act as the covered military member's representative before a Federal, State, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the covered military member's covered active duty status.

(5) *Counseling.* To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for a child as defined in paragraph (a)(3)(v) of this section, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a covered military member.

(6) *Rest and recuperation.* To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to 5 days of leave for each instance of rest and recuperation.

(7) *Post-deployment activities.* (i) To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's covered active duty status; and

(ii) To address issues that arise from the death of a covered military member while on covered active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements.

(8) *Additional activities.* To address other events which arise out of the covered military member's covered active duty or call to covered active duty status provided that the agency and employee agree that such leave shall qualify as an exigency, and that they agree to both the timing and duration of such leave.

(b) Employees are eligible to take FMLA leave because of a qualifying exigency when the covered military member is on covered active duty or call to covered active duty status as a member of a regular component of the Armed Forces, or when the covered military member is on covered active duty or call to covered active duty status in support of a contingency operation pursuant to one of the provisions of law identified in the definition of *covered active duty or call to covered active duty status* as either a member of the reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve), or a retired member of the Regular Armed Forces or Reserve.

(c) For those called to covered active duty status in support of a contingency operation—

(1) A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States pursuant to one of the provisions of law identified in paragraph (b) of this section in support of a contingency operation.

(2) For such members, the active duty orders of a covered military member will generally specify whether the servicemember is serving in support of a contingency operation by citation to the relevant section of title 10 of the United States Code or by reference to the specific name of the contingency operation, or both. A military operation qualifies as a contingency operation if it:

(i) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(ii) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406, or chapter 15 of title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. (See 10 U.S.C. 101(a)(13).)

5. In newly designated § 630.1205, revise paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 630.1205 Intermittent leave or reduced leave schedule.

* * * * *

(b) Leave under § 630.1203(a)(3) or (4) may be taken intermittently or on a reduced leave schedule when medically necessary, subject to §§ 630.1207 and 630.1208(b)(6). Leave under § 630.1203(a)(5) may be taken on an intermittent or reduced leave schedule basis, subject to §§ 630.1207 and 630.1209.

(c) * * * Upon returning from leave, the employee shall be entitled to be returned to his or her permanent position or an equivalent position, as provided in § 630.1210(a) of this part.

* * * * *

6. In newly designated § 630.1207, redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively, and add a new paragraph (c) to read as follows:

§ 630.1207 Notice of leave.

* * * * *

(c) If the need for leave taken under § 630.1203(a)(5) is foreseeable, the employee must provide notice as soon as practicable, regardless of how far in advance such leave is being requested.

* * * * *

7. In newly designated § 630.1208, revise paragraph (k) to read as follows:

§ 630.1208 Medical certification.

* * * * *

(k) To ensure the security and confidentiality of any written medical certification under §§ 630.1208 or 630.1210(h) of this part, the medical certification shall be subject to the provisions for safeguarding information about individuals under subpart A or part 293 of this chapter.

8. Further redesignate newly designated §§ 630.1209 through 630.1212 as §§ 630.1210 through 630.1213, respectively, and add new § 630.1209 to read as follows:

§ 630.1209 Certification for leave taken because of a qualifying exigency.

(a) *Active duty orders.* The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status of a covered military member, an agency may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's active duty service. This information need only be provided to the agency once. A copy of new active duty orders or other documentation issued by the military must be provided to the agency if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status of the same or a different covered military member.

(b) *Required information.* An agency may require that leave for any qualifying exigency specified in § 630.1204 be supported by a certification from the employee that sets forth the following information:

(1) A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which FMLA leave is requested. The facts must be sufficient to support the need for leave. Such facts include the type of qualifying exigency for which leave is requested and any available written documentation that supports the request for leave, such as a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs;

(2) The approximate date on which the qualifying exigency commenced or will commence;

(3) If an employee requests leave because of a qualifying exigency for a single, continuous period of time, the beginning and end dates for such absence;

(4) If an employee requests leave because of a qualifying exigency on an intermittent or reduced leave schedule basis, an estimate of the frequency and duration of the qualifying exigency; and

(5) If the qualifying exigency involves meeting with a third party, appropriate contact information for the individual or entity with whom the employee is meeting (such as the name, title, organization, address, telephone number, fax number, and email address) and a brief description of the purpose of the meeting.

(c) *Verification.* If an employee submits a complete and sufficient certification to support his or her request for leave because of a qualifying exigency, the agency may not request additional information from the employee. However, the agency may verify the information described in paragraphs (c)(1) and (c)(2) of this section and does not need the employee's permission to do so.

(1) If the qualifying exigency involves meeting with a third party, the agency may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity.

(2) An agency may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on covered active duty or call to covered active duty status.

9. In newly designated § 630.1210, revise the last three sentences in paragraph (h) and all of paragraph (l) to read as follows:

§ 630.1210 Protection of employment and benefits.

* * * * *

(h) * * * The same conditions for verifying the adequacy of a medical certification in § 630.1208(c) shall apply to the medical certification to return to work. No second or third opinion on the medical certification to return to work may be required. An agency may not require a medical certification to return to work during the period the employee takes leave intermittently or under a reduced leave schedule under § 630.1205.

* * * * *

(l) An employee who does not comply with the notification requirements in § 630.1207 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1208(b) is not entitled to family and medical leave.

10. In § 630.1213, revise paragraph (b)(3) to read as follows:

§ 630.1213 Records and reports.

* * * * *

(b) * * *

(3) The number of hours of leave taken under § 630.1203(a), including any paid leave substituted for leave without pay under § 630.1206(b); and

* * * * *

[FR Doc. 2010–29275 Filed 11–18–10; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC27

Common Crop Insurance Regulations; Extra Long Staple Cotton Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Extra Long Staple Cotton Crop Insurance Provisions to remove all references to the Daily Spot Cotton Quotation and replace the reference with the National Average Loan Rate published by the Farm Service Agency (FSA), to incorporate a current Special Provisions statement into the Crop Provisions, and to make the Extra Long Staple Cotton Crop Insurance Provisions consistent with the Upland Cotton Crop Insurance Provisions. The intended effect of this action is to provide policy changes, to clarify existing policy

provisions to better meet the needs of the producers, and to reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2012 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business January 18, 2011 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments, titled "Extra Long Staple Cotton Crop Provisions," by any of the following methods:

- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205.
- *By Express Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, 9240 Troost Avenue, Kansas City, MO 64131–3055.
- *E-mail: DirectorPDD@rma.usda.gov.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Paperwork Reduction Act of 1995

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

E-Government Act Compliance

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

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

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

Executive Order 12372

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

Executive Order 12988

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

Environmental Evaluation

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

Background

FCIC proposes to revise 7 CFR part 457, Common Crop Insurance Regulations, by revising § 457.105 (Extra Long Staple Cotton Crop Insurance Provisions). Requests have been made for changes to improve the coverage offered, address program integrity issues, and simplify program administration. The provisions will be effective for the 2012 and succeeding crop years.

The proposed changes to § 457.105 are as follows:

1. FCIC proposes to remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict. This same information is contained in the Basic Provisions. Therefore, it is duplicative and should be removed in the Crop Provisions.

2. Section 10—FCIC proposes to revise the format of section 10(d) to make the provisions easier to read.

FCIC proposes to remove in section 10(d) all references to the Daily Spot Cotton Quotation and related language

and replace it with a reference to the Extra Long Staple Cotton National Average Loan Rate determined by FSA. The Daily Spot Cotton Quotation is a price published daily, whereas the Extra Long Staple Cotton National Average Loan Rate is a price published annually. Because the Daily Spot Cotton Quotation values change daily, this method was time-consuming, cumbersome, and burdensome for cotton producers and loss adjusters. For this reason, FCIC is proposing to utilize the Extra Long Staple Cotton National Average Loan Rate for quality adjustment purposes. This same change was made to the Upland Cotton Crop Insurance Provisions beginning with the 2011 crop year. This change makes the Extra Long Staple and Upland Cotton Crop Provisions consistent.

FCIC also proposes to change the percentage of Price B from 75 percent to 85 percent in sections 10(d) and 10(d)(3). This does not change the existing terms of the policy because the change was already implemented in the Special Provisions. FCIC is proposing to move the provision to the Crop Provisions because the change is being implemented in all areas where ELS cotton is available.

FCIC proposes to remove in section 10(f) all references to the Daily Spot Cotton Quotation and replace it with a reference to the Upland Cotton National Average Loan Rate and the Extra Long Staple Cotton National Average Loan Rate determined by FSA. FCIC also proposes to remove the language regarding the price quotations contained in the Daily Spot Cotton Quotations published on the date the last bale from the unit is classed and the language regarding price quotations being unavailable. The Daily Spot Cotton Quotation is a price published daily, whereas the Extra Long Staple Cotton National Average Loan Rate is a price published annually. Therefore, it is not necessary to include information regarding specific dates upon which it will be based.

List of Subjects in 7 CFR Part 457

Crop insurance, Extra long staple cotton, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2012 and succeeding crop years to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(1), 1506(o).

2. Amend § 457.105 as follows:

a. Amend the introductory text by removing "1998" and adding "2012" in its place;

b. Remove the undesignated paragraph immediately preceding section 1.

c. Amend section 10 by:

i. Revising section 10(d); and

ii. Revising section 10(f).

The revisions read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

* * * * *

10. Settlement of Claim.

* * * * *

(d) Mature ELS cotton production may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if Price A is less than 85 percent of Price B.

(1) Price B is defined as the Extra Long Staple Cotton National Average Loan Rate determined by FSA, or as specified in the Special Provisions.

(2) Price A is defined as the loan value per pound for the bale determined in accordance with the FSA Schedule of Premiums and Discounts for the applicable crop year, or as specified in the Special Provisions.

(3) If eligible for quality adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing Price A by 85 percent of Price B.

* * * * *

(f) Any AUP cotton harvested or appraised from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound for AUP cotton by the price per pound for ELS cotton. The prices used for AUP and ELS cotton will be calculated using the Upland Cotton National Average Loan Rate and the Extra Long Staple Cotton National Average Loan Rate determined by FSA, or as specified in the Special Provisions.

* * * * *

Signed in Washington, DC, on November 15, 2010.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2010–29250 Filed 11–18–10; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0037]

RIN 1904–AC39

Energy Efficiency Program for Consumer Products: Public Meeting and Availability of the Framework Document for Automatic Commercial Ice-Makers

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

ACTION: Notice of public meeting and availability of the framework document.

SUMMARY: The U.S. Department of Energy (DOE) is initiating a rulemaking and data collection process to consider amended energy conservation standards for automatic commercial ice-makers. DOE will hold a public meeting to discuss and receive comments on its planned analytical approach and issues it will address in this rulemaking proceeding. DOE welcomes written comments and relevant data from the public on any subject within the scope of this rulemaking. To inform interested parties and to facilitate this process, DOE has prepared a framework document that details the analytical approach and identifies several issues on which DOE is particularly interested in receiving comments.

DATES: DOE will hold a public meeting on Thursday, December 16, 2010 from 9 a.m. to 4 p.m. in Washington, DC. Additionally, DOE plans to conduct the public meeting via webinar. Registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site *https://www1.gotomeeting.com/register/782074929.* Participants are responsible for ensuring that their systems are compatible with the webinar software.

DOE must receive requests to speak at the public meeting before 4 p.m., Thursday, December 2, 2010. DOE must receive an electronic copy of the statement with the name and, if appropriate, the organization of the presenter to be given at the public meeting before 4 p.m., Thursday, December 9, 2010. DOE will accept written comments, data, and information regarding the framework document before and after the public meeting, but no later than January 18, 2011. Comments submitted after the above date may not be considered. DOE encourages all written comments, data, and information to be submitted in electronic form.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please note that foreign nationals planning to participate in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon a possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed.

Interested parties are encouraged to submit comments electronically by the following methods:

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

• *E-mail to the following address: ACIM-2010-STD-0037@ee.doe.gov.* Include docket number EERE–2010–BT–STD–0037 and/or RIN 1904–AC39 in the subject line of the message. All comments should clearly identify the name, address, and, if appropriate, organization of the commenter.

Alternatively, interested parties may submit comments by the following methods:

• *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for Automatic Commercial Ice-Making Equipment, Docket No. EERE–2010–BT–STD–0037 and/or RIN 1904–AC39, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Please submit one signed paper original.

Docket: For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to *http://www.regulations.gov.* Alternatively, interested parties may go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards first at the above telephone number for additional information regarding visiting the Resource Room.

A copy of the framework document and a link to the docket web page are available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/automatic_ice_making_equipment.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2192. E-mail: *Charles_Llenza@ee.doe.gov.*

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. E-mail: *Ari.Altman@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION: Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, § 441(a), established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, which includes the automatic commercial ice-makers that are the focus of this notice.[1]

Section 136(d) of the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA to prescribe energy conservation standards for some automatic commercial ice-makers. (42 U.S.C. 6313(d)(1)) A summary of these standards can be found in section 1.3 of the framework document. The EPACT 2005 amendments (42 U.S.C. 6313(d)(2)) also authorize DOE to issue standards for types of automatic commercial ice makers that are not covered by 42 U.S.C. 6313(d)(1). In addition, not later than January 1, 2015, with respect to the standards at 42 U.S.C. 6313(d)(1), and not later than 5 years after the effective date of any standards issued by DOE under 42 U.S.C. 6313(d)(2), DOE is to issue a final rule to determine whether amending the applicable standards is technologically feasible and economically justified. (42 U.S.C. 6313(d)(3)(A)) Any final rule issued by the Secretary establishing a new or amended standard shall provide that the new or amended standard applies to products manufactured on or after the date that is 3 years after the standard is published, unless the Secretary determines by rule that 3 years is inadequate, in which case the standard shall apply to products manufactured on or after a date no later than 5 years after the date on which the final rule is published. Any new or amended standard issued by the Secretary under 42 U.S.C. 6313(d) shall be set at the maximum level that is technically feasible and economically justified. This framework document is being published as a first step toward meeting these statutory requirements.

The Energy Independence and Security Act of 2007 (section 310 of EISA 2007; Pub. L. 110–140) requires quantification of standby and off mode energy consumption in energy conservation standards for consumer products. (42 U.S.C. 6295) The section which establishes energy conservation standards for commercial and industrial equipment, section 342, was not similarly amended to include requirements for addressing standby and off mode equipment. Therefore, standby and off modes will not be considered for automatic commercial ice-makers.

To initiate this rulemaking process, DOE has prepared a framework document to explain the relevant issues, analyses, and processes it anticipates using to determine whether to amend the standards, as well as for the development of any amended standards. The focus of the public meeting will be to discuss the analyses presented and issues identified in the framework document. At the public meeting, DOE will make presentations, invite discussion on the rulemaking process as it applies to automatic commercial ice-making equipment, and solicit comments, data, and information from participants and other interested parties.

DOE is planning to conduct in-depth technical analyses in the following areas: (1) Engineering; (2) energy-use characterization; (3) product price; (4) life-cycle cost and payback period; (5) national impact analysis; (6) manufacturer impact analysis; (7) utility impact analysis; (8) employment impact analysis; (9) environmental assessment; and (10) regulatory impact analysis. DOE will also conduct several other analyses that support those previously listed, including the market and technology assessment, the screening analysis (which contributes to the engineering analysis), and the shipments analysis (which contributes to the national impact analysis).

DOE encourages those who wish to participate in the public meeting to obtain the framework document and to be prepared to discuss its contents. A

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

copy of the framework document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/automatic_ice_making_equipment.html.*

Public meeting participants need not limit their comments to the issues identified in the framework document. DOE is also interested in comments on other relevant issues that participants believe would affect energy conservation standards for this equipment, applicable test procedures, or the preliminary determination of the scope of coverage. DOE invites all interested parties, whether or not they participate in the public meeting, to submit in writing by January 18, 2011, comments and information on matters addressed in the framework document and on other matters relevant to DOE's consideration of amended standards for automatic commercial ice-makers.

The public meeting will be conducted in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be available for purchase from the court reporter and placed on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/automatic_ice_making_equipment.html.*

After the public meeting and the close of the comment period on the framework document, DOE will begin conducting the analyses as discussed in the framework document and at the public meeting, and reviewing the public comments.

DOE considers public participation to be a very important part of the process for determining whether to amend energy conservation standards, as well as for setting those amended standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Beginning with the framework document, and during each subsequent public meeting and comment period, interactions with and among members of the public provide a balanced discussion of the issues to assist DOE in the standards rulemaking process. Accordingly, anyone who wishes to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via e-mail at *Brenda.Edwards@ee.doe.gov.*

Issued in Washington, DC, on November 4, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–29208 Filed 11–18–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2010–0310; Notice No. 10–17]

RIN 2120–AJ72

Harmonization of Various Airworthiness Standards for Transport Category Airplanes—Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend various airworthiness standards for transport category airplanes. This action would harmonize the requirements for takeoff speeds, static lateral-directional stability, speed increase and recovery characteristics, and the stall warning margin for the landing configuration in icing conditions with the European Aviation Safety Agency (EASA) certification standards. When airplanes are type certificated to both sets of standards, differences between the standards can result in additional costs to manufacturers and operators. Adopting this proposal would harmonize regulatory differences for the items noted above between United States (U.S.) and EASA airworthiness standards.

DATES: Send your comments on or before February 17, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0310 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Don Stimson, FAA, Airplane & Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, WA 98057–3356; telephone (425) 227–1129; facsimile (425) 227–1149, e-mail *Don.Stimson@faa.gov.*

For legal questions about this proposed rule, contact Doug Anderson, FAA, Office of the Regional Counsel (ANM–7), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2166; facsimile (425) 227–1007; e-mail *Douglas.Anderson@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble, under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents. Appendix 1 of this NPRM defines terms used in this proposal.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart III, section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

Background

Part 25 of Title 14 of the Code of Federal Regulations (14 CFR) prescribes airworthiness standards for type certification of transport category airplanes for products certified in the United States. EASA's Certification Specifications for Large Aeroplanes (CS–25) prescribe the corresponding airworthiness standards for products certified in Europe by the European Aviation Safety Agency. While part 25 and CS–25 are similar, they differ in several respects.

The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) through its Flight Test Harmonization Working Group to review existing regulations and recommend changes that would eliminate differences between the U.S. and European performance and handling characteristics standards by harmonizing to the higher standards. This proposed rule is a result of this harmonization effort.

General Discussion of the Proposal

Three of the four changes to the part 25 airworthiness requirements proposed in this rulemaking respond to ARAC recommendations and EASA's actions in response to those recommendations. The fourth proposed change (pertaining to the stall warning margin for the landing configuration in icing conditions) responds to an action taken by EASA regarding a comment made during the public comment period of the harmonized rulemaking that led to adoption of Amendment 25–121 and Amendment 3 of CS–25.

The FAA agrees with the actions taken by EASA and proposes to amend part 25 in a similar manner. The proposals are not expected to be controversial and should reduce costs to industry without adversely affecting safety. In developing these proposals, ARAC and the FAA considered the following factors:

a. Underlying safety issues addressed by current standards;

b. Differences between part 25 and CS–25 standards;

c. Differences between part 25 and CS–25 means of compliance;

e. Effect of the proposed standard on current industry practice;

f. Whether FAA advisory material exists and/or needs amendment; and

g. The costs and benefits of each proposal.

The complete analyses for the proposed changes made in response to ARAC recommendations can be found in the ARAC recommendation reports. We have placed the reports in the docket for this rulemaking.

The appendix of this preamble contains a glossary of airspeed terms and definitions to help the reader understand the rulemaking proposals.

Proposals From ARAC Recommendations

The following proposals result from ARAC recommendations made to the FAA and EASA:

(1) Amend § 25.107(e)(1)(iv), selection of the takeoff rotation speed;

(2) Amend § 25.177, static lateral-directional stability; and

(3) Amend § 25.253, roll capability and extension of speedbrakes at high speeds.

EASA's rulemaking action in response to these recommendations was included in the original issuance of CS–25, effective October 17, 2003. The adopted CS–25 requirements differ somewhat from the ARAC recommendations due to public comments received during the rulemaking process and because EASA disagreed with some portions of ARAC's recommendations.

A Proposal From a Commenter

The sole proposal that did not result from an ARAC recommendation is to amend § 25.21(g)(1) to add stall warning requirements that must be met in the landing configuration for flight in icing conditions. This proposal originates from a comment that this requirement should be added, which was made during the public comment period of the rulemaking that led to adoption of Amendment 25–121, Airplane Performance and Handling Qualities in Icing Conditions.

In the preamble to that rulemaking (72 FR 44665), the FAA stated that we needed more time and aviation industry participation to fully address the safety concern expressed in this comment. We were concerned that adopting the changes proposed by the commenter would introduce significant regulatory differences from EASA's airworthiness certification requirements, and potentially add significant costs (as an initial cost estimate indicated). Further, it was unclear whether the proposed changes would completely resolve the potential safety issue.

The commenter made the same comment to EASA during the public comment period for the rulemaking that became Amendment 3 to CS–25, which corresponds to Amendment 25–121 of 14 CFR. EASA deferred addressing the comment until its Notice of Proposed Amendment 2008–05, dated April 10, 2008. EASA did not receive any opposing comments from the public and adopted the rule change in Amendment 6 to CS–25, issued July 6, 2009. The FAA proposes to amend § 25.21(g) in the same manner.

Discussion of the Proposed Regulatory Requirements

Proof of Compliance—§ 25.21(g)(1)

Section 25.21(g)(1) specifies which subpart B requirements must be met in icing conditions and the ice accretions that must be used to show compliance. The current rule does not require the stall warning margin requirements of § 25.207(c) and (d) to be met in icing conditions. The proposed rule would require that these stall warning margin requirements be met in icing conditions for the landing configuration. This proposed change would harmonize our standards with CS 25.21(g)(1), except for one minor difference regarding seaplanes and amphibians. This is because part 25 contains requirements for seaplanes and amphibians, and CS–25 does not.

Takeoff Speeds—§ 25.107(e)(1)(iv)

This requirement ensures that the scheduled takeoff speeds provide a minimum liftoff speed (V_{LOF}) greater than the minimum safe flyaway speed (V_{MU}). The V_{MU} is the lowest speed at which an applicant demonstrates that no hazardous characteristics are present, such as a relatively high drag condition or a stall. This rule prescribes a minimum speed margin between V_{LOF} and V_{MU} to ensure a safe takeoff speed, while taking likely in-service variations in takeoff technique into consideration.

The FAA proposes to allow reduction of both the all-engines-operating and one-engine-inoperative speed margins between V_{MU} and V_{LOF} for airplanes for

which the minimum liftoff speed is limited by the geometry of the airplane (i.e., ground contact of the tail of the airframe with the runway as the nose lifts off). This limiting condition provides protection against early or over-rotation beyond the safe liftoff pitch attitude at or near V_{MU} such that the prescribed minimum speed margin can be reduced without reducing the level of safety. In the past, the FAA has allowed reduction of this speed margin for geometry-limited airplanes for the all-engines-operating condition using findings of equivalent safety. The proposed standard would codify this practice and extend its application to the one-engine-inoperative condition. This proposed change would harmonize this takeoff speed requirement with CS 25.107(e)(1)(iv).

Static Lateral-Directional Stability—§ 25.177

This requirement ensures that transport category airplanes have basic lateral and directional stability, proportionality between aileron and rudder control movements and forces (at least within the sideslip angles appropriate to the operation of the airplane), and freedom from fin stall or rudder overbalance. The full rudder sideslip requirements of § 25.177(c) are primarily intended to investigate the potential for a loss of directional stability or fin stall (as indicated by a decrease in the rudder deflection needed for increased angles of sideslip) and rudder overbalance or locking (as indicated by a reversal in the rudder pedal force).

The proposed revision to § 25.177(a) and (b) would reinstate the standards that existed prior to Amendment 25–72 that treat the specific lateral and directional stability requirements as separate entities.

The proposed revisions to § 25.177(c) are as follows:

1. Divide the existing paragraph into two separate paragraphs. The proposed § 25.177(c) would address the basic lateral and directional stability, while a new paragraph (d) would be introduced to address full rudder sideslips. The existing paragraph (d) would be removed as its provisions would be covered by the reinstated § 25.177(b).

2. Revise § 25.177(c) to require that proportionality criteria must also be met at the sideslip angles obtained with one-half of the available rudder control (i.e., rudder pedal input). This change would impose a minimum lateral control power requirement such that the airplane must be capable of maintaining a straight, steady, sideslip when the pilot puts in one-half of the available rudder control or uses a force of 180 pounds on the rudder control at the conditions specified in the rule.

3. Specify that the requirements in § 25.177(c) must be met for the configurations and speeds specified in § 25.177(a). This proposal would not change the applicable conditions from those applied in practice under the current § 25.177(c).

4. Move the current § 25.177(c) requirement that applies to sideslip angles greater than those considered appropriate for normal operation of the airplane (i.e., up to full rudder control input) to a proposed new § 25.177(d). The conditions for which this requirement must be met would include all of the approved landing gear and flap positions for the range of operating speeds and power conditions appropriate to each landing gear and flap position with all engines operating. Relative to the current § 25.177(c), this proposal would reduce the range of speeds and power settings for which the requirement applies. The reduced speed ranges specified in the proposed § 25.177(d) are intended to reduce the flight test safety risk as well as to harmonize and standardize current practices.

5. Add text to the new § 25.177(d) stating that compliance with this requirement must be shown using straight, steady sideslips, unless full lateral control input is achieved before reaching either the rudder control input or force limit. A straight, steady sideslip need not be maintained beyond the lateral control limit. This change further clarifies the intent of the requirement regarding the capability required beyond the sideslip angles considered appropriate for operations. For airplanes lacking sufficient aileron control power to maintain a steady heading with full rudder input, any flight test demonstration would be continued to full rudder input even though a steady heading could not be maintained. This situation has caused difficulties in the past because the current rule wording is ambiguous regarding the conduct of the full rudder sideslips. This proposal would codify the FAA interpretation provided in the preamble to Amendment 25–72, Special Review: Transport Category Airplane Airworthiness Standards (55 FR 29756).

Also, § 25.253(b) and (c) would be revised to reference only § 25.177 (a) through (c), rather than the entire § 25.177, to be consistent with the proposed reduced speed range over which § 25.177(d) applies. The current § 25.253 (b) and (c) specify that V_{FC}/M_{FC} is the maximum speed for which the requirements of all of § 25.177 must be met. Because the proposed § 25.177(d) requirements only apply to the operational speed range (e.g., V_{MO}/M_{MO}) and need not be met at V_{FC}/M_{FC}, the reference to § 25.177 in § 25.253(b) and (c) would be revised to refer only to § 25.177(a) through (c).

These proposed changes would harmonize the static lateral-directional stability requirements with the corresponding CS–25 requirements and update references to these requirements in other sections of part 25.

High-Speed Characteristics—§ 25.253

This requirement assures that the airplane has safe recovery characteristics at speeds beyond the maximum operating limit speed (V_{MO}/M_{MO}) up to the maximum demonstrated flight diving speed (V_{DF}/M_{DF}). We propose to add requirements that (1) there must be adequate roll capability to assure a prompt recovery from a lateral upset condition and (2) speedbrake extension at high speed must not result in an excessive positive load factor when the pilot does act to counteract the effects of the extension. The speedbrake extension at high speed also must not cause buffeting that would impair the pilot's ability to read the instruments or cause a nose-down pitching moment, unless that pitching moment is small.

The proposed revision would harmonize our high-speed characteristics requirements with CS 25.253.

Advisory Material

The FAA is revising AC 25–7 to incorporate guidance on how to comply with the proposed harmonized standards. The draft AC is posted on the FAA's draft document Web site at *http://www.faa.gov/aircraft/draft_docs/.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices

and has identified no differences with these proposed regulations.

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

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

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this proposed rule.

The reasoning for this determination follows: The proposed rule would amend §§ 25.21(g)(1), 25.107(e)(1)(iv), 25.177, and 25.253 to harmonize with EASA requirements already in CS–25. A review of current practice of U.S. manufacturers of transport category airplanes has revealed the manufacturers intend to fully comply with the EASA standards (or are already complying) as a means of obtaining joint certification. Since future certificated transport category airplanes are expected to meet the existing CS–25 requirements and this proposed rule would simply adopt the same requirements, the manufacturers would incur no additional costs. The proposed rule would provide benefits from reduced joint certification costs from the harmonization itself, and for the parts of the rule harmonizing with less stringent EASA requirements; manufacturers can expect additional benefits inherent in the reduced stringency. The FAA therefore has determined that this proposed rule would have no costs and positive benefits and does not warrant a full regulatory evaluation. The FAA requests comments regarding this determination. We discuss the basis for our findings below.

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

Costs and Benefits of This Rulemaking

Cost and Benefits of Proposed Amendment to § 25.21(g)(1)

We are proposing to adopt an EASA requirement that has no counterpart in the current CFR. Manufacturer compliance with the EASA requirement would increase the safety of their airplanes. Since the manufacturers intend to comply with the EASA requirement, however, there would be no additional safety benefits from compliance with the proposed harmonizing amendment. Nevertheless, it is beneficial to make the FAA's compliance requirement identical to EASA's requirement in order to avoid confusion and make clear that the safety implications of the proposed § 25.21(g)(1) and CS 25.21(g)(1) are identical.

As we are proposing to adopt an EASA requirement that has no counterpart in the current CFR, there can be no reduction in certification costs—in the requirements for data collection and analysis, paperwork, and time spent applying for and obtaining approval from the regulatory authorities. Rather, manufacturers would face some increase in certification costs to comply with the EASA requirement. Since the manufacturers intend to comply with the EASA requirement, however, they would incur no additional costs to comply with the proposed FAA harmonizing amendment.

Costs and Benefits of Proposed Amendment to § 25.107(e)(1)(iv)

Manufacturers would benefit as a result of reduced certification costs from the harmonization of proposed § 25.107(e)(1)(iv) with CS 25.107(e)(1)(iv).

Additional benefits would result because the proposed amendment is a less stringent requirement, which would reduce the required minimum takeoff speed of geometry-limited (viz., tail contact with the runway) airplanes. As discussed in the preamble above, since the minimum takeoff speed is, in part, intended to reduce the probability of an airplane reaching a takeoff pitch attitude beyond that shown to be safe, the additional protection against such a condition inherent in a geometry-limited airplane allows the minimum takeoff speed to be safely reduced. The less stringent requirement implies higher takeoff weights, increases in payload, and shorter takeoff distances for geometry-limited airplanes. These are operator benefits, some of which will accrue to part 25 manufacturers by increasing airplane value.

As this proposed amendment is relieving, there would be no increase in costs.

Costs and Benefits of Proposed Amendment to § 25.177

Section 25.177(a) and (b) (requiring separate directional and lateral stability assessments) were removed by Amendment 25–72, published in the **Federal Register** (55 FR 29756), July 20, 1990. The FAA considered them unnecessary since directional and lateral stability could be determined using an "alternative test" based on data obtained in showing compliance with § 25.177(c). EASA's retention of CS 25.177(a) and (b), however, allows manufacturers to use the "basic test" outlined by CS 25.177(a) and (b). Reinstatement of § 25.177(a) and (b) would lower certification costs for manufacturers preferring instead to use the "basic test." Part 25 manufacturers preferring to satisfy the stability requirements with the "alternative test" of § 25.177(c) would face no increase in cost since they could still use that test. In any case, since manufacturers intend to comply with CS 25.177(a) and (b), they would incur no additional costs from complying with the proposed harmonizing amendment regardless of the cost situation.

Compared to the current § 25.177(c) and (d), CS 25.177(c) and (d) have both more stringent and less stringent requirements. As discussed in the preamble above, the less stringent requirement would increase the safety of flight tests without reducing test validity. Compliance with the more stringent requirement would entail some certification costs and reduce payload-carrying capability under

certain conditions. Since the manufacturers intend to comply with CS 25.177(c) and (d), however, they would incur no additional costs to comply with the proposed harmonizing amendment.

Costs and Benefits of Proposed Amendment to § 25.253

Manufacturers would benefit as a result of reduced certification costs from the harmonization of § 25.253 with CS 25.253. The compliance of the manufacturers with the more stringent EASA requirements would also increase the safety of their airplanes. Since the manufacturers intend to comply with the EASA requirements, however, there would be no additional safety benefits from compliance with the proposed FAA harmonizing amendment.

Part 25 manufacturers would face additional certification costs, especially additional flight testing costs, to meet the EASA requirements. Since the manufacturers intend to comply with the EASA requirements, however, they would incur no additional costs to comply with the proposed FAA harmonizing amendment.

Summary of Costs and Benefits

The benefits of an FAA rule harmonizing with a more stringent EASA rule necessarily flow from reduced certification costs brought about by the harmonization itself. Just as any costs are attributable to complying with the existing EASA rule, so too are any benefits from increased safety. Accordingly, the benefits of the more stringent §§ 25.21(g)(1), 25.253, 25.177(a) and (b), and the more stringent parts of § 25.177(c) and (d) would be reduced certification costs or qualitative benefits from harmonization.

For an FAA rule harmonizing with a less stringent EASA rule, there would be reduced certification costs from the harmonization itself, but also benefits inherent in the reduced stringency. For § 25.107(e)(1)(iv) the inherent benefits to operators would be higher takeoff weights, increases in payload, and shorter takeoff distances for geometry-limited airplanes allowed by the reduced minimum takeoff speeds. For the reduced speed ranges specified in proposed § 25.177(c) and (d), the inherent benefits would be to reduce test flight safety risk.

The FAA, therefore, has determined that this proposed rule would have minimal costs with positive net benefits and does not warrant a full regulatory evaluation. The FAA requests comments regarding our determination of minimal costs with positive net benefits.

Regulatory Flexibility Determination

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

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

As noted above, this proposed rule would not entail any additional costs to part 25 manufacturers as they are already in compliance, or intend to fully comply, with more stringent EASA standards. Moreover, all U.S. manufacturers of transport category airplanes exceed the Small Business Administration small-entity criteria of 1,500 employees. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA requests comments regarding this determination.

International Trade Impact Assessment

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

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government and therefore, would not have federalism implications.

Environmental Analysis

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

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the

executive order, it is not a "significant regulatory action" under Executive Order 12866 and DOT's Regulatory Policies and Procedures, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

Additional Information

Comments Invited

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

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

Proprietary or Confidential Business Information

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

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

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

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

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

Appendix 1 to the Preamble

SPEED TERMS AND DEFINITIONS

Term	Definition
V_R	Rotation speed.
V_1	Maximum speed in the takeoff at which the pilot must take the first action (*e.g.,* apply brakes, reduce thrust, deploy speed brakes) to stop the airplane within the accelerate stop distance. It also means the minimum speed in the takeoff, following a failure of the critical engine at V_{EF}, at which the pilot can continue the takeoff and achieve the required height above the takeoff surface within the takeoff distance.
V_2	Takeoff safety speed.
V_{REF}	Reference landing speed.
V_{SW}	Speed at which the onset of natural or artificial stall warning occurs.
V_{SR}	Reference stall speed.
V_{SR1}	Reference stall speed in a specific configuration.
V_{LOF}	Lift-off speed.
V_{MU}	Minimum unstick speed.
V_{MC}	Minimum control speed with the critical engine inoperative.
V_{FE}	Maximum flap extended speed.
V_{LE}	Maximum landing gear extended speed.

SPEED TERMS AND DEFINITIONS—Continued

Term	Definition
V_{FC}/M_{FC}	Maximum speed for stability characteristics.
V_{MO}/M_{MO}	Maximum operating limit speed.
V_{DF}/M_{DF}	Demonstrated flight diving speed.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

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

2. Amend § 25.21 by revising paragraph (g)(1) to read as follows:

§ 25.21 Proof of compliance.

* * * * *

(g) * * *

(1) Each requirement of this subpart, except §§ 25.121(a), 25.123(c), 25.143(b)(1) and (b)(2), 25.149, 25.201(c)(2), 25.239, and 25.251(b) through (e), must be met in icing conditions. Section 25.207(c) and (d) must be met in the landing configuration in icing conditions, but need not be met for other configurations. Compliance must be shown using the ice accretions defined in appendix C of this part, assuming normal operation of the airplane and its ice protection system in accordance with the operating limitations and operating procedures established by the applicant and provided in the Airplane Flight Manual.

* * * * *

3. Amend § 25.107 by revising paragraph (e)(1)(iv) to read as follows:

§ 25.107 Takeoff speeds.

* * * * *

(e) * * *

(1) * * *

(iv) A speed that, if the airplane is rotated at its maximum practicable rate, will result in a V_{LOF} of not less than—

(A) 110 percent of V_{MU} in the all-engines-operating condition, and 105 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition; or

(B) If the V_{MU} attitude is limited by the geometry of the airplane (i.e., tail contact with the runway), 108 percent of V_{MU} in the all-engines-operating condition and 104 percent of V_{MU} determined at the thrust-to-weight ratio corresponding to the one-engine-inoperative condition.

* * * * *

4. Revise § 25.177 to read as follows:

§ 25.177 Static lateral-directional stability.

(a) The static directional stability (as shown by the tendency to recover from a skid with the rudder free) must be positive for any landing gear and flap position and symmetric power condition, at speeds from 1.13 V_{SR1}, up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate).

(b) The static lateral stability (as shown by the tendency to raise the low wing in a sideslip with the aileron controls free) for any landing gear and flap position and symmetric power condition, may not be negative at any airspeed (except that speeds higher than V_{FE} need not be considered for flaps extended configurations nor speeds higher than V_{LE} for landing gear extended configurations) in the following airspeed ranges:

(1) From 1.13 V_{SR1} to V_{MO}/M_{MO}.

(2) From V_{MO}/M_{MO} to V_{FC}/M_{FC}, unless the divergence is—

(i) Gradual;

(ii) Easily recognizable by the pilot; and

(iii) Easily controllable by the pilot.

(c) In straight, steady sideslips over the range of sideslip angles appropriate to the operation of the airplane, but not less than those obtained with one-half of the available rudder control input or a rudder control force of 180 pounds, the aileron and rudder control movements and forces must be substantially proportional to the angle of sideslip in a stable sense; and the factor of proportionality must lie between limits found necessary for safe operation. This requirement must be met for the configurations and speeds specified in paragraph (a) of this section.

(d) For sideslip angles greater than those prescribed by paragraph (c) of this section, up to the angle at which full rudder control is used or a rudder control force of 180 pounds is obtained, the rudder control forces may not reverse, and increased rudder deflection must be needed for increased angles of sideslip. Compliance with this requirement must be shown using straight, steady sideslips, unless full lateral control input is achieved before reaching either full rudder control input or a rudder control force of 180 pounds; a straight, steady sideslip need not be maintained after achieving full lateral control input. This requirement must be met at all approved landing gear and flap positions for the range of operating speeds and power conditions appropriate to each landing gear and flap position with all engines operating.

5. Amend § 25.253 by adding paragraphs (a)(4) and (a)(5) and revising paragraphs (b) and (c) introductory text to read as follows:

§ 25.253 High-speed characteristics.

(a) * * *

(4) Adequate roll capability to assure a prompt recovery from a lateral upset condition must be available at any speed up to V_{DF}/M_{DF}.

(5) With the airplane trimmed at V_{MO}/M_{MO}, extension of the speedbrakes over the available range of movements of the pilot's control, at all speeds above V_{MO}/M_{MO}, but not so high that V_{DF}/M_{DF} would be exceeded during the maneuver, must not result in:

(i) An excessive positive load factor when the pilot does not take action to counteract the effects of extension;

(ii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery; or

(iii) A nose down pitching moment, unless it is small.

(b) *Maximum speed for stability characteristics, V_{FC}/M_{FC}.* V_{FC}/M_{FC} is the maximum speed at which the requirements of §§ 25.143(g), 25.147(e), 25.175(b)(1), 25.177(a) through (c), and 25.181 must be met with flaps and landing gear retracted. Except as noted in § 25.253(c), V_{FC}/M_{FC} may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF}, except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

(c) *Maximum speed for stability characteristics in icing conditions.* The maximum speed for stability characteristics with the ice accretions defined in appendix C, at which the requirements of §§ 25.143(g), 25.147(e),

25.175(b)(1), 25.177(a) through (c), and 25.181 must be met, is the lower of:

* * * * *

Issued in Washington, DC, on November 9, 2010.

KC Yanamura,

Deputy Director, Aircraft Certification Service.

[FR Doc. 2010–29193 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1114; Directorate Identifier 2010–NM–206–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0100, 1000, 2000, 3000, and 4000 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The design review conducted by Fokker on the F28 in response to these regulations revealed that, in case of a lightning strike, an ignition source can develop in the wing tank vapour space during fuel transfer from bag tank CWT [center wing tank], if the electrical power for refuelling is not switched off after refuelling.

Service experience has revealed situations where the power switch of the Fuelling Control Panel (FCP) appeared to be "ON" with the access panel closed. The cam on the access panel that should operate the power switch, if forgotten by flight crew or maintenance staff, can pivot away during closing of the panel, which may result in the switch staying in the "ON" position.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

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

DATES: We must receive comments on this proposed AD by January 3, 2011.

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

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

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1114; Directorate Identifier 2010–NM–206–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0139, dated July 1, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The design review conducted by Fokker on the F28 in response to these regulations revealed that, in case of a lightning strike, an ignition source can develop in the wing tank vapour space during fuel transfer from bag tank CWT [center wing tank], if the electrical power for refuelling is not switched off after refuelling.

Service experience has revealed situations where the power switch of the Fuelling Control Panel (FCP) appeared to be "ON" with the access panel closed. The cam on the access panel that should operate the power switch, if forgotten by flight crew or maintenance staff, can pivot away during closing of the panel, which may result in the switch staying in the "ON" position.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

For the reasons described above, this [EASA] AD requires an inspection of the cam and, depending on findings, replacement with an improved part. Subsequently, this AD requires repetitive functional checks of the cam and, depending on findings, the necessary corrective actions.

The corrective action is adjusting the FCP cam until it operates correctly. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletins SBF28–28–052, dated April 20, 2010; and SBF100–28–063, dated April 15, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 6 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $426 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,086, or $681 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2010–1114; Directorate Identifier 2010–NM–206–AD.

Comments Due Date

(a) We must receive comments by January 3, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F28 Mark 1000, 2000, 3000, and 4000 airplanes, all serial numbers, equipped with a center wing tank (CWT); and Model F28 Mark 0100 airplanes, serial numbers 11244 through 11441; certificated in any category.

Subject

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

Reason

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

Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The design review conducted by Fokker on the F28 in response to these regulations revealed that, in case of a lightning strike, an ignition source can develop in the wing tank vapour space during fuel transfer from bag tank CWT [center wing tank], if the electrical power for refuelling is not switched off after refuelling.

Service experience has revealed situations where the power switch of the Fuelling Control Panel (FCP) appeared to be "ON" with the access panel closed. The cam on the access panel that should operate the power switch, if forgotten by flight crew or maintenance staff, can pivot away during closing of the panel, which may result in the switch staying in the "ON" position.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

Compliance

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

Actions

Initial Inspection and Corrective Actions

(g) Within 6 months after the effective date of this AD, inspect the FCP cam to determine the part number (P/N), in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F28 Mark 0100 airplanes).

(1) If the correct part number is installed (P/N D48127–009 for Model F28 Mark 0100 airplanes and P/N A42509–089 for Model F28 Mark 1000, 2000, 3000, and 4000 airplanes), before further flight, do an inspection to verify that the cam operates correctly, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–

063, dated April 15, 2010 (for Model F28 Mark 0100 airplanes).

(2) If a part number other than P/N D48127–009 for Model F28 Mark 0100 airplanes and P/N A42509–089 for Model F28 Mark 1000, 2000, 3000, and 4000 airplanes is installed, within 24 months after the effective date of this AD, replace the cam with a cam having a correct part number, and do an inspection to verify that the cam operates correctly, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F28 Mark 0100 airplanes).

(3) If, during any inspection required by paragraphs (g)(1) and (g)(2) of this AD, the cam does not operate correctly, before further flight, adjust the cam until it operates correctly, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F28 Mark 0100 airplanes).

Repetitive Inspections

(h) Within 1,200 flight hours after verifying that the cam operates correctly, as required by paragraphs (g)(1) and (g)(2) of this AD, as applicable: Do an inspection to verify that the cam operates correctly and, before further flight, do all applicable corrective actions, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F28 Mark 0100 airplanes). Thereafter, repeat the inspection of the cam at intervals not to exceed 1,200 flight hours.

Parts Installation

(i) As of the effective date of this AD, no person may install an FCP access door, cam, or fueling panel on any airplane, unless the requirements of this AD have been accomplished on the cam.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although paragraph (6) of the MCAI provides an option to incorporate the repetitive functional inspection into the maintenance program and then use the maintenance program as a method of complying with the repetitive inspection requirement, this AD does not include that provision.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2010–0139, dated July 1, 2010; Fokker Service Bulletin SBF28–28–052, dated April 20, 2010; and Fokker Service Bulletin SBF100–28–063, dated April 15, 2010; for related information.

Issued in Renton, Washington, on November 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–29228 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0090; Directorate Identifier 2007–NM–312–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Model 747 airplanes. The original NPRM would have required measuring the electrical bond resistance between the motor operated valve (MOV) actuators and airplane structure for the main, center, auxiliary, and horizontal stabilizer fuel tanks, as applicable, and corrective action if necessary. The original NPRM also would have required a revision to the maintenance program to incorporate airworthiness limitation (AWL) No. 28–AWL–21 or AWL No. 28–AWL–27, as applicable. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This supplemental NPRM would revise the original NPRM by adding airplanes to the applicability, and would require replacing production-installed laminate phenolic spacers with metallic spacers between the fuel jettison MOV and the airplane structure, as applicable. We are proposing this supplemental NPRM to prevent electrical current from flowing through an MOV actuator into a fuel tank, which could create a potential ignition source inside the fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this supplemental NPRM by December 14, 2010.

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

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

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

service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2008–0090; Directorate Identifier 2007–NM–312–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued a notice of proposed rulemaking (NPRM) (the "original NPRM") to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 747 airplanes. That original NPRM was published in the **Federal Register** on January 31, 2008 (73 FR 5773). That original NPRM proposed to require measuring the electrical bond resistance between the motor operated valve (MOV) actuators and airplane structure for the main, center, auxiliary, and horizontal stabilizer fuel tanks, as applicable, and corrective action if necessary. That original NPRM also proposed to require a revision to the maintenance program to incorporate airworthiness limitation (AWL) No. 28–AWL–21 or AWL No. 28–AWL–27, as applicable.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we reviewed Boeing Service Bulletin 747–28A2292, Revision 2, dated May 13, 2010 (for Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes). This service bulletin clarifies the procedure for measuring the electrical bond resistance, and adds procedures for replacing production-installed laminate phenolic spacers with metallic spacers for airplanes in Groups 12, 16, 17, 18, and 19. This service bulletin also adds airplanes to the Effectivity. Paragraphs (c) and (g) of this supplemental NPRM have been revised accordingly.

We also reviewed Boeing Service Bulletin 747–28A2294, Revision 1, dated March 5, 2009 (for Model 747–400 series airplanes equipped with an active horizontal stabilizer fuel tank). This service bulletin is the same as the original issue, dated September 21, 2007, except that a reference to Subsection 28–17–03 of Boeing 747–400 Airplane Maintenance Manual (AMM) is corrected in Revision 1.

We reviewed Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–13747–CMR, Revision March 2008 (hereafter referred to as "Document D6–13747–CMR"). (We referred to Revision January 2007 of Document D6–13747–CMR in the original NPRM.) Document D6–13747–CMR revises certain AWLs for fuel tank systems. However, AWL No. 28–AWL–21, which is specified in this supplemental NPRM, has not been revised in Document D6–13747–CMR, Revision March 2008.

We also reviewed the Boeing 747–400 Maintenance Planning Data (MPD) Document, Section 9, D621U400–9, Revision December 2009 (hereafter referred to as "Boeing 747–400 MPD"). Among other things, Subsection D of Boeing 747–400 MPD has been revised to clarify the "Applicability" of AWL No. 28–AWL–27, which is a critical design configuration control limitation (CDCCL) to maintain the design features of the MOV actuator.

We have revised this supplemental NPRM to refer to the latest service information described previously.

Other Relevant Rulemaking

On April 28, 2008, we issued AD 2008–10–07, Amendment 39–15513 (73 FR 25977, May 8, 2008); and on October 30, 2009, we issued AD 2008–10–07 R1, Amendment 39–16070 (74 FR 56098, November 16, 2009); applicable to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. Those ADs require revising the maintenance program by incorporating new AWLs for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 ("SFAR 88") requirements. As an optional action, those ADs also allow incorporating AWL No. 28–AWL–21 into the maintenance program. Therefore, we have added a new paragraph (n) to this supplemental NPRM to specify that incorporating AWL No. 28–AWL–21 into the maintenance program in accordance with paragraph (g) of AD 2008–10–07 or 2008–10–07 R1 terminates the action required by paragraph (k) of this supplemental NPRM for the applicable airplanes.

Comments

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

Request To Allow Use of Future Revisions of the Service Bulletins

Boeing requested that we revise the original NPRM to specify that the proposed modifications may also be done in accordance with any future-approved revisions to Boeing Alert Service Bulletin 747–28A2292, dated September 14, 2007; and Boeing Alert Service Bulletin 747–28A2294, dated September 21, 2007. As justification, Boeing stated that these service bulletins could be revised by the time we issue the AD.

We partially agree. As discussed previously, we have revised this supplemental NPRM to refer to the most recently issued service information. However, we do not agree to refer to "later revisions." To allow operators to use later revisions of the referenced service documents, either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with the AD. Therefore, we have removed all references to the use of a "later revision" of the applicable service information from this supplemental NPRM to be

consistent with FAA policy. We may consider approving the use of later revisions of the service information as an AMOC with this AD, as provided by paragraph (q) of this supplemental NPRM.

Request To Revise Paragraphs (h) and (i) of the Original NPRM

KLM Royal Dutch Airlines (KLM) stated that the intent of the original NPRM is to maintain the design features introduced in accordance with Boeing Alert Service Bulletin 747–28A2292, dated September 14, 2007; and Boeing Alert Service Bulletin 747–28A2294, dated September 21, 2007; respectively; when an MOV actuator is installed. KLM thought that it was clearer if the NPRM stated that the CDCCLs must be incorporated into the applicable paragraphs of the AMM to maintain these design features.

We infer that KLM requests that we revise paragraphs (h) and (i) of the NPRM as proposed above. We disagree with the commenter's request. We disagree that incorporating CDCCLs into the AMM is the appropriate location for a CDCCL. The AMM is not an FAA-approved document. The appropriate location for a CDCCL is in the FAA-approved section (*i.e.,* the Airworthiness Limitations section) of an operator's maintenance program. We have not changed this supplemental NPRM in this regard.

Request To Exclude a Certain Airplane From the Requirements of Paragraph (g) of the Original NPRM

Lufthansa requested that we exclude a certain Model 747–400 series airplane from paragraph (g) of the original NPRM because the horizontal stabilizer tank (HST) on that airplane has never been activated.

We disagree with the request. Although the HST might not be activated at this time, it could be activated in the future. We cannot exclude an airplane from the requirements of this supplemental NPRM without substantiation that the unsafe condition has been adequately addressed. We have not changed this supplemental NPRM in this regard.

Request To Extend Compliance Time

Lufthansa requested that we extend the compliance time of the original NPRM from 60 months to 72 months. Lufthansa stated that this extension will allow operators to implement the modification at the next maintenance layover.

KLM requested that we extend the compliance time of the original NPRM from 60 months to 96 months. KLM stated that tank entry might be necessary for accomplishing the actions, and KLM wanted to avoid tank entry during C-checks.

We disagree with the commenters' requests to extend the compliance time. In developing an appropriate compliance time for this supplemental NPRM, we considered the urgency associated with the subject unsafe condition and the practical aspect of accomplishing the required actions on the Model 747 fleet in a timely manner. We recognize that operators may have different schedules for accomplishing heavy maintenance, but at the same time, we find that the 60-month compliance time will include most operators' schedules for that type of work. Further, according to the provisions of paragraph (q) of this AD, we may consider approving requests to adjust the compliance time if those requests include data that prove that the new compliance time would provide an acceptable level of safety. No change to this supplemental NPRM is necessary in this regard.

Other Change Made to This Supplemental NPRM

We have added a new paragraph (m) to this supplemental NPRM to specify that no alternative CDCCLs may be used unless they are approved as an AMOC. Inclusion of this paragraph in the supplemental NPRM is intended to ensure that the AD-mandated airworthiness limitations changes are treated the same as the airworthiness limitations issued with the original type certificate.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

We are proposing this supplemental NPRM because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design. Certain changes described above expand the scope of the original NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Explanation of Change to Costs of Compliance

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

For convenience to the operator, the Estimated Costs table, below, was revised to break out the cost of replacing the spacers and the on-condition costs.

Costs of Compliance

We estimate that this proposed AD will affect 222 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Measurement	Up to 7 work-hours × $85 per hour = Up to $595.	Up to $350	Up to $945	Up to $209,790.
Replacement (Up to 60 airplanes).	Up to 4 work-hours × $85 per hour = Up to $340.	$1,305	Up to $1,645	Up to $98,700.
Maintenance program revision.	1 work-hour × $85 per hour = $85	$0	$85	$18,870.

We estimate the following costs to do any necessary modification that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this modification:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Change electrical bond and rework part contact surface.	436 work-hours × $85 per hour = $37,060	Up to $35,760	Up to $72,820.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2008–0090; Directorate Identifier 2007–NM–312–AD.

Comments Due Date

(a) We must receive comments by December 14, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Service Bulletin 747–28A2292, Revision 2, dated May 13, 2010.

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

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent electrical current from flowing through a motor operated valve (MOV) actuator into a fuel tank, which could create a potential ignition source inside the fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Measurement, Corrective Action, and Replacement

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

(1) Measure the electrical bond resistance between the MOV actuators and the airplane structure for the main, center, and auxiliary fuel tanks, as applicable; and do all applicable corrective actions; by accomplishing all of the applicable actions in the Accomplishment Instructions of Boeing Service Bulletin 747–28A2292, Revision 2, dated May 13, 2010. The corrective actions must be accomplished before further flight.

(2) For airplanes in Groups 12, 16, 17, 18, and 19, as identified in Boeing Service Bulletin 747–28A2292, Revision 2, dated May 13, 2010: Within 60 months after the effective date of this AD, replace production-installed laminate phenolic spacers with metallic spacers, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28A2292, Revision 2, dated May 13, 2010.

(h) For airplanes identified in Boeing Service Bulletin 747–28A2294, Revision 1, dated March 5, 2009: Within 60 months after the effective date of this AD, measure the electrical bond resistance between the MOV actuators and airplane structure for the horizontal stabilizer (HST) fuel tanks, and do all the applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28A2294, Revision 1, dated March 5, 2009. The corrective actions must be accomplished before further flight.

Deactivation of the HST

(i) For airplanes identified in Boeing Service Bulletin 747–28A2294, Revision 1, dated March 5, 2009: Deactivation of the HST, in accordance with the applicable Boeing service information specified in Table 1 of this AD, terminates the requirements of paragraph (h) of this AD, except as provided by paragraph (j) of this AD. Deactivation of the HST before the effective date of this AD in accordance with the applicable service information specified in Table 2 of this AD also terminates the requirements of paragraph (h) of this AD, except as provided by paragraph (j) of this AD.

TABLE 1—DEACTIVATION SERVICE INFORMATION

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

TABLE 2—DEACTIVATION CREDIT SERVICE INFORMATION

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

Reactivation of the HST

(j) For airplanes identified Boeing Service Bulletin 747–28A2294, Revision 1, dated March 5, 2009, on which the HST is reactivated, the HST must be reactivated in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For any airplane on which the HST is reactivated, the requirements of paragraphs (h) and (l) of this AD must be done before further flight following the reactivation, or within 60 months after the effective date of this AD, whichever occurs later. For a reactivation method to be approved, the reactivation method must meet the certification basis of the airplane, and the approval must specifically reference this AD.

Maintenance Program Revision

(k) For Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes: Concurrently with accomplishing the actions required by paragraph (g) of this AD, revise the maintenance program by incorporating airworthiness limitation (AWL) No. 28–AWL–21 of Section D of Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–13747–CMR, Revision March 2008.

(l) For Model 747–400, 747–400D, and 747–400F series airplanes: Concurrently with accomplishing the actions required by paragraph (g) of this AD, revise the maintenance program by incorporating AWL No. 28–AWL–27 of Subsection D of Boeing 747–400 Maintenance Planning Data (MPD) Document, Section 9, D621U400–9, Revision December 2009.

No Alternative Critical Design Configuration Control Limitations (CDCCLs)

(m) After accomplishing the applicable action required in paragraph (k) or (l) of this AD, no alternative CDCCLs may be used unless the CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (q) of this AD.

Terminating Action for Maintenance Program Revision

(n) For Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes: Incorporating AWL No. 28–AWL–21 into the maintenance program in accordance with paragraph (g) of AD 2008–10–07, Amendment 39–15513; or AD 2008–10–07 R1, Amendment 39–16070; terminates the action required by paragraph (k) of this AD.

Actions Accomplished According to Previous Issue of Service Bulletin

(o) Actions done before the effective date of this AD, in accordance with Boeing Alert Service Bulletin 747–28A2294, dated September 21, 2007, are acceptable for compliance with the corresponding requirements of this AD.

Incorporation of Previous Issues of Airworthiness Limitation (AWL)

(p) Incorporation of AWL No. 28–AWL–21 of Section D of the Boeing 747–100/200/300/SP Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), Document D6–13747–CMR, Revision January 2007, September 2007, or January 2008, is acceptable for compliance with the corresponding requirements of this AD if done before the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Office. The AMOC approval letter must specifically reference this AD.

ssued in Renton, Washington on November 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–29231 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1115; Directorate Identifier 2010–NM–221–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require repetitive inspections for damage of the electrical terminal at the left and right flightdeck window 1, and corrective actions if necessary. This proposed AD would also allow for replacing the flightdeck window 1 with a new improved flightdeck window equipped with different electrical connections, which would terminate the repetitive inspections for that flightdeck window 1. This proposed AD was prompted by several reports of electrical arcs at the terminal blocks of the electrically heated flightdeck window 1. We are proposing this AD to prevent smoke and fire in the cockpit, which could lead to loss of visibility, and injuries to or incapacitation of the flightcrew.

DATES: We must receive comments on this proposed AD by January 3, 2011.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6478; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–1115; Directorate Identifier 2010–NM–221–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received multiple reports of electrical arcs at the terminal blocks of the flightdeck window 1. In several incidents, the arcs resulted in open flames. An investigation showed that the electrical arcs are caused by loose terminal connections, which are caused by incorrect torque of the screw or an incorrectly installed screw. A loose terminal connection will overheat with electrical current passing through it. An overheated connector can degrade the adjacent electrical circuit (including solder, if present). This condition, if not corrected, could result in smoke and fire in the cockpit, and consequent loss of visibility, and injuries to or incapacitation of the flightcrew.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010. Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, describes procedures for repetitive detailed inspections for damage (including but not limited to a cross-threaded screw, arcing, loose terminal, and heat damage) of the terminal block, connector, and wiring at the left and right flightdeck window 1, and corrective actions if necessary. The corrective actions are applying the correct torque to a loose electrical connection, repairing damaged wiring, or installing a replacement window 1. Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, specifies a compliance time of within 500 hours after the date on the service bulletin for doing the initial detailed inspection.

Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, specifies that the replacement window can either be a window that uses screws and lugs for the electrical connection or a window that uses pins and sockets for the electrical connections. For airplanes on which a replacement window that uses pins and sockets is installed, Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, also specifies changes to the related wire bundle. Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, specifies that installing a window that uses pins and sockets eliminates the need for the repetitive inspections. If the window is replaced with the same type of window (i.e., windows with the screw and lug type electrical terminations), then the inspection must be repeated within 500 flight hours from

the date of the accomplishment of these corrective actions and every 6,000 flight hours thereafter.

Related Rulemaking

We issued AD 2010–15–01, Amendment 39–16367 (75 FR 39804, July 13, 2010), that applies to certain Model 757 airplanes, Model 767 airplanes, and Model 777–200 and –300 series airplanes. That AD requires repetitive inspections for damage (e.g., of the electrical terminal at the left and right flightdeck window 1), and corrective actions if necessary. That AD also allows for replacing the flightdeck window 1 with a new improved flightdeck window equipped with different electrical connections, which terminates the repetitive inspections for that flightdeck window 1. That AD results from several reports of electrical arcs at the terminal blocks of the electrically heated flightdeck window 1. We issued that AD to prevent smoke and fire in the cockpit, which could lead to loss of visibility, and injuries to or incapacitation of the flightcrew.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Information."

Differences Between the Proposed AD and the Service Information

Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, does not explicitly specify an inspection for, nor specify a corrective action for, airplanes on which a screw is found cross threaded during the detailed inspections in paragraph (g) of this proposed AD. If these conditions are found, paragraph (i) of this proposed AD would require replacing the windshield either before further flight if the screw is found to be loose, or within 500 flight hours or 150 days after the inspection if the screw is found to be tight, whichever occurs first.

Where Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, specifies an interval for repetitive inspections not to exceed 6,000 flight hours, paragraphs (g) and (h) of this proposed AD would require repetitive inspections at intervals not to exceed 6,000 flight hours or 24 months, whichever occurs later. We have determined that this revised interval will not adversely affect safety of the affected airplanes. Boeing concurs with this extension of the interval for the repetitive inspections.

Clarifications of Service Information

Where Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, and paragraph (h) of this proposed AD state to perform a detailed inspection for damage of the terminal block, connector, and wiring of flightdeck window 1 "within 500 flight hours," it is also acceptable to do the inspection at zero flight hours (i.e., before the airplane ever leaves the hangar and resumes operations). The intent of this second inspection is for quality assurance purposes. This clarification has been coordinated with Boeing.

We have added paragraph (k) of this proposed AD to clarify that each window is handled separately. In the compliance table in paragraph 1.E., "Compliance," of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, the repeat interval applies to the action, which is doing both Work Packages 1 and 2. If the left window is replaced with a window that uses pins and sockets for the electrical connection, then that replacement terminates the requirements of this proposed AD for that window only. The other window still needs to be inspected.

Costs of Compliance

We estimate that this proposed AD will affect 251 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85 per inspection cycle.	None	$85 per inspection cycle	$21,335 per inspection cycle.

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of windshield	Up to 18 work-hours × $85 per hour = $1,530	Up to $47,592	Up to $49,122.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

(3) Will not affect intrastate aviation in Alaska, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2010–1115; Directorate Identifier 2010–NM–221–AD.

Comments Due Date

(a) We must receive comments by January 3, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 30: Ice and rain protection.

Unsafe Condition

(e) This AD results from several reports of electrical arcs at the terminal blocks of the electrically heated flightdeck window 1. In several of the incidents, the arcs resulted in open flames. We are issuing this AD to prevent smoke and fire in the cockpit, which could lead to loss of visibility, and injuries to or incapacitation of the flightcrew.

Compliance

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

Detailed Inspection and Corrective Actions

(g) Within 500 flight hours after the effective date of this AD, do a detailed inspection for damage (including but not limited to a cross-threaded screw, arcing, loose terminal, and heat damage) of the terminal block, connector, and wiring of flightdeck window 1, and do all applicable corrective actions, by accomplishing the actions specified in Work Packages 1 and 2 of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, except as provided by paragraph (j) of this AD. Do all applicable corrective actions before further flight, except as required by paragraph (i) of this AD. Except as required by paragraphs (h) and (i) of this AD, repeat the detailed inspection thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever occurs later. Doing the replacement specified in paragraph (k) of this AD terminates the repetitive inspection requirements of this paragraph for the replaced flightdeck window 1.

(h) For airplanes on which a flightdeck window 1 is replaced with a window that uses screws and lugs for the electrical connections, in accordance with Work Package 1 or 2 of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010: Except as provided by paragraph (j) of this AD, do the next detailed inspection within 500 flight hours after the corrective action, and repeat the inspection thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever occurs later. Doing the replacement specified in paragraph (k) of this AD terminates the repetitive inspection requirements of this paragraph for the replaced flightdeck window 1.

Exceptions to the Service Bulletin

(i) If, during the inspection required by paragraph (g) of this AD, a screw is found cross threaded do the applicable corrective action specified in paragraph (i)(1) or (i)(2) of this AD.

(1) If the terminal lug is loose and cannot be tightened: Before further flight, replace the window, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010.

(2) If the terminal lug is tight: Within 150 days or 500 flight hours after the inspection, whichever occurs first, replace the window, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010.

(j) Where paragraph 1.E. of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, states in the "Action" column to "do the inspections given in Work Packages 1 and 2," the intent is "Work Package 1, step 3. or Work Package 2, step 3., as applicable." Operators are to use one or the other (or both) work instruction, as applicable, to replace the window(s) that need replacing.

Optional Terminating Action

(k) Replacing a flightdeck window 1 that uses screws and lugs for the electrical connections with a flightdeck window that uses pins and sockets for the electrical connections, in accordance with Work Packages 3 or 4 of Boeing Special Attention Service Bulletin 747–30–2081, Revision 2, dated March 10, 2010, ends the repetitive inspection requirements of this AD for that window only.

Credit for Actions Accomplished Previously According to Previous Issue of Service Information

(l) Actions accomplished before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 747–30–2081, dated August 08, 2006; or Revision 1, dated August 20, 2008; are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(n) For more information about this AD, contact Louis Natsiopoulos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone: (425) 917–6478; fax: (425) 917–6590; e-mail: *Elias.Natsiopoulos@faa.gov.*

(o) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, the FAA, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 10, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–29236 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 183

[Docket No. FAA–2010–1127; Notice No. 2010–16]

RIN 2120–AJ42

Photo Requirements for Pilot Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would require a person to carry a pilot certificate with photo to exercise the privileges of the pilot certificate. This proposal responds to section 4022 of the Intelligence Reform and Terrorism Prevention Act (IRTPA). The FAA previously required all pilots to obtain a plastic certificate (excepting temporary certificates and student pilot certificates). This proposal furthers the fulfillment of IRTPA by requiring a photo of the pilot to be on all pilot certificates. The FAA also proposes to require student pilots to obtain a plastic certificate with photo. Student pilot certificates would also have the same duration as other pilot certificates. Additionally, because of the new photo requirements, this proposal modifies the application process and the fee structure for pilot certificates.

DATES: Send your comments on or before February 17, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1127 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: The FAA will post all comments received, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Lance Nuckolls, Certification and General Aviation Operations Branch, AFS–810, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8212; facsimile (202) 267–5094, e-mail *lance.nuckolls@faa.gov.* For legal questions concerning this proposed rule contact Robert Hawks, Air Traffic and Airman/Airport Certification Law Branch, AGC–240, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7143; facsimile (202) 267–7971, e-mail *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section is a discussion of how you can comment on this proposal and how the FAA will handle your comments. Included in this discussion is related information about the docket, privacy, the handling of proprietary or confidential business information, and accessing related rulemaking documents.

Authority for This Rulemaking

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

Under Subtitle VII, Part A, Subpart iii, Section 44703(b)(1)(C), the FAA may define the terms of an airman certificate the FAA Administrator finds necessary to ensure safety in air commerce. Additionally, Subtitle VII, Part A, Subpart iii, Section 44703(g)(1) permits modifications to the airman certification system to make the system more efficient in serving the needs of those enforcing laws related to combating acts of terrorism by ensuring verifiable identification of individuals applying for airman certificates. In Section 4022 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA),[1] Congress required the FAA to promulgate regulations for the issuance of improved pilot licenses.

This rulemaking is within the scope of that authority because it prescribes the inclusion of a photo of the pilot on the pilot certificate in accordance with the IRTPA mandate. This rulemaking aids in preventing terrorism and in ensuring safety in air commerce by issuing certificates that conform to the IRTPA requirements.

Background

On March 12, 1990, the FAA published the Drug Enforcement Assistance notice of proposed rulemaking (55 FR 9270). That NPRM proposed changes to requirements for registration of aircraft, certification of pilots, and certification violations. The FAA intended this proposal to correct deficiencies in the FAA's aircraft registration and pilot certification systems identified in the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 ("the DEA Act").[2] After the close of the comment period, the FAA determined that technological improvements could accomplish most requirements of the DEA Act. The FAA withdrew the NPRM on December 5, 2005 (70 FR 72403).

As part of the technological improvements, the FAA discontinued issuing paper certificates and began issuing plastic airman certificates in 2003. The plastic certificates are of high quality plastic card stock and have micro printing that contains certain

[1] Public Law 108–458, 118 Stat. 3638 (Dec. 17, 2004).

[2] Public Law 100–690, 102 Stat. 4181 (Nov. 18, 1988).

words and phrases, a hologram, and an UV-sensitive layer to resist tampering, altering, and counterfeiting.

On January 5, 2007, the FAA published the Drug Enforcement Assistance notice of proposed rulemaking ("the 2007 DEA NPRM") (72 FR 489). That NPRM proposed changes to the airman certification and aircraft registration requirements to comply with the mandates of the DEA Act that could not be completed without rulemaking. Among other requirements, the NPRM proposed requiring holders of pilot certificates and other airmen certificates to hold a plastic certificate to exercise the privileges of that certificate.

While the FAA was developing the 2007 DEA NPRM, IRTPA became law and added to the FAA's obligations regarding pilot certificates. Section 4022 of IRTPA requires the FAA to issue improved pilot certificates that (1) are resistant to tampering, alteration, or counterfeiting; (2) include a photograph of the individual to whom the certificate is issued; and (3) are capable of accommodating a digital photograph, a biometric identifier, or any other unique identifier the FAA Administrator considers necessary.

On February 28, 2008, the FAA published the Drug Enforcement Assistance final rule ("the DEA final rule") (73 FR 10662). In that rule, the FAA required all pilots, except student pilots, to obtain a plastic certificate by March 31, 2010. After that date, pilots without plastic certificates may not exercise the privileges of their certificates. The FAA continued the use of paper temporary pilot certificates and student pilot certificates. The DEA final rule also satisfies the IRTPA requirement to issue pilot certificates that are resistant to tampering, alteration, and counterfeiting.

Other Airman Certificate-Related Rulemaking Activity

Currently, the Department of Homeland Security's Transportation Security Administration (TSA) is engaged in ongoing efforts to improve identification, credentialing, and security vetting of persons involved in transportation (49 U.S.C. 44903). Under existing FAA programs, the TSA uses information from the Airman Registry to crosscheck certification records against a variety of terrorism-related databases. Currently, the TSA is considering a rulemaking to improve security vetting of airman certificate holders and applicants for airman certificates. In the interest of reducing burdens on the certificate holder and government, the FAA will continue to consult and collaborate with TSA and other Federal agencies to reduce potential redundancies or duplication in Federal certification, vetting, and credentialing processes. If the TSA issues a final rule regarding airman security vetting, the FAA may issue conforming requirements in any final rule resulting from this proposal, subsequent to a supplemental notice of proposed rulemaking, or as part of a new rulemaking project, depending on the scope and timing of the TSA's actions.

Discussion of the Proposal

The FAA proposes to further fulfill the requirements of section 4022 of the IRTPA by requiring a photo of the pilot on all plastic pilot certificates. This proposal also requires student pilots to have a plastic certificate with photo in order to exercise student pilot privileges. The FAA would continue to allow the use of a paper temporary pilot certificate when upgrading a pilot certificate (such as going from a student to a sport, recreational, or private pilot certificate) or adding a rating (such as an instrument rating). However, the temporary paper certificate evidencing the added authority must be accompanied by the underlying pilot certificate with photo.

The FAA proposes a 5-year phased implementation schedule. This schedule includes a "trigger-based" approach to issue pilot certificates with photos to people interacting with the FAA during the implementation period. The schedule also includes a "non-trigger-based" approach that requires pilots to obtain a pilot certificate with photo during a 3-, 4-, or 5-year period depending on the type of certificate. This proposal would not revoke or otherwise cancel a previously issued paper or plastic certificate. It simply would require the pilot to have a pilot certificate with photo to exercise pilot privileges.

The FAA proposes to add a new § 61.6 to prescribe the requirements related to a pilot certificate with photo. This proposal also amends the application process in § 61.85 to require submission of a photo with an application for a pilot certificate. The FAA also proposes to modify the fee structure related to an application for a pilot certificate with photo to recover some costs associated with issuing a pilot certificate with photo. The FAA also proposes to amend § 61.3 to remove the requirement to carry a separate government-issued photo identification for persons carrying a pilot certificate with photo. The FAA has determined two photo identifications are unnecessary and do not serve a safety or security interest. However, persons with special purpose pilot authorizations, foreign pilot licenses, or limited-term facsimile pilot certificates still must carry government-issued photo identification. Finally, the FAA proposes minor editorial changes, including some changes to section numbering, to improve ease of use.

The following sections discuss in greater detail the proposals related to the fees for issuing or replacing a pilot certificate with photo, the implementation approach, applying for a pilot certificate with photo, photo requirements, duration of pilot privileges for pilot certificates with photos, student pilot certificates, and other issues.

Fees for Issuing or Replacing a Pilot Certificate With Photo

Currently, the FAA charges a $2 fee to replace a lost or destroyed airman certificate. There is no charge for issuing, upgrading, or adding ratings to an airman certificate. 14 CFR 61.29(a). Although the FAA has statutory authority to charge a fee for issuing a pilot certificate, the FAA previously has not exercised that authority. 49 U.S.C. 45302. That authority permits the FAA to charge a maximum fee of $22.00 ($12.00 adjusted according to the Consumer Price Index of All Urban Consumers published by the Secretary of Labor). 49 U.S.C. 45302(b)–(c).

Congress required the FAA to change from issuing paper pilot certificates to issuing plastic certificates with photos and other security measures.[3] The cost of issuing these new certificates is substantial. To recover some of these costs, the FAA proposes to exercise its statutory authority to collect a fee when issuing a pilot certificate with a photo and other security features.

Specifically, the FAA proposes to charge a $22 fee to process an application for: (1) Exchanging an existing certificate without a photo for a certificate with photo; (2) issuing a new pilot certificate or student pilot certificate; and (3) replacing a pilot certificate with photo whenever a replacement certificate is requested by a pilot or required by regulation. Examples of events which would require a replacement certificate include renewing expired photos, achieving new ratings or certificate levels, changing name or citizenship information, and replacing lost or destroyed certificates. As shown in the regulatory evaluation, the $22 fee does not recover fully the cost of issuing pilot certificates, but the FAA may not exceed its statutory authority to recover costs. Accordingly,

[3] IRTPA § 4022(b).

the FAA proposes to include this fee schedule for a pilot certificate with photo in the new § 61.6.

The FAA also proposes to adjust this fee periodically to correspond with changes in the Consumer Price Index, as permitted by 49 U.S.C. 45302(c). Any fee adjustment would not occur more than once a year and would not exceed the FAA's cost for issuing a certificate. Any calculation of issuance cost would be performed in the same manner as that performed for this proposed rule.

The Federal Aviation Administration Reauthorization bill (H.R. 915), if enacted as passed by the House of Representatives on May 21, 2009, would provide authority to increase fees for airman certificates. This legislation would allow the FAA to recover the costs related to airman certification, and the legislation sets the fee for issuing an airman certificate at $50 and for issuing a replacement airman certificate at $25. Once the outcome of the reauthorization legislation is known, the FAA would decide whether additional rulemaking is necessary.

Since this proposal would require in-person identity verification, the FAA anticipates allowing designees to accept and verify applications for pilot certificates with photos to lessen the inconvenience to certificate holders and new applicants. The FAA anticipates that designees would charge a fee, in addition to the fee charged by the FAA, to accept and verify the applications. The FAA cannot set or limit fees charged by designees. This fee likely would be independent of any fee charged by a designee for testing services provided to the applicant.

Implementation Approach

The FAA would begin issuing a pilot certificate with photo to an applicant for a new pilot certificate once the rule becomes effective. For the FAA to comply with IRPTA, it must reissue all existing pilot certificates with a pilot certificate with photo. To minimize the burden of reissuance on certificate holders, the FAA proposes a concurrent "trigger-based" and "non-trigger-based" implementation approach.

Many pilots already would interact with the FAA during the implementation period of this proposed rule because of a "triggering event." They would be required to apply for a pilot certificate with photo as a result of that interaction. One triggering event would be applying for a new pilot certificate or rating, including a student pilot certificate. A pilot obtaining a new flight instructor certificate or renewing a flight instructor certificate would also be required to apply for a pilot certificate with photo for the underlying pilot certificate. The FAA does not propose requiring all persons requesting replacement pilot certificates during the implementation period to apply for a pilot certificate with photo. However, replacement activity requiring an in-person interaction with the FAA (for example, change of name, citizenship, date of birth, or gender) would be a triggering event. The FAA proposes to require pilots interacting with the FAA during one of these triggering events to provide a photo with the application. These pilots would not be subject to the proposed phase-in requirements because they would already comply with the proposed rule.

Because not all pilots will have a triggering event during the implementation period, the FAA proposes a phased approach for requiring an application for a pilot certificate with photo. A pilot with an airline transport pilot (ATP) certificate would have 3 years after the final rule becomes effective to obtain a pilot certificate with photo. A person with a commercial pilot certificate would have 4 years after the effective date of the final rule. Finally, a private, recreational, or sport pilot certificate holder would have 5 years after the effective date of the final rule. Pilots who do not obtain a certificate with photo during the appropriate period would not be able to exercise pilot privileges after the cut-off date.

The FAA chose different cut-off dates based on certificate level to provide the most time for private, sport, and recreational pilots. Those pilots are the least likely to have regular contact with the FAA. ATP and commercial pilot certificate holders usually have more regular contact with the FAA than other types of pilots.

The FAA believes that these periods are reasonable to allow for the timely replacement of pilot certificates. The phased implementation approach balances the FAA's ability to receive and process applications for replacement certificates and to maintain the FAA's existing range of services. The FAA assumes that applications would be evenly spread throughout the implementation period. If all pilots wait until close to the end of the period to apply for the certificate, there undoubtedly would be delays in processing and receipt of the new certificate. A pilot may apply for a certificate with photo after the specific implementation period ends, but he or she would not be able to exercise pilot privileges until he or she has a pilot certificate with photo. The FAA proposes to add this implementation schedule to § 61.19.

Applying for a Pilot Certificate With Photo

The FAA would require a pilot to submit an application for a new or replacement pilot certificate with photos in person in certain cases. For these in-person applications, a pilot must appear at a FSDO or other FAA designee (such as a Knowledge Testing Center or designated pilot examiner (DPE)). All certificate holders applying for a pilot certificate for the first time would submit that application in person for purposes of identity verification. After a person holds a pilot certificate with photo, there would be certain situations for which an in-person application is required. If the photo would expire within 90 days of the application, a pilot would submit the application in person. A pilot changing vital information on the certificate, such as name, date of birth, citizenship, or gender, would still be required to apply in person so the FAA could verify the applicant's identity. Finally, a pilot who upgrades his or her certificate or adds a rating would still apply for a new certificate in person.

A pilot who wants to add or update the photo on the certificate may do so using one of two methods. The first method would be to submit a paper photo with a paper 8710–1 Airman Certificate and/or Rating Application form. The second method would be to use the Web-based Integrated Airman Certificate and/or Rating Application (IACRA) form. However, regardless of the method used, a pilot must appear in-person to either a FSDO or any authorized FAA-designee to have his or her photo and identification validated whenever a photo is required as part of the application. Currently, the FAA operates 96 FSDOs in the U.S. and has approximately 2,700 designees worldwide that can process applications for pilot certificates with photo. A pilot residing outside of the U.S. must use an FAA-designee who is authorized to service his or her area. Alternately, the pilot may come to the U.S. and use any FAA-designee or FSDO.

In some cases, the FAA would allow a pilot to submit an application for a pilot certificate with photo by mail. These instances would not require an in-person application because the pilot has established his or her identity with the FAA, and the changes to the certificate do not affect the pilot's identity. For example, a pilot could submit an application to replace a lost or destroyed certificate with photo without an in-person interaction.

Additionally, a pilot could notify the FAA of a change of address by mail or via the FAA website. Although not required by regulation, the pilot could request a replacement certificate when making the change of address. When requesting a replacement pilot certificate with photo in these situations, the pilot must have a photo on file that does not expire within 90 days of the application.

Photo Requirements

The FAA proposes a new § 61.6 to prescribe the photo requirements for pilot certificates. The FAA would require an applicant to submit a 2 x 2-inch photo with the application. The photo must be unretouched and in color. The photo must be of only the applicant and must have been taken within the last six months. It also must show a full front view of the applicant's face in such a way that the area from the bottom of the applicant's chin to the top of the applicant's head (including hair) covers more than 50 percent but not more than 75 percent of the total area of the photo. The photo must show the applicant in front of a plain light-colored background and in normal street attire. If an applicant chose to wear a pilot uniform, the FAA would consider that applicant to be wearing normal street attire, provided the photo did not show the applicant wearing a hat, head covering, or dark glasses as prescribed in § 61.6. These requirements are consistent with Department of State guidelines for passport photos. Therefore, an applicant for a pilot certificate with photo should be able to obtain the required photo from any passport photo vendor.

At this time, the FAA is prepared to accept only a hard copy of a photo, similar to the Department of State's passport model. In the future, however, the FAA anticipates accepting a digital photo. The FAA would revise its guidance material as technology advances and additional methods are available for photo submission.

Currently the FAA is considering three methods of acquiring a digital photo. One way would be for an applicant to upload a digital photo into FAA's Integrated Airman Certificate and/or Rating Application (IACRA) sub-system. IACRA is an Internet-based database program providing a fully-electronic method of applying for an airman certificate or rating. IACRA can accommodate submission of digital images.

The second method to acquire a digital photo would be for an applicant to go to a Knowledge Testing Center, which is a logical venue for verifying identity and taking digital photos. Currently there are two major testing companies that are authorized to perform knowledge testing for the FAA via Knowledge Testing Centers. These testing centers are located to serve a wide geographic range (approximately 960 nationwide centers and 9 international locations). Usually, people do not have to travel more than 100 miles to get to a testing center.

The third method to acquire a digital photo would be for an applicant to go to a DPE or a FSDO that has the capability to take digital photos. Currently, FSDOs have this capability, but DPEs do not. However, the FAA anticipates they would have this capability in the future.

Duration of Pilot Privileges for a Pilot Certificate With Photo

Because the accuracy of a photo degrades over time, the FAA proposes to include a photo expiration date on the pilot certificate with photo. As under current regulations, the actual pilot certificate would not expire but would remain valid unless surrendered, suspended, or revoked. However, the pilot may not exercise the privilege of the certificate after the photo expiration date. Therefore, the pilot must renew the photo in order to continue to exercise the pilot privileges of the certificate past the photo expiration date.

The FAA considered different photo durations, specifically an 8-year duration (similar to that required by the Real ID Act) and a 10-year duration (similar to that used for passports). The Real ID Act of 2005 [4] imposes certain security, authentication, and issuance procedure standards for state driver's licenses and identification cards for them to be accepted by the federal government for official purposes. The FAA acknowledges that the Real ID Act does not require the FAA to set any specific duration with respect to a pilot certificate with photo. The Department of State traditionally has issued passports that are valid for 10 years. This practice was established well before the Real ID Act became law and was established in response to different concerns than those to which the Real ID Act responds. The FAA proposes an 8-year duration. This duration is consistent with the Real ID Act, which is Congress's latest expression on the appropriate period of validity for government identification. The FAA proposes to amend § 61.19 to prescribe a photo expiration date of 8 years after the month in which the FAA issues the pilot certificate. The FAA also proposes to place the photo expiration date on the pilot certificate with photo to remind certificate holders of when a new photo must be submitted.

Under this proposal, it would be the pilot's responsibility to apply for a replacement certificate and provide a new, current photo before the photo expiration date. It is important to note that the issuance of a pilot certificate with photo could take up to 6 to 8 weeks. Therefore, a pilot should plan to submit an application, with a new photo, well before the photo expiration date on the current pilot certificate. If the photo expiration date passes before the pilot receives a replacement pilot certificate with photo, the FAA would not issue temporary privileges, and the pilot could not exercise pilot privileges.

For applications received in the 180 days before the photo expiration date, the FAA would issue a certificate with a photo expiration date that is 8 years from the previous certificate's photo expiration date. If a pilot requests changes to a certificate, such as changing the certificate level or adding a rating, the FAA would issue a new certificate with the current photo on file. That certificate would have the same photo expiration date as the certificate that it is replacing. However, if a pilot wishes to submit a new photo, the FAA would issue a certificate with a photo expiration date of 8 years from the month of issue. If the photo would expire within the next 90 days, the pilot must submit a new photo with the application for a certificate.

Student Pilot Certificates

The FAA includes student pilot certificates in this proposal to meet the IRTPA requirements that apply to all pilot certificates. The Drug Enforcement Assistance final rule, which required plastic pilot certificates, did not include student pilot certificates. Therefore, the FAA proposes to require all student pilot certificates to be made of plastic and include a photo of the certificate holder. As a result, only the FAA's Airman Certification Branch (AFS–760) would issue student pilot certificates.

The FAA proposes to discontinue use of an Aviation Medical Examiner (AME) for the application and issuance of a student pilot certificate. Currently, AMEs may issue both a medical certificate and a student pilot certificate (often referred to as a combination certificate). Except in the case of glider, balloon, and light sport aircraft, a student pilot's first contact with the FAA usually is through an AME because of the medical certificate requirement. It

[4] Public Law 109–13, 119 Stat. 231 (May 11, 2005).

is convenient for a student pilot to apply for a student pilot certificate at the same time as for a medical certificate. However, under this proposal, student pilots must obtain a student pilot certificate with photo. Because an AME's principal function is to perform the medical evaluation, the FAA has determined that it is inappropriate to burden the AME with information-gathering and photo-verification duties. Accordingly, under this proposal, a person wishing to obtain a student pilot certificate would still obtain a medical certificate from an AME; however, that person may not apply for a student pilot certificate with an AME. A student pilot would obtain a student pilot certificate with photo that is issued by the FAA Airman Certification Branch (AFS–760) prior to conducting solo flights. The FAA proposes to amend § 61.85 to prescribe the application process for student pilot certificates and § 183.21 to relieve AMEs from issuing student pilot certificates.

Also, under this proposal, Designated Pilot Examiners (DPEs) no longer would issue student pilot certificates. However, DPEs would be authorized to accept an application for a student pilot certificate. In addition, designated knowledge testing centers, designated airmen certification representatives, local Flight Standards District Offices (FSDOs), and International Field Offices would be authorized to accept an application for a student pilot certificate.

Because the student pilot certificate would be issued by the FAA's Airmen Certification Branch instead of by Aviation Safety Inspectors or FAA designees, student pilots, instructors, and pilot schools should plan accordingly for the additional time it would take to receive a plastic student pilot certificate with photo. At this time, the FAA estimates that it could take up to 6 to 8 weeks for the FAA to issue a student pilot certificate. As under the current regulations, students still can receive instruction, but they may not engage in solo flight before receiving a student pilot certificate.

Currently, a student pilot certificate expires either 24 or 60 calendar months after issuance depending on the age of the student pilot or on the rating sought. Because of the proposed change in procedure to obtain a student pilot certificate, the FAA proposes to issue student pilot certificates that do not expire. Like other pilot certificates, a student pilot certificate would remain valid unless surrendered, suspended, or revoked. However, the student pilot certificates would have a photo expiration date of 8 years after the month of issuance. This duration is consistent with the duration of other pilot certificates because the FAA has concluded there is no purpose to treating student pilot certificates differently from other pilot certificates. A student pilot would not be able to exercise the privileges of the certificate after the photo expiration date unless he or she submitted a new photo.

A student pilot certificate issued prior to the effective date of this rule would continue to be valid until the expiration date shown on the face of that certificate. If a person wishes to obtain a replacement student pilot certificate, he or she may apply for a student pilot certificate with photo. Because student pilot certificates currently expire after either 24 or 60 months, all student pilots would be using a student pilot certificate with photo before the end of the 5-year implementation period established by this proposal for obtaining a pilot certificate with photo.

The FAA also proposes to make conforming changes regarding the placement of solo flight endorsements on student pilot certificates. Because it is not possible to make the currently-required solo flight endorsements on a plastic student pilot certificate, the FAA proposes to amend §§ 61.87, 61.93, and 61.133 to require that those endorsements be made in only the student pilot's logbook. The FAA also proposes to amend §§ 61.189 and 61.195 to require flight instructors to place those endorsements in only the student pilot's logbook. The FAA proposes to amend § 61.13(a)(2)(i)(A) so that it would apply to an application for a student pilot certificate because student pilot certificates would be issued only by the FAA Airman Certification Branch (AFS–760).

Other Issues

Currently § 61.29(e) allows a person to obtain a facsimile airman certificate [5] if the original certificate is lost or destroyed. The FAA Airman Certification Branch issues facsimile certificates so that an airman may continue to exercise privileges until a replacement pilot certificate is issued. This facsimile is valid for 60 days. Although this facsimile does not meet the IRTPA requirements, the FAA proposes to leave the facsimile provision unchanged. The replacement of a pilot certificate with photo would take up to 6 to 8 weeks during which time a pilot effectively would be grounded. The FAA has concluded that grounding a pilot for an extended time period is unnecessary. The FAA would treat the facsimile pilot certificate as a special purpose pilot authorization that may be used in conjunction with a government-issued photo identification under § 61.3. This treatment would allow a pilot whose identity has been certified by the FAA to continue to exercise pilot privileges while allowing security agencies to verify the pilot's identity against a government-issued identification.

Comments Invited

The FAA is specifically interested in receiving comments on the following questions:

(1) While this proposal does not outline specific identity verification standards and processes, the FAA may include such standards and processes in a final rule. The FAA seeks comment on standards that should be used for identity verification to issue pilot photo certificates, either in person or remotely. Should the FAA require applicants to produce fraud-resistant documents to verify identity? If so, which documents or other identity verification procedures should the FAA implement to ensure a high level of confidence in the verification process?

(2) Should the FAA consider an alternative implementation approach to the "trigger" and "non-trigger" approach set forth in the proposal? Should the FAA set one deadline, regardless of certificate level, for pilots to have a pilot certificate with photo to exercise the privileges of that certificate rather than implement the phased "non-trigger" approach set forth in this proposal? What is the basis and supporting data for a single deadline? If the FAA were to implement a single deadline, what time period for conversion to a pilot certificate with photo adequately balances the FAA's need to comply with the statutory mandate and the burden on certificate holders? Would lengthening the implementation period significantly reduce burden on a pilot? What is the basis and supporting data for a longer time period?

(3) Currently, the FAA envisions using Knowledge Testing Centers, DPEs, and FSDOs to accept pilot certificate applications and validate applicant identity. Are there alternative, potentially less burdensome, methods for pilots within the U.S. and outside of the U.S. the FAA should consider? In addition, what should the FAA consider when designating service providers with identity verification authority?

(4) Is the proposed 8-year duration for the photo, based on the photo duration

[5] Currently, the Airman Certification Branch issues a paper temporary certificate, a faxed temporary authority, or an e-mail temporary authority.

for state driver's licenses under the Real ID Act, a reasonable period of time that balances the security needs expressed in IRTPA and the burden on certificate holders? Are there other standards or guidance for photo accuracy the FAA should consider? What is the basis and supporting data for a shorter or longer duration?

(5) Is there any reason why student pilot certificates should not be treated like other pilot certificates for the purposes of meeting the IRTPA requirements? What is the basis and supporting data for your response?

(6) With respect to the photo that is placed on the pilot certificate, should the FAA accept only hard copy photos, only digitally-captured photos, or either hard copy or digitally-captured photos? What is the basis and supporting data for your response?

(7) If the FAA accepts digitally-captured photos, what are the advantages and disadvantages of the following methods of acquiring the photo: (a) An applicant uploading a self-captured photo to the IACRA sub-system; (b) a FSDO capturing the photo when the application is submitted; (c) a Knowledge Testing Center capturing the photo when an application is submitted; and (d) a DPE capturing the photo when an application is submitted? What is the basis and supporting data for your response?

Paperwork Reduction Act

This proposal contains the following revisions to existing information collection requirements. As required by the Paperwork Reduction Act of 1995, the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review. *See* 44 U.S.C. 3507(d).

Title: Photo Requirements for Pilot Certificates

Summary: This action would require a person to carry a pilot certificate with photo to exercise the privileges of the pilot certificate. This proposal responds to section 4022 of the Intelligence Reform and Terrorism Prevention Act (IRTPA). The FAA previously required all pilots to obtain a plastic certificate (excepting temporary certificates and student pilot certificates), and after March 31, 2010, all pilots must carry a plastic certificate. This proposal furthers the fulfillment of IRTPA by requiring a photo of the pilot to be on all pilot certificates. The FAA also proposes to require student pilots to obtain a plastic certificate with photo and treats student pilot certificates equally with other pilot certificates for durational purposes. Additionally, because of the photo requirement on pilot certificates, this proposal modifies the process for obtaining a pilot certificate and the fee structure for processing an application for a pilot certificate with photo. This revision affects the existing information collection requirements of FAA Form 8710–1 "Airman Certificate and/or Rating Application" (OMB Approval Number 2120–0021).

Use of: This proposed rule is in direct response to section 4022 of the Intelligence Reform and Terrorism Prevention Act (IRTPA). This request for clearance reflects requirements necessary under Title 14 CFR part 61 to require a person to carry a pilot certificate with photo to exercise the privileges of the pilot certificate. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, where necessary, to take enforcement action on violators of the regulations.

Respondents (including number of): The FAA estimates there are 740,442 pilots who would be required to provide information in accordance with the proposed rule. The respondents to this proposed information requirement are pilots regulated under part 61.

Frequency: The FAA estimates certificate holders will have a one-time information collection, and will then collect or report information occasionally thereafter.

Annual Burden Estimate: This proposal would result in a 20-year recordkeeping and reporting burden as follows:

Summary of time and costs (20-year):

The following table sums up the costs and time:

	Total cost	Annual cost	Total time	Annual time
Pilot-related costs:				
Trigger—Initial Registration	$4,221,982	$211,099	82,923.34	4,146.17
Non-Trigger—Initial Registration	191,555,276	9,577,764	3,521,734.67	176,086.73
Non-Trigger—Renewal	149,053,511	7,452,676	2,740,341.74	137,017.09
Additional/Replacement	9,654,806	482,740	363,509.25	18,175.46
Portals:				
KTC	10,100,840	505,042	655,048.00	32,752.40
DPE	17,545,925	877,296	233,945.67	11,697.28
FAA Contractor	5,328,284	266,414	N/A	N/A
Total	387,460,624	19,373,031	7,597,502.66	379,875.13

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

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

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by January 18, 2011 and should direct them to the address listed in the Addresses section at the beginning of this preamble. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, Attention: Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR § 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rulemaking is consistent with ICAO Standards and Recommended Practices.

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

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. The FAA suggests readers seeking greater detail read the full regulatory evaluation, a copy of which is in the docket for this rulemaking.

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

Summary

In this analysis, the FAA estimated future costs for a 20-year period, from 2010 through 2029. All costs in this analysis are in 2008 dollars.

There are currently about 740,000 pilots and 93,000 CFIs that would be covered by this proposal. Given future projected growth in all pilot categories and given the requirement to renew every 8 years, the FAA anticipates that the FAA would process 4.40 million photo IDs from 2010 to 2029.

Costs to pilots would sum to $445.8 million ($235.8 million, present value) over the above 20-year period. This includes the costs of the pilots providing hard copy photos and a Form 8710–1 to a portal designee, either a Knowledge Testing Center, Designated Pilot Examiner, or Flight Service District Office. These portals would incur costs of $33.2 million ($17.6 million, present value) to process this information and pass it on to the Airman Registry at the FAA. The FAA would incur costs of $239.8 million ($126.7 million, present, value) to process the certificates. Total costs, over 20 years, sum to $718.7 million ($380.1 million, present value).

This proposal responds to IRTPA by requiring digital photos on all pilot certificates. Congress has mandated that the FAA improve pilot licenses by including a photo on the license. The proposal requiring owners to personally appear before authorized persons and to produce proof of identity including photo identification would be a significant help in the prevention of fraudulent and fictitious registration.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

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

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

A number of commercial pilots are employed as crop dusters, as passenger and freight charter operators, in aerial photography and mapmaking businesses, in sightseeing businesses, and/or in flight schools, many of which are small businesses. The FAA does not have data as to how many such pilots are employed in each of these businesses. While in a rural setting, the entire process may take half a day, the pilot would have large latitude in choosing which day to get the certificate. These types of small businesses are often seasonal, meaning that in almost all cases, the pilot would not have to miss a day of work in order to get a pilot certificate with photo.

The cost impact to any one pilot and to any business would not be large. The average cost to a pilot in a "non-trigger" event is higher than that of a "trigger" event as the time and mileage needs to be taken into account as well as the portal costs. The average cost for a "non-trigger" event is about $175. These commercial pilots would have a phase-in period of 4 years and then would have to renew every 8 years. Thus, over a 20-year period, such a pilot would have to get 3 pilot certificates, for a cost of about $375; the average annual cost is $19, which is not a significant impact.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Statement

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States.

Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would have only a domestic impact and therefore would not create unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Determination

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This proposed rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

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

Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

Additional Information

Comments Invited

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

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

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or
3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

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

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

List of Subjects in 14 CFR Parts 61 and 183

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Security measures.

The Proposed Amendment

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

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(G), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Amend § 61.3 by revising paragraphs (a), (d)(2)(iv), and paragraph (l) introductory text to read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

(a) *Pilot certificate.* (1) A person may not serve as a required pilot flight crewmember of a civil aircraft of the United States, unless that person:

(i) Has a pilot certificate issued under this part and in accordance with § 61.19;

(ii) Has a special purpose pilot authorization issued under § 61.77;

(iii) Has a temporary certificate issued under § 61.17;

(iv) Has a facsimile certificate issued under § 61.29; or

(v) When operating an aircraft within a foreign country, has a pilot license issued by that country.

(2) The pilot certificate or special authorization must be in the person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization.

(3) If the pilot certificate or authorization is not a pilot certificate with photo, a person may not serve as a required pilot flight crewmember of a civil aircraft of the United States, unless that person has a photo identification in that person's physical possession or readily accessible in the aircraft when exercising the privileges of that pilot certificate or authorization. The photo identification must be a:

(i) Driver's license issued by a State, the District of Columbia, or a territory or possession of the United States;

(ii) Government identification card issued by the Federal government, a State, the District of Columbia, or a territory or possession of the United States;

(iii) U.S. Armed Forces' identification card;

(iv) Official passport;

(v) Credential that authorizes unescorted access to a security identification display area at an airport regulated under 49 CFR part 1542; or

(vi) Other form of identification that the Administrator finds acceptable.

* * * * *

(d) * * *

(2) * * *

(iv) Endorse a logbook for solo operating privileges.

* * * * *

(l) *Inspection of certificate.* Each person who holds an airman certificate, medical certificate, authorization, or license required by this part must present it and, unless the pilot certificate contains a photo, a photo identification as described in paragraph (a)(2) of this section for inspection upon a request from:

* * * * *

3. Add a new § 61.6 to read as follows:

§ 61.6 Pilot certificate with photo and photo requirements.

(a) *Trigger-based implementation.* Except as provided in § 61.19(h)(2), after [effective date of final rule], all persons must apply for a pilot certificate with photo and provide a photo that conforms to the requirements prescribed in paragraph (b) of this section when:

(1) Obtaining a new pilot certificate or rating (including student pilot certificate);

(2) Obtaining a new flight instructor certificate;

(3) Renewing a flight instructor certificate; or

(4) Obtaining a replacement pilot certificate resulting from a change of name, citizenship, date of birth, or gender.

(b) *Photo Requirements.* (1) A photo provided with an application for a new or replacement pilot certificate with photo must—

(i) Be unretouched and in color;

(ii) Be a recent likeness of only the applicant (taken within the last six months) and show a full front view of the applicant's face in such a way that the area from the bottom of the applicant's chin to the top of the applicant's head (including hair) covers more than 50 percent but not more than 75 percent of the total area of the photo; and

(iii) Show the applicant in front of a plain light-colored background and in normal street attire, without a hat, head covering, or dark glasses unless a signed statement is submitted by the applicant verifying the item is worn daily for religious purposes or a signed doctor's statement is submitted verifying the item is used daily for medical purposes.

(2) A photo provided with an application for a pilot certificate or rating must measure 2 x 2 inches in size.

(c) *Application for new or replacement pilot certificate with photo.* (1) A photo of the applicant that conforms to the requirements prescribed in paragraph (b) of this section must accompany each application for a new or replacement pilot certificate with photo unless the applicant previously submitted a photo and that photo has not expired or will not expire within 90 days of the application.

(2) An applicant for a pilot certificate with photo must make an application accompanied by a photo at a place designated by the Administrator.

(3) An applicant for a replacement pilot certificate with photo who has a current photo on file may make an application that is not accompanied by a photo at a place designated by the Administrator or by mail to the Department of Transportation, FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125.

(4) Payment to the FAA of the fee specified in paragraph (d) of this section by check, money order, or other payment method approved by the Administrator must accompany each application for a new or replacement pilot certificate with photo.

(d) *Fee for issuance of pilot certificate with photo.* The fee for processing an application for a new or replacement pilot certificate with photo is $22. The FAA periodically may increase this fee to correspond with changes in the Consumer Price Index.

4. Amend § 61.13 by revising paragraphs (a)(1) and (a)(2)(i)(A) to read as follows:

§ 61.13 Issuance of airman certificates, ratings, and authorizations.

(a) *Application.* (1) An applicant for an airman certificate, rating, or authorization under this part must make that application on a form acceptable to the Administrator and at a place designated by the Administrator. In addition, an applicant for a pilot certificate with photo must make that application as prescribed in § 61.6.

(2) * * *

(i) * * *

(A) Application for student pilot certificate that is received outside the United States; or

* * * * *

5. Amend § 61.19 by revising paragraphs (a), (b), and (c), and (g) to read as follows:

§ 61.19 Duration of pilot and instructor certificates and privileges.

(a) *General.* (1) Except for a student pilot certificate or flight instructor certificate issued with an expiration date, a pilot certificate is valid unless it is surrendered, suspended, or revoked.

(2) A pilot certificate with photo is issued with a photo expiration date after which the holder of the certificate may not exercise the privileges of that certificate.

(b) *Paper student pilot certificate.* A student pilot certificate issued under this part prior to [effective date of final rule] expires:

(1) For student pilots who have not reached their 40th birthday, 60 calendar months after the month of the date of examination shown on the medical certificate.

(2) For student pilots who have reached their 40th birthday, 24 calendar months after the month of the date of examination shown on the medical certificate.

(3) For student pilots seeking a glider rating, balloon rating, or a sport pilot certificate, 60 calendar months after the month of the date issued, regardless of the person's age.

(c) *Pilot certificates.* (1) A pilot certificate (other than a student pilot certificate) issued under this part prior to [effective date of final rule] is issued without a specific expiration date.

(2) A pilot certificate, including a student pilot certificate, issued under this part after [effective date of final rule] contains a photo expiration date that is 96 months from the month in which a photo is submitted for inclusion on the certificate.

(3) The holder of a pilot certificate issued on the basis of a foreign pilot license may exercise the privileges of that certificate only while that person's foreign pilot license is effective.

* * * * *

(g) *Duration of pilot certificates.* (1) Except for a temporary certificate issued under § 61.17 or a student pilot certificate issued under paragraph (b) of this section, the holder of a paper pilot certificate issued under this part may not exercise the privileges of that certificate after March 31, 2010.

(2) Except for a temporary certificate issued under § 61.17 or a facsimile certificate issued under § 61.29, no person may exercise the privileges of a

particular certificate as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of U.S. registry unless that person has a photo on his or her pilot certificate after:

(i) [Date 3 years after publication of final rule] for a pilot holding an airline transport pilot certificate;

(ii) [Date 4 years after publication of final rule] for a pilot holding a commercial pilot certificate; or

(iii) [Date 5 years after publication of final rule] for a pilot holding a private, recreational or sport pilot certificate.

6. Amend § 61.25 by adding paragraph (c) to read as follows:

§ 61.25 Change of name.

* * * * *

(c) For applications for a pilot certificate with photo, an applicant must make that application as prescribed in § 61.6.

7. Amend § 61.29 by revising the section heading, revising paragraphs (a), (b), (c), (d) introductory text, and (e) introductory text to read as follows:

§ 61.29 Replacement of a pilot certificate with photo and replacement of lost or destroyed airman or medical certificate or knowledge test report.

(a)(1) *Pilot certificate with photo.* A request for the replacement of a pilot certificate with photo issued under this part must be made as prescribed in § 61.6.

(2) *Other airman certificate.* A request for the replacement of a lost or destroyed airman certificate issued under this part must be made by letter to the Department of Transportation, FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA.

(b) *Medical certificate.* A request for the replacement of a lost or destroyed medical certificate must be made by letter to the Department of Transportation, FAA, Aerospace Medical Certification Division, P.O. Box 26200, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA.

(c) *Knowledge test report.* A request for the replacement of a lost or destroyed knowledge test report must be made by letter to the Department of Transportation, FAA, Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and must be accompanied by a check or money order for the appropriate fee payable to the FAA.

(d) *Request for replacement.* The letter requesting replacement of a pilot certificate with photo or a lost or destroyed airman certificate, medical certificate, or knowledge test report must state:

* * * * *

(e) *Facsimile airman certificate, medical certificate, or knowledge test report.* A person who has lost an airman certificate, medical certificate, or knowledge test report may obtain a facsimile from the FAA Aeromedical Certification Branch or the Airman Certification Branch, as appropriate, confirming that it was issued and the:

* * * * *

8. Revise § 61.85 to read as follows:

§ 61.85 Application.

An applicant for a student pilot certificate:

(a) Must make that application in a form acceptable to the Administrator;

(b) Must provide a photo of the applicant that conforms to the photo requirements set forth in § 61.6 with the application;

(c) Must submit the application to a designee authorized by the Administrator or to a Flight Standards District Office; and

(d) Must submit payment for the application fee as directed in § 61.6.

9. Amend § 61.87 by revising paragraph (n), by adding the word "and" after the semicolon in paragraph (p)(3), removing paragraph (p)(4), and redesignating paragraph (p)(5) as paragraph (p)(4) to read as follows:

§ 61.87 Solo requirements for student pilots.

* * * * *

(n) *Limitations on student pilots operating an aircraft in solo flight.* A student pilot may not operate an aircraft in solo flight unless that student pilot has received an endorsement in the student's logbook for the specific make and model aircraft to be flown by an authorized instructor who gave the training within the 90 days preceding the date of the flight.

* * * * *

10. Amend § 61.93 by revising paragraphs (c)(1) and (c)(2) and adding paragraph (c)(3) to read as follows:

§ 61.93 Solo cross-country flight requirements.

* * * * *

(c) * * *

(1) A student pilot must have a solo cross-country endorsement from the authorized instructor who conducted the training that is placed in that person's logbook for the specific category of aircraft to be flown.

(2) A student pilot must have a solo cross-country endorsement from an authorized instructor that is placed in that person's logbook for the specific make and model of aircraft to be flown.

(3) For each cross-country flight, the authorized instructor who reviews the cross-country planning must make an endorsement in the person's logbook after reviewing that person's cross-country planning, as specified in paragraph (d) of this section. The endorsement must—

(i) Specify the make and model of aircraft to be flown;

(ii) State that the student's preflight planning and preparation is correct and that the student is prepared to make the flight safely under the known conditions; and

(iii) State that any limitations required by the student's authorized instructor are met.

* * * * *

11. Amend § 61.133 by revising paragraphs (a)(2)(i)(C) and (a)(2)(ii)(C) to read as follows:

§ 61.133 Commercial pilot privileges and limitations.

(a) * * *

(2) * * *

(i) * * *

(C) Endorse a pilot's logbook for solo operating privileges in an airship;

* * * * *

(ii) * * *

(C) Endorse a pilot's logbook for solo operating privileges in a balloon; and

* * * * *

12. Amend § 61.189 by revising paragraph (b)(1) to read as follows:

§ 61.189 Flight instructor records.

* * * * *

(b) * * *

(1) The name of each person whose logbook that instructor has endorsed for solo flight privileges, and the date of the endorsement; and

* * * * *

13. Amend § 61.195 by revising paragraphs (d)(1) introductory text and (d)(2) to read as follows:

§ 61.195 Flight instructor limitations and qualifications.

* * * * *

(d) * * *

(1) Student pilot's logbook for solo flight privileges, unless that flight instructor has—

* * * * *

(2) Student pilot's logbook for a solo cross-country flight, unless that flight instructor has determined the student's flight preparation, planning, equipment, and proposed procedures are adequate for the proposed flight under the existing conditions and within any

limitations listed in the logbook that the instructor considers necessary for the safety of the flight;

* * * * *

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

14. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 45303.

15. Amend § 183.21 by revising paragraph (c) and removing and reserving paragraph (d) to read as follows:

§ 183.21 Aviation Medical Examiners.

* * * * *

(c) Issue or deny medical certificates in accordance with part 67 of this chapter, subject to reconsideration by the Federal Air Surgeon or his or her authorized representatives within the FAA; and

* * * * *

Issued in Washington, DC, on November 10, 2010.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 2010–29192 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

RIN 3038–AC96

Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) regarding the compliance activities of certain registrants. The proposed rules require each futures commission merchant, swap dealer, and major swap participant to designate a chief compliance officer. The proposed rules also prescribe qualifications and duties of the chief compliance officer. Finally, the proposed rules require that the chief compliance officer prepare, certify, and furnish to the Commission an annual report containing an assessment of the registrant's compliance activities.

DATES: Comments must be received on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by RIN 3038–AC96 and CCO Designation, by any of the following methods:

- Agency web site, via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in CFTC Regulation 145.9, 17 CFR 145.9.

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Associate Director, Division of Clearing and Intermediary Oversight, (202) 418–5684, *sjosephson@cftc.gov;* or Claire Noakes, Attorney Advisor, Division of Clearing and Intermediary Oversight, (202) 418–5444, *cnoakes@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Act.[1] Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (CEA)[2] to establish a comprehensive new regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

The Dodd-Frank Act addresses the compliance activities of certain registrants in detail by requiring each futures commission merchant, swap dealer, and major swap participant to designate a chief compliance officer.[3] The Dodd-Frank Act also establishes duties of the chief compliance officer of a swap dealer or major swap participant,[4] and requires that the chief compliance officer of a swap dealer or major swap participant annually prepare, sign, and certify a report that is furnished to the Commission discussing the registrant's compliance policies and activities.[5] The Dodd-Frank Act requires the Commission to prescribe rules regarding the annual report prepared by the chief compliance officer of a swap dealer or major swap participant.[6] With regard to futures commission merchants, the Dodd-Frank Act does not set forth specific duties for the chief compliance officer or establish specific procedures for the preparation and submission of an annual report. Rather, the Dodd-Frank Act states that the chief compliance officer shall "perform such duties and responsibilities as shall be set forth in regulations to be adopted by the Commission."[7]

The Commission has determined to apply the same duties and responsibilities to a chief compliance officer of a futures commission merchant as are required for a chief

[1] See Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at: *http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.*

[2] 7 U.S.C. 1 *et seq.*

[3] 7 U.S.C. 6d(d), 6s(k)(1).

[4] 7 U.S.C. 6s(k)(2).

[5] 7 U.S.C. 6s(k)(3)(A–B).

[6] 7 U.S.C. 6s(k)(3)(A).

[7] 7 U.S.C. 6d(d).

compliance officer of a swap dealer or a major swap participant. In particular, the Commission is prescribing rules that (i) require the chief compliance officer of a registrant prepare, sign, and certify an annual report discussing the registrant's compliance policies and activities that is furnished to the Commission; (ii) clarify that a chief compliance officer of a registrant would be a "principal" as defined under Commission regulation 3.1(a); and (iii) require that specified recordkeeping and inspection requirements for the compliance documents discussed in the proposed rule be satisfied. The proposed rules also would require that each futures commission merchant, swap dealer, and major swap participant provide the chief compliance officer with the responsibility and authority, in consultation with the board of directors or the senior officer, to develop and enforce appropriate policies and procedures to fulfill the assigned duties of the position. The Commission specifically requests comment on its decision to apply the duties and responsibilities for chief compliance officers set forth for swap dealers and major swap participants to futures commission merchants.

The proposed rules reflect consultation with staff of the following agencies: (i) The Securities and Exchange Commission; (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation. Staff from each of these agencies has had the opportunity to provide oral and/or written comments to the proposal, and the proposed rules incorporate elements of the comments provided.

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

II. Proposed Regulations

A. Chief Compliance Officers

The Dodd-Frank Act requires that each futures commission merchant, swap dealer, and major swap participant designate an individual to serve as its chief compliance officer. The proposed rules codify this requirement, and prescribe certain qualifications of the position. The individual serving as chief compliance officer must have the appropriate background and skills to perform the compliance duties of the position, and must not fall into the categories that would disqualify him or her from registration under section 8a(2) and (3) of the CEA.[8] Although the chief compliance officer would not register with the Commission, as the primary individual with responsibility for ensuring the registrant's legal compliance, the chief compliance officer would have to meet the same standard as those individuals who are required to register, as set forth in the list of statutory disqualifications. Furthermore, the proposed rules amend the definition of "principal" that applies to all registrants under regulation 3.1(a) to clarify that the chief compliance officer position is considered to be similar in status and responsibility to the enumerated list of positions found in that definition, such as the chief executive officer. Like other principals of registrants, the chief compliance officer would have to submit a Form 8–R, and, if required, fingerprint cards to the National Futures Association, and would be subject to a background check.

The Dodd-Frank Act requires that the chief compliance officer of a swap dealer or major swap participant "report directly to the board or to the senior officer" of the entity. The proposed rules establish the reporting structure to which the chief compliance officer would be subject by specifying that only the board of directors or the senior officer of the registrant would be permitted to take action to designate the chief compliance officer or determine the compensation of the chief compliance officer. The rule text substitutes the term "board of directors" for "board," and the term "board of directors" is defined to include any governing body of an organization. The clarification is intended to account for all forms of business associations (for example, partnerships and limited liability companies) that may have forms of governing bodies other than boards of directors. The proposed rules also extend the reporting structure requirement to futures commission merchants.

The Commission specifically seeks comment on the degree of flexibility in the reporting structure for chief compliance officers that should be afforded under the proposed rules. Specifically, the Commission requests comment on: (i) Whether it would be more appropriate for a chief compliance officer to report to the senior officer or the board of directors; (ii) whether the senior officer or board of directors generally is a stronger advocate of compliance matters within an organization; (iii) whether the proposed rules allow for sufficient flexibility with regard to a registrant's business structure; (iv) whether the proposed reporting structure should be amended to address any issues related to affiliates; and (v) whether the rule should include a provision requiring a majority of a board of directors to remove the chief compliance officer.

The Commission also is seeking comment on whether additional limitations should be placed on the persons who may be designated as a chief compliance officer. For example, should the Commission restrict the chief compliance officer position from being held by an attorney who represents the registrant or its board of directors, such as an in-house or general counsel? The rationale for such a restriction is based on the concern that the interests of defending the registrant would be in tension with the duties of the chief compliance officer.

The Commission specifically seeks comment on whether there is a need to insulate the chief compliance officer of registrants from undue pressure and coercion. Is it necessary to adopt rules to address the potential conflict between and among compliance interests, commercial interests, and ownership interests of a futures commission merchant, swap dealer, and major swap participant? If there is no need for such a provision, how would such possible conflicts be addressed?

The Dodd-Frank Act sets forth certain duties to be performed by a chief compliance officer of a swap dealer or major swap participant, and requires the Commission to promulgate rules concerning the duties of a chief compliance officer of a futures commission merchant. The proposed rules codify the duties set forth in the Act and apply them uniformly to futures commission merchants, swap dealers, and major swap participants. The Commission believes the statutory duties are largely self-explanatory, but in the interest of clarity, those duties will be discussed briefly below.

The duty to report to the board or the senior officer under section 4s(k)(2)(A) of the CEA[9] is addressed in the rule as discussed above. The duty to review compliance under section 4s(k)(2)(B) of the CEA[10] is combined with the duty to ensure compliance under section 4s(k)(2)(E),[11] and the duty to administer required policies under section 4s(k)(2)(D).[12] The duty to resolve conflicts of interest under section 4s(k)(2)(C) of the CEA[13] is codified in

[8] 7 U.S.C. 12a(2–3).

[9] 7 U.S.C. 6s(k)(2)(A).

[10] 7 U.S.C. 6s(k)(2)(B).

[11] 7 U.S.C. 6s(k)(2)(E).

[12] 7 U.S.C. 6s(k)(2)(D).

[13] 7 U.S.C. 6s(k)(2)(C).

the rules. The duty to identify noncompliance issues and establish procedures for their remediation in section 4s(k)(2)(F) of the CEA [14] is codified as well, as are other duties with respect to noncompliance issues in section 4s(k)(2)(G).[15] Underlying all of these duties are two fundamental acknowledgements: The chief compliance officer can only ensure the registrant's compliance to the full capacity of an individual person, and the duties of the chief compliance officer do not elevate the position above the board of directors, or otherwise contradict basic and well-established tenets of law regarding the allocation of responsibility within a business association.

The Commission would also require the chief compliance officer to meet annually with the board of directors or the senior officer to discuss the effectiveness of the compliance policies adopted by the registrant, as well as the administration of those policies by the chief compliance officer. The session would create an opportunity for a chief compliance officer and the directors or the senior officer to speak freely about any sensitive issues of concern to any of them, including any reservations about the cooperativeness or compliance practices of the registrant's employees.

The term "compliance policies" is defined to include all the written policies and procedures that are required to be adopted or established by a registrant under the CEA and the rules of the Commission. Specifically, the Commission intends for chief compliance officers to administer compliance policies that include, but are not limited to, all the new policies and the code of ethics required to be established or adopted by a registrant under these proposed rules, as well as all the policies currently required to be established or adopted by a registrant under the existing rules, such as risk management policies, trading rules, customer record protection procedures, and safeguards for electronic signatures. Finally, the proposed rules include as a duty the statutory requirement to prepare, sign,[16] and certify [17] the annual report, which is further discussed below.

B. Annual Report

The Dodd-Frank Act requires that the chief compliance officer of a swap dealer or major swap participant annually prepare, sign, and certify a report containing a description of the registrant's compliance with the CEA and regulations promulgated under the CEA, and a description of each policy and procedure of the chief compliance officer, including the code of ethics and conflicts of interest policies. The Dodd-Frank Act also requires, and the Commission is codifying, that a swap dealer and major swap participant furnish the report to the Commission simultaneously with each appropriate financial report that is required to be furnished to the Commission. The report would include a certification by the chief compliance officer that, under penalty of law, the annual report is accurate and complete. As discussed below, the Commission is proposing to apply these requirements to futures commission merchants as well.

More specifically, the Commission would require the annual report to be furnished simultaneously with the futures commission merchant's Form 1–FR–FCM or FOCUS report, and the swap dealer or major swap participant's financial condition report, the scope of which shall be defined in a future rulemaking pursuant to new section 4s of the CEA. The proposed rules elaborate on the certification of the annual report by specifying that the chief compliance officer must sign a statement that to the best knowledge and reasonable belief of the chief compliance officer, and under penalty of law, the information contained in the annual report is accurate and complete.

The proposed rules would also permit a registrant to request an extension of time to furnish the report; require that any material error or omission within a previously furnished annual report be promptly corrected; and allow for annual reports to cross-reference sections from recently furnished annual reports by the same entity, even in a different registration capacity.

Regarding the last provision, for example, if a company has submitted an annual report in the previous reporting period with a description of a compliance policy that is unchanged, then the company could incorporate by reference that description in an annual report furnished in the current reporting period, if it remains an accurate description that fulfills a content requirement of the current year's annual report. As another example, if a company is registered as both a swap dealer and a futures commission merchant, and the description of the company's code of ethics is the same under each registrant's annual report, then a cross-reference to one of the reports would satisfy the content requirements of the other report.

Importantly, the Commission would extend to chief compliance officers of futures commission merchants the Dodd-Frank Act's requirement that a chief compliance officer of a swap dealer or major swap participant prepare, sign, and certify an annual report to be furnished to the Commission. An annual report is intended to promote compliance behavior by requiring a registrant to conduct a periodic self-evaluation and to inform the Commission of possible compliance weaknesses that should be addressed. The Commission believes that it is beneficial to receive self-evaluation and compliance information from futures commission merchants as well as from swap dealers and major swap participants. Furthermore, the Commission believes this comports with Congressional intent in requiring that futures commission merchants designate a chief compliance officer under the Dodd-Frank Act.

The contents of the annual report are specified in the Dodd-Frank Act to include a description of the compliance of the registrant with the CEA and the Commission's rules, and each policy and procedure of the chief compliance officer of the registrant, including the code of ethics and conflict of interest policies. The proposed rules codify these requirements by reference to the defined term "compliance policies," and also require a discussion of any material changes to the registrant's compliance policies made during the reporting period.

Additionally, the proposed rules would require that the annual report include a certification of compliance under the provisions of sections 619 and 716 of the Dodd-Frank Act, which may impose obligations on registrants. Section 619, subject to limited exceptions, prohibits banking entities, as defined in that section, from engaging in proprietary trading or acquiring or retaining any equity, partnership, or other ownership interest in, or sponsoring, a hedge fund or private equity fund. Section 716 prohibits any swaps entity from receiving federal assistance, as defined in that section. The Commission requests comment on this proposed rule, including the scope of its application.

The annual report also would be required to contain a discussion of the execution of the chief compliance officer's duty to resolve conflicts of interest and to identify and resolve noncompliance issues. Additionally, the annual report would be required to contain a description of the financial, managerial, operational, and staffing resources set aside for compliance with

[14] 7 U.S.C. 6s(k)(2)(F).

[15] 7 U.S.C. 6s(k)(2)(G).

[16] 7 U.S.C. 6s(k)(3)(A).

[17] 7 U.S.C. 6s(k)(3)(B)(ii).

the CEA and the Commission's rules, including any deficiencies in such resources. The annual report would also be required to delineate the roles and responsibilities of various registrant personnel in addressing any conflicts, including any necessary coordination with, or notification of regulators, self-regulatory organizations, and others who may be involved in addressing the conflict.

Finally, the Commission would require that both the annual report and any related records be subject to the record keeping and inspection provisions of regulation 1.31. The requirement with respect to records related to the annual report is intended to preserve the Commission's ability to reconstruct why certain information was included or excluded in an annual report, in the event of an audit or investigation.

The Commission specifically seeks comment regarding: (i) The required content of the annual report; (ii) whether any additional content should be included therein; (iii) whether the Commission should require explicit approval of the annual report by the registrant's board of directors prior to the submission of the annual report to the Commission; (iv) whether additional provisions are necessary to ensure that individual directors or employees have an adequate opportunity to register their concerns or objections to the contents of the annual report; and (v) whether additional guidance is needed on what efforts by the chief compliance officer would be required to permit the chief compliance officer to certify that, to the best of his knowledge and reasonable belief, the annual report is accurate and complete.

Liability for false, incomplete, or misleading statements or representations made in the annual report could rest with the registrant or the chief compliance officer or both, either directly or vicariously, and could be administrative, civil, and/or criminal. Possible violations could include, among other things, a claim of failure to supervise or false statements to the Commission. The Commission could seek an injunction against future violations, civil monetary penalties, and/or any other appropriate remedial relief. Criminal penalties could be sought by appropriate criminal authorities.

III. Transition Period

Futures commission merchants are currently required to be registered under regulation 3.10. The Dodd-Frank Act requires the Commission to promulgate rules providing for the registration of swap dealers and major swap participants no later than July 21, 2011.[18] In order to provide for sufficient time for existing and new registrants to come into compliance with these proposed rules, the Commission is proposing to establish a delayed compliance date. The Commission specifically seeks comment on how long it might take for a registrant to hire a chief compliance officer and how long it might take for the registrant to implement the required policies and procedures under these proposed rules.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[19] requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[20] The proposed rules would affect futures commission merchants, swap dealers, and major swap participants, entities that are required to be registered with the Commission. The Commission previously has determined that registered futures commission merchants are not small entities for the purposes of the RFA. The Commission's determination was based, in part, upon the obligation of futures commission merchants to meet minimum financial requirements established by the Commission to enhance the protection of customers' segregated funds and protect the financial condition of futures commission merchants generally.[21]

Swap dealers and major swap participants are new categories of registrant. Accordingly, the Commission has not previously addressed the question of whether such persons are, in fact, small entities for the purposes of the RFA. However, like futures commission merchants, swap dealers will be subject to minimum capital and margin requirements. Swap dealers are expected to comprise the largest global financial firms, and the Commission is required to exempt from designation entities that engage in a *de minimis* level of swaps dealing in connection with transactions with or on behalf of customers. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that swap dealers not be considered small entities for essentially the same reasons that futures commission merchants previously have been determined not to be small entities and in light of the exemption from the definition of swap dealer for those engaging in a *de minimis* level of swap dealing. The Commission anticipates that this exemption would tend to exclude small entities from registration.

The Commission also has previously determined that large traders are not small entities for RFA purposes.[22] In that determination, the Commission considered that a large trading position was indicative of the size of the business. Major swap participants, by the statutory definition, maintain substantial positions in swaps or maintain outstanding swap positions that create substantial counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets. Accordingly, for purposes of the RFA for this rulemaking, the Commission is hereby proposing that major swap participants not be considered small entities for the same reasons that large traders have previously been determined not to be small entities.

The Commission is carrying out Congressional mandates by proposing this regulation. Specifically, the Commission is proposing these rules to comply with the Dodd-Frank Act, the aim of which is to reduce systemic risks presented by swap dealers and major swap participants through comprehensive regulation. The Commission does not believe that there are regulatory alternatives to those being proposed that would be consistent with the statutory mandate. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)[23] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined in the PRA. Certain provisions of this proposed rule would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this

[18] 7 U.S.C. 6s(b)(5).

[19] 5 U.S.C. 601–611.

[20] 47 FR 18618, Apr. 30, 1982.

[21] *Id.* at 18619, 18620.

[22] *Id.* at 18620.

[23] 44 U.S.C. 3501 *et seq.*

collection of information is "Annual Report for Chief Compliance Officer of Registrants." The OMB has not yet assigned this collection a control number. 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 control number.

The collection of information under these proposed rules is necessary to implement certain provisions of the CEA, as amended by the Dodd-Frank Act, and to assure that futures commission merchants, swap dealers, and major swap participants maintain comprehensive policies and procedures. The Commission's staff would use the information collected when conducting examination and oversight of futures commission merchants, swap dealers, or major swap participants for compliance with the CEA and Commission regulations.

If adopted, responses to this new collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974.[24]

1. Information Provided by Reporting Entities/Persons

The burden associated with the proposed regulation is estimated to be 136 hours, at a cost of $13,600 annually for each respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This burden will result from the requirements that the respondent: (1) Prepare and file a Form 8–R designating the chief compliance officer; (2) draft and maintain various compliance policies and procedures; (3) annually prepare and furnish to the Commission an annual report that describes the respondent's compliance policies and resources and the respondent's compliance with the CEA and Commission regulations; (4) amend a previously furnished annual report when material errors or omissions are identified; and (5) maintain records related to respondent's compliance policies and annual reports.

The respondent burden for preparing and filing a Form 8–R designating the respondent's chief compliance officer as a principal of the firm is expected to be 1 hour. It is estimated that each respondent would spend 80 hours annually in connection with the proposed requirement that respondent's chief compliance officer establish various compliance policies and procedures. This estimate includes the time needed to review applicable laws and regulations; develop compliance policies and procedures; and consult with respondent's board of directors or senior officer on compliance policies, as required. It is estimated that each respondent will spend an additional 40 hours drafting and submitting its annual report. This estimate includes the time needed to collect and analyze the information that underlies the contents of the annual report, to formulate recommendations to existing compliance policies, and to draft the report. The Commission notes that it has attempted to reduce the burden of this particular requirement by including a provision in the proposed regulation that: (1) Permits a respondent to incorporate by reference sections of an annual report that has been furnished within the current or immediately preceding reporting period and (2) where a respondent is registered in more than one capacity with the Commission, to incorporate by reference sections in the annual report that the registrant has furnished within the current or immediately preceding reporting period as another type of registrant. The Commission additionally estimates that a respondent may spend an average of 5 hours annually amending an annual report if material errors are found. Finally, each respondent is expected to spend 10 hours annually satisfying the record retention requirements of the rule. This would include the time to be expended maintaining records of the firm's compliance policies; compiling and indexing records relevant to the annual report; and maintaining reports and other materials furnished to the respondent's board of directors or senior officer in connection with its review of the report. The Commission does not expect respondents to incur any start-up costs in connection with this proposed regulation as it anticipates that respondents already maintain compliance personnel and systems for regulatory reporting and recordkeeping.

There are 159 futures commission merchants currently registered with the Commission and it is anticipated that there will be approximately 250 swap dealers and 50 major swap participants that will register with the Commission. Thus, the total number of respondents is expected to be 459. According to the Bureau of Labor Statistics, the mean hourly wage of an employee under occupation code 13–1041, "Compliance Officers, Except Agriculture, Construction, Health and Safety, and Transportation," that is employed by the "Securities and Commodity Contracts Intermediation and Brokerage" industry is $38.77.[25] Because futures commission merchants, swap dealers and major swap participants include large financial institutions whose employee salaries may exceed the mean wage, the Commission has taken the more conservative approach of estimating the cost burden of these proposed regulations based upon an average compliance officer salary of $100 per hour. Accordingly, the estimated burden was calculated as follows:

Preparation and Filing of Form 8–R
- *Number of respondents:* 459
- *Estimated number of responses:* 459
- *Estimated total burden on respondents:* 1 hour
- *Frequency of collection:* One initial collection and on occasion thereafter
- *Aggregate reporting burden:* 459 respondents × 1.0 hours = 459 burden hours

Drafting and Updating Compliance Policies and Procedures
- *Number of respondents:* 459
- *Estimated number of responses:* 459
- *Estimated total annual burden on respondents:* 80 hours
- *Frequency of collection:* Annually
- *Aggregate reporting burden:* 459 respondents × 80 hours = 36,720 burden hours

Preparation and Furnishing Annual Report
- *Number of respondents:* 459
- *Estimated number of responses:* 459
- *Estimated total annual burden on respondents:* 40 hours
- *Frequency of collection:* Annually
- *Aggregate reporting burden:* 459 respondents × 40 hours = 18,360 burden hours

Preparation and Furnishing Amended Annual Report
- *Number of respondents:* 459
- *Estimated number of responses:* 459
- *Estimated total annual burden on respondents:* 5 hours
- *Frequency of collection:* Annually
- *Aggregate reporting burden:* 459

[24] 5 U.S.C. 552a.

[25] *http://www.bls.gov/oes/current/oes131041.htm.*

respondents × 5 hours = 2,295 burden hours

Recordkeeping Related to Compliance Policies and Annual Report

Number of respondents: 459

Estimated number of responses: 459

Estimated total annual burden on respondents: 10 hours

Frequency of collection: Annually

Aggregate reporting burden: 459 respondents × 10 hours = 4,590 hours

Based upon the above, the aggregate cost for all respondents is 62,424 burden hours [136 hours × 459 respondents] and $6,242,400 [62,424 burden hours × $100 per hour].

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the **ADDRESSES** section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting *RegInfo.gov.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication.

C. Cost-Benefit Analysis

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing new rules under the Act. By its terms, it does not require the Commission to quantify the costs and benefits of new rules or to determine whether the benefits of the proposed rules outweigh their costs. Rather, it requires the Commission to "consider the cost and benefits" of the subject rules.

Section 15(a) of the CEA further specifies that the costs and benefits of the proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The proposed rules would improve compliance by registrants with applicable laws and rules by requiring designation of a chief compliance officer, prescribing the duties of that position, and requiring preparation of a report on compliance activities of the registrant, to be furnished to the Commission for its review.

With respect to costs, the Commission has determined that costs to futures commission merchants, swap dealers, and major swap participants include the costs associated with the designation of a chief compliance officer, maintaining compliance policies, preparing the annual report, and satisfying applicable recordkeeping requirements. As noted above, the Commission has estimated these costs of preparing the annual report and the recordkeeping costs to be $13,600 per year per respondent. However, there is little doubt that futures commission merchants, swap dealers, and major swap participants already expend resources on compliance activities and compliance personnel. For these entities, the proposed rule would not substantially increase costs.

With respect to benefits, the Commission has determined that there would be benefits to both the registrants and to the financial system as a whole if registrants undertake regular and comprehensive self-evaluations regarding their level of compliance with laws and regulations. Also, the decision to devote sufficient resources to compliance with laws and regulations is a core component of sound risk management practices. Providing periodic notification to the Commission of how compliance is undertaken, whether there are compliance issues, and what resources are allocated for compliance activities would enable the Commission to better exercise its oversight authority and further the goal of avoiding market disruptions and financial losses to market participants and the general public.

The Commission invites public comment on its cost-benefit considerations. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of these proposed rules with their comment letters.

List of Subjects in 17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures, Major swap participants, Reporting and recordkeeping requirements, Swap dealers.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 3 as follows:

PART 3—REGISTRATION

Authority and Issuance

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

Authority: 5 U.S.C. 552, 552b; 7 U.S.C. 1a, 2, 6a, 6b, 6b–1, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23, unless otherwise noted.

2. Amend § 3.1 by revising paragraph (a)(1) and by adding paragraphs (g) and (h) to read as follows:

§ 3.1 Definitions.

(a) * * *

(1) If the entity is organized as a sole proprietorship, the proprietor; if a partnership, any general partner; if a corporation, any director, the president, chief executive officer, chief operating officer, chief financial officer, and any person in charge of a principal business unit, division or function subject to regulation by the Commission; if a limited liability company or limited liability partnership, any director, the president, chief executive officer, chief operating officer, chief financial officer, the manager, managing member or those members vested with the management authority for the entity, and any person in charge of a principal business unit, division or function subject to

regulation by the Commission; and, in addition, any person occupying a similar status or performing similar functions, such as the chief compliance officer, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the entity's activities that are subject to regulation by the Commission;

* * * * *

(g) *Compliance policies.* Compliance policies means all policies, procedures, codes, safeguards, rules, programs, and internal controls required to be adopted or established by a registrant pursuant to the Act and Commission regulations, including a code of ethics.

(h) *Board of directors.* Board of directors means the board of directors, board of governors, or equivalent governing body of a registrant.

3. Add § 3.3 to read as follows:

§ 3.3 Chief compliance officer.

(a) *Designation.* Each futures commission merchant, swap dealer, and major swap participant shall designate an individual to serve as its chief compliance officer, and provide the chief compliance officer with the full responsibility and authority to develop and enforce, in consultation with the board of directors or the senior officer, appropriate policies and procedures to fulfill the duties set forth in the Act and Commission regulations.

(1) The chief compliance officer shall report to the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant. The board of directors or the senior officer shall approve the compensation of the chief compliance officer and meet with the chief compliance officer at least once a year to discuss the effectiveness of the compliance policies, as defined in § 3.1(g), as well as the administration of those policies by the chief compliance officer.

(2) The board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant may not delegate its authority over the chief compliance officer, including authority to remove the chief compliance officer.

(b) *Qualifications.* The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position. No individual disqualified from registration under section 8a(2)–(3) of the Act may serve as a chief compliance officer.

(c) *Submission with registration.* Each application for registration as a futures commission merchant under § 3.10, a swap dealer under § 23.21, or a major swap participant under § 23.21, must include a designation of a chief compliance officer by submitting a Form 8–R for the chief compliance officer as a principal of the applicant pursuant to § 3.10(a)(2).

(d) *Chief compliance officer duties.* The chief compliance officer's duties shall include, but are not limited to:

(1) Establishing, in consultation with the board of directors or the senior officer, compliance policies, as defined in § 3.1(g);

(2) In consultation with the board of directors or the senior officer, resolving any conflicts of interest that may arise;

(3) Reviewing and ensuring compliance by the futures commission merchant, swap dealer, or major swap participant with compliance policies, as defined in § 3.1(g), and all applicable laws, rules, and regulations, including, but not limited to the requirements set forth in the Act and Commission regulations;

(4) Establishing procedures, in consultation with the board of directors or the senior officer, for the remediation of noncompliance issues identified by the chief compliance officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(5) Establishing procedures, in consultation with the board of directors or the senior officer, for the handling, management response, remediation, retesting, and closing of noncompliance issues; and

(6) Preparing, signing, and certifying the annual report required under paragraph (d) of this section.

(d) *Annual report.* The chief compliance officer annually shall prepare a written report that covers the most recently completed fiscal year of the futures commission merchant, swap dealer, or major swap participant, and provide the annual report to the board of directors or the senior officer. The annual report shall, at a minimum:

(1) Contain a description of the compliance by the futures commission merchant, swap dealer, or major swap participant with respect to the Act and Commission regulations and each of the registrant's compliance policies, as defined in § 3.1(g);

(2) Review each applicable requirement under the Act and Commission regulations, and with respect to each:

(i) Identify the policies and procedures that ensure compliance with the requirement under the Act and Commission regulations;

(ii) Provide an assessment as to the effectiveness of these policies and procedures; and

(iii) Discuss areas for improvement, and recommend potential or prospective changes or improvements to its compliance program and resources devoted to compliance;

(3) Provide a statement of certification of compliance with sections 619 and 716 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, and any rules adopted pursuant thereto;

(4) List any material changes to compliance policies during the coverage period for the report;

(5) Describe the financial, managerial, operational, and staffing resources set aside for compliance with respect to the Act and Commission regulations, including any deficiencies in such resources;

(6) Describe any non-compliance issues identified, and the corresponding action taken; and

(7) Delineate the roles and responsibilities of its board of directors or senior officer, relevant board committees, and staff in addressing any conflicts of interest, including any necessary coordination with, or notification of, other entities, including regulators.

(e) *Furnishing the annual report to the Commission.*

(1) Prior to furnishing the annual report to the Commission, the chief compliance officer shall provide the annual report to the board of directors or the senior officer of the futures commission merchant, swap dealer, or major swap participant for its review. Furnishing the annual report to the board of directors or the senior officer shall be recorded in the board minutes or otherwise, as evidence of compliance with this requirement.

(2) The annual report shall be furnished electronically to the Commission not more than 90 days after the end of the fiscal year of the futures commission merchant, swap dealer, or major swap participant, simultaneously with the submission of Form 1–FR–FCM, as required under § 1.10(b)(2)(ii), simultaneously with the Financial and Operational Combined Uniform Single Report, as required under § 1.10(h), or simultaneously with the financial condition report, as required under section 4s(f) of the Act, as applicable.

(3) The report shall include a certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the information contained in the annual report is accurate and complete.

(4) The futures commission merchant, swap dealer, or major swap participant shall promptly furnish an amended annual report if material errors or omissions in the report are identified. An amendment must contain the certification required under paragraph (e)(3) of this section.

(5) A futures commission merchant, swap dealer, or major swap participant may request from the Commission an extension of time to furnish its annual report, provided the registrant's failure to timely furnish the report could not be eliminated by the registrant without unreasonable effort or expense. Extensions of the deadline will be granted at the discretion of the Commission.

(6) A futures commission merchant, swap dealer, or major swap participant may incorporate by reference sections of an annual report that has been furnished within the current or immediately preceding reporting period to the Commission. If the futures commission merchant, swap dealer, or major swap participant is registered in more than one capacity with the Commission, and must submit more than one annual report, an annual report submitted as one registrant may incorporate by reference sections in the annual report furnished within the current or immediately preceding reporting period as the other registrant.

(f) *Recordkeeping.*

(1) The futures commission merchant, swap dealer, or major swap participant shall maintain:

(i) A copy of the compliance policies, as defined in § 3.1(g), and all other policies and procedures adopted in furtherance of compliance with the Act and Commission regulations;

(ii) Copies of materials, including written reports provided to the board of directors or the senior officer in connection with the review of the annual report under paragraph (d) of this section; and

(iii) Any records relevant to the annual report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are created, sent or received in connection with the annual report and contain conclusions, opinions, analyses, or financial data related to the annual report.

(2) All records or reports that a futures commission merchant, swap dealer, or major swap participant are required to maintain pursuant to this section shall be maintained in accordance with § 1.31 and shall be made available promptly upon request to representatives of the Commission and to representatives of the applicable prudential regulator, as defined in 1a(39) of the Act.

Issued in Washington, DC, on November 10, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler

Designation of a Chief Compliance Officer; Required Compliance Policies; and Annual Report of a Futures Commission Merchant, Swap Dealer, or Major Swap Participant

I support the proposed rulemaking establishing requirements for the designation, qualifications and duties of a chief compliance officer of swap dealers, major swap participants and futures commission merchants. These rules are intended to ensure that sufficient resources are devoted to compliance with laws and regulations, which is a core component of sound risk management practices. The proposed rules fulfill the Dodd-Frank Act's requirements that intermediaries have chief compliance officers and establish and administer compliance policies, as well as resolve certain conflicts of interest.

[FR Doc. 2010–29021 Filed 11–18–10; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0909; FRL–9228–9]

Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Clean Air Act, EPA is proposing to find that the Utah State Implementation Plan (SIP) is substantially inadequate to attain or maintain the national ambient air quality standards or to otherwise comply with the requirements of the Clean Air Act. Specifically, the SIP includes Utah rule R307–107, which exempts emissions during unavoidable breakdowns from compliance with emission limitations. This rule undermines EPA's, Utah's, and citizens' ability to enforce emission limitations that have been relied on to ensure attainment or maintenance of the national ambient air quality standards or meet other Clean Air Act requirements. If EPA finalizes this proposed finding of substantial inadequacy, Utah will be required to revise its SIP to correct this deficiency within 12 months of the effective date of our final rule. If EPA finds that Utah has failed to submit a complete SIP revision as required by a final rule or if EPA disapproves such a revision, such finding or disapproval would trigger clocks for mandatory sanctions and an obligation for EPA to impose a Federal Implementation Plan. EPA is also proposing that if EPA makes such a finding or disapproval, sanctions would apply consistent with 40 CFR 52.31, such that the offset sanction would apply 18 months after such finding or disapproval and highway funding restrictions would apply six months later unless EPA first takes action to stay the imposition of the sanctions or to stop the sanctions clock based on the State curing the SIP deficiencies. EPA is also requesting comment on whether EPA should exercise its discretionary authority under the Clean Air Act to impose highway funding restrictions in all areas of the State, not just in nonattainment areas.

DATES: Comments must be received on or before December 20, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2010–0909, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: russ.tim@epa.gov.*
- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Fax:* (303) 312–6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Hand Delivery:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2010–0909. 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" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6479, or *russ.tim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, the following definitions apply:

(i) The word *Act* or initials *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA*, *we*, *us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *NAAQS* mean national ambient air quality standard.

(iv) The initials *SIP* mean or refer to State Implementation Plan.

(v) The words *State* or *Utah* mean the State of Utah, unless the context indicates otherwise.

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I. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. 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.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background

On September 20, 1999, Assistant Administrator for Enforcement and Compliance Assurance, Steven A. Herman, and Assistant Administrator for Air and Radiation, Robert Perciasepe, issued the EPA's most recent policy on appropriate State Implementation Plan (SIP) provisions addressing excess emissions during periods of startup, shutdown and malfunction (SSM). "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown" (1999 Policy). The 1999 Policy indicated that it was expanding on and clarifying two previous policies issued in 1982 and 1983 by then Assistant Administrator for Air, Noise and Radiation Kathleen Bennett ("1982 Policy" and "1983 Policy").

In the 1982 and 1983 Policies, Assistant Administrator Bennett enunciated the Agency's position that SIPs should not be approved if they include exemptions for excess emissions during malfunction events.[1] These policies reflect the Agency's interpretation that broad exemptions from compliance with emission limitations during periods of malfunction prevent a SIP from adequately ensuring attainment and maintenance of national ambient air quality standards (NAAQS). For purposes of demonstrating attainment and maintenance, states rely on assumed compliance with emission limitations. *See, e.g.,* Clean Air Act (CAA) sections 110(a)(2)(A) and (C); 40 CFR 51.112; *Train* v. *NRDC,* 421 U.S.

[1] As indicated above, the 1982, 1983, and 1999 Policies also address excess emissions provisions for startup and shutdown events. However, because our proposed action only addresses a malfunction provision—Utah's unavoidable breakdown rule—we are not including any further discussion of the Policies as they relate to startup and shutdown.

60, 78–79 (1975). Thus, the 1982 and 1983 Policies indicated that, because SIPs must provide for attainment and maintenance of the NAAQS, any SIP provisions addressing malfunctions must be narrowly drawn and should not provide a blanket exemption from compliance with emission limitations; all periods during which emissions exceed emission limitations ("excess emissions") should constitute violations under the SIP.

The 1982 and 1983 Policies stated that EPA could approve SIP revisions that incorporated an enforcement discretion approach as described in the Policies. This enforcement discretion approach envisioned commencement of a proceeding to notify the source of its violation and a demonstration by the source that the excess emissions, "though constituting a violation," were due to an unavoidable malfunction. Following the proceeding and consideration of specific criteria, the state agency would decide whether to pursue an enforcement action. The 1982 and 1983 Policies also advised that the state could choose not to include in the SIP any provision on malfunctions, which reflected the fact that the CAA does not require states to include in SIPs any form of relief for violations caused by malfunctions.

EPA understood that some malfunctions are unavoidable: "Generally, EPA agrees that the imposition of a penalty for sudden and unavoidable malfunctions caused by circumstances entirely beyond the control of the owner and/or operator is not appropriate." (1982 and 1983 Policies). However, EPA was also mindful of its duty under the CAA to protect the NAAQS:

"The rationale for establishing these emissions as violations, as opposed to granting automatic exemptions, is that SIPs are ambient-based standards and any emissions above the allowable may cause or contribute to violations of the national ambient air quality standards. Without clear definitions and limitations, these automatic exemption provisions could effectively shield excess emissions arising from poor operation and maintenance or design, thus precluding attainment. Additionally, by establishing an enforcement discretion approach and by requiring the source to demonstrate the existence of an unavoidable malfunction on the source, good maintenance procedures are indirectly encouraged." (1982 Policy.) [2]

The 1999 Policy reiterated EPA's interpretation that all periods of excess emissions should be considered violations. However, the 1999 Policy reflected our interpretation that a state could include a narrowly crafted affirmative defense provision in the SIP as an alternative to an enforcement discretion provision. Under this approach, a SIP could provide an affirmative defense to an enforcement action for penalties, but not to an action for injunctive relief. The Agency explained that because periods of excess emissions could undermine attainment and maintenance of the NAAQS and protection of prevention of significant deterioration (PSD) increments, an affirmative defense to an action for injunctive relief would not be appropriate.[3]

We also indicated in the 1999 Policy that we would not approve a rule that would bar EPA or citizen enforcement based on a state's decision to exercise its discretion not to pursue an enforcement action. EPA explained that such a rule would be inconsistent with the regulatory scheme established in Title I of the CAA.

Finally, the 1999 Policy noted that some SIPs had been approved that appeared to be in conflict with EPA's SSM policies. The Policy indicated that EPA Regional Offices should work with the states to ensure SIPs were consistent with EPA's interpretation of the Act's requirements.

Since the 1999 Policy was issued, EPA Region VIII has worked with states within the Region to ensure that their SIPs are consistent with EPA's interpretation of the Act as set forth in the 1982, 1983, and 1999 Policies.[4] Shortly after the 1999 Policy was issued, we advised Utah that its unavoidable breakdown rule was inconsistent with the CAA, and since that time, we have asked Utah several times to revise the rule. Among other things, the rule provides that "emissions resulting from an unavoidable breakdown will not be deemed a violation * * *"

Some version of the Utah unavoidable breakdown rule has been in the SIP for many years. In 1980, EPA approved a variation of the current Utah unavoidable breakdown rule. In the proposed rulemaking preamble, EPA stated that it could "not fully approve Regulation 4.7 because it exempts certain excess emissions from being violations of the Air Conservation Regulations," but then proposed to approve Utah's malfunction procedures because any exemptions granted by the Utah Executive Secretary "are not applicable as a matter of federal law." 44 FR 28688, 28691 (May 16, 1979). EPA's final approval of the regulation mirrored this concept. 45 FR 10761, 10763 (February 19, 1980). However, thirty years later, it is not clear how EPA reached the conclusion that exemptions granted by Utah would not apply as a matter of federal law or whether a court would honor EPA's interpretation; the Utah rule itself makes no reference to a reservation of federal authority. Instead, the rule merely states that information submitted by a source regarding a breakdown event would be "used by the executive secretary in determining whether a violation has occurred and/or the need of further enforcement action."

EPA approved a revised version of the rule in 1994 with no preamble discussion, except to say that the Utah air rules had been renumbered and new requirements had been added (59 FR 35036, July 8, 1994; 40 CFR 52.2320(c)(25)(i)(A)). The key aspects of the unavoidable breakdown rule remained the same.

Subsequently, Utah again re-numbered its entire SIP regulations, and EPA approved the re-numbered regulations, including the re-numbered unavoidable breakdown rule, to conform the federally-approved SIP to the numbering of Utah's regulations. (70 FR 59681 (October 13, 2005).) EPA did not consider the substance of the unavoidable breakdown rule in that action. Instead, EPA indicated that it was only approving the renumbering and that attempts to address problems in the rules were ongoing:

"By this action, EPA has reviewed the Utah Department of Air Quality's (UDAQ) SIP submittals and found that these SIP submittals only renumber and restructure UDAQ's rules. EPA has not reviewed the substance of these rules as part of this action; EPA approved these state rules into the SIP in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the State. The current version of UDAQ's rules does not contain substantive changes from the prior codification that we

[2] Even prior to the issuance of the 1982 and 1983 Policies, it was our interpretation that all excess emissions, regardless of cause, should be treated as violations so as to provide sources with the incentive to properly design their facilities in the first instance and to improve their operation and maintenance practices over time. See, e.g., 42 FR 58171 (November 8, 1977).

[3] In a 2009 decision, the United States Court of Appeals for the Tenth Circuit held that the policy was a "reasonable interpretation of the Clean Air Act." *Arizona Public Service Company* v. *EPA,* 562 F.3d 1116, 1129 (10th Cir. 2009). *See also Michigan Dept. of Environmental Quality* v. *EPA,* 230 F.3d 181 (6th Cir. 2000).

[4] For example, at our request, the State of Colorado revised its SIP provisions for SSM. We approved revised provisions in 2006 (71 FR 8958, February 22, 2006) and 2008 (73 FR 45879, August 7, 2008). At our request, the State of Wyoming revised its SIP provision for malfunctions. We approved the revised provision on April 16, 2010 (75 FR 19886). At our request, the State of North Dakota revised its SIP provision for malfunctions and submitted the revised provision to us on April 6, 2009. That provision is modeled on the Wyoming provision, and we intend to propose action on it shortly.

approved into the SIP. EPA acknowledges that there are ongoing discussions with Utah to address EPA's concerns with some rule language that EPA previously approved into the Utah SIP. In an April 18, 2002 letter from Richard Sprott, Director of Utah's Division of Air Quality, to Richard Long, Director of the Air and Radiation Program in EPA Region 8, UDAQ committed to work with us to address our concerns with the Utah SIP. Because the SIP submittals only restructure and renumber the existing SIP-approved regulations, contain no substantive changes, and UDAQ has committed to address EPA's concerns, we believe it is appropriate to propose to approve the submittal. Approving the restructured and renumbered Utah rules into the SIP will also facilitate future discussions on the rules. EPA will continue to require the State to correct any rule deficiencies despite EPA's approval of this recodification." (70 FR at 59683)

Over the years Utah personnel acknowledged that the unavoidable breakdown rule should be revised and committed to do so. For example, in a January 17, 2001 letter to EPA, Rick Sprott, then the Executive Director of the Utah Division of Air Quality (UDAQ), wrote the following:

"With respect to EPA's concern with the breakdown rule currently approved into Utah's SIP, UDAQ agrees that the rule would benefit from clarification."

Later, in an April 18, 2002 letter,[5] Mr. Sprott wrote the following:

"The Utah Division of Air Quality commits to work with EPA in good faith to develop approvable SIP revisions, which address the following issues:

* * *

8. Unavoidable breakdown rules and consistency with the EPA September 20, 1999 policy regarding such breakdowns."

In 2004, UDAQ staff drafted replacement rule language for the breakdown rule, consulted with EPA and other stakeholders, and initiated the State's public process for SIP revisions. EPA provided detailed comments regarding draft rule language and in January 2005 traveled to Utah to provide a detailed presentation to UDAQ and industry stakeholders regarding EPA's interpretations of the CAA and concerns regarding UDAQ's proposed replacement rule language.

Following the January 2005 meeting, Fred Nelson of the Utah Attorney General's Office prepared another draft of possible replacement rule language, which he shared with EPA and industry representatives. In May 2005, in an attempt to ensure that any rule revision could ultimately be approved by EPA, EPA provided specific comments and suggestions to Mr. Nelson regarding this draft. However, UDAQ did not pursue further rulemaking action at that time.

During the August 2, 2006 midyear review between UDAQ and EPA, the unavoidable breakdown rule was again discussed. Mr. Sprott indicated that he did not want to pursue further action on the unavoidable breakdown rule given the disagreement between Utah industry and EPA. However, he said he was aware that Colorado was in the process of revising its malfunction rule, that he would be happy to benefit from the Colorado process, and that if it concluded successfully, he would lead the effort to adopt a new rule in Utah. Mr. Sprott also said that while he wanted to complete a rule revision through a cooperative process, if it couldn't be done that way, EPA should do a SIP call. Although Colorado subsequently adopted a revised malfunction rule and we approved it into the SIP without challenge (73 FR 45879, August 7, 2008), we are unaware of any further steps taken by Utah to revise its unavoidable breakdown rule.

To assure that a state's SIP provides for attainment and maintenance of the NAAQS, and compliance with other CAA requirements, sections 110(a)(2)(H) and 110(k)(5) of the CAA authorize EPA to find that a SIP is substantially inadequate to attain or maintain a NAAQS, or comply with other CAA requirements, and to require ("call for") the state to submit, within a specified time period, a SIP revision to correct the inadequacy. This CAA requirement for a SIP revision is known as a "SIP call." The CAA authorizes EPA to allow a state up to 18 months to respond to a SIP call.

On September 3, 2009, WildEarth Guardians (WEG) filed a complaint against EPA in the U.S. District Court for the District of Colorado (Civil Action No. 09–cv–02109–MSK–KLM) seeking, among other things, an injunction requiring EPA to issue a SIP call to Utah to revise the unavoidable breakdown rule. On November 23, 2009, we entered into a Consent Decree with WEG that requires us to sign a notice of final rulemaking action by February 28, 2011. In that final rulemaking action we must determine whether the Utah breakdown provision (Utah Regulations 307–107–1 through 307–107–5) renders the Utah SIP "substantially inadequate" within the meaning of section 110(k)(5) of the CAA, 42 U.S.C. 7410(k)(5), and, if EPA determines that the SIP is substantially inadequate, require the State to revise the SIP as it relates to the Utah breakdown provision. We intend to meet the requirements of the Consent Decree through the rulemaking action we are initiating today.

III. Why is EPA proposing a SIP call?

Utah rule R307–107 contains various provisions that are inconsistent with EPA's interpretations regarding the appropriate treatment of malfunction events in SIPs and which render the Utah SIP substantially inadequate. As a result, we are calling for a SIP revision.

A. Deficiencies in R307–107–1

R307–107–1 indicates it applies to all regulated pollutants including those for which there are NAAQS and states that "emissions resulting from unavoidable breakdown will not be deemed a violation of these regulations." As described above, our interpretation of the CAA as expressed in our various policy statements since the early 1980s is that SIP provisions may not provide that periods of excess emissions are not violations.

We believe the Utah rule's broad exemption undermines the ability to protect the NAAQS, PSD increments, and visibility through enforcement of emission limits contained in the SIP. The Utah SIP contains generic emission limits that help areas maintain the NAAQS as well as emission limits specifically modeled and relied on to bring areas not attaining the NAAQS into attainment. *See, e.g.,* Utah rule R307–201 ("General Emission Standards") and Section IX.H.1 of the Utah SIP (contains emission limits for the Utah County PM10 nonattainment area SIP). Because the NAAQS are not directly enforceable against individual sources,[6] SIPs rely on the adoption and enforcement of these generic and specific emission limits to attain and maintain the NAAQS, as well as to protect PSD increments and meet other CAA requirements, such as protection of visibility in Class I areas.

In the case of an unavoidable breakdown, the rule's exemption eliminates any opportunity to obtain injunctive relief that may be needed to protect the NAAQS, increments, and visibility. Thus, the rule impedes the ability to protect public health and the environment. Furthermore, the rule's exemption reduces a source's incentive to design, operate, and maintain its facility to meet emission limits at all times.

We expect some commenters may assert that we need to show a direct causal link between unavoidable breakdown excess emissions and specific threats to or violations of the

[5] April 18, 2002 letter from Rick Sprott, UDAQ to Richard Long, EPA referred to as 15-point commitment letter.

[6] *See, e.g., Coalition Against Columbus Ctr.* v. *New York,* 967 F.2d 764, 769 (2d Cir. 1992); *League to Save Lake Tahoe, Inc.* v. *Trounday, 598* F.2d 1164, 1173 (9th Cir. 1979); 57 FR 32276, July 21, 1992.

NAAQS to conclude that the SIP is substantially inadequate. We do not agree. It is our interpretation that the fundamental integrity of the CAA's SIP process and structure are undermined if emission limits relied on to meet CAA requirements related to protection of public health and the environment can be violated without potential recourse. We do not believe we are restricted to issuing SIP calls only after a violation of the NAAQS has occurred or only where a violation can be directly linked to specific excess emissions. It is sufficient that emissions limits to which the unavoidable breakdown exemption applies have been, are being, and will be relied on to attain and maintain the NAAQS and meet other CAA requirements.[7]

Our interpretation of the CAA is supported by sections 110 and 302 of the CAA. Section 110(a)(2)(A) requires each SIP to include enforceable emission limitations necessary or appropriate to meet the CAA's applicable requirements. As noted above, these applicable requirements include attainment and maintenance of the NAAQS, prevention of significant deterioration, and improvement and protection of visibility in national parks and wilderness areas. Section 302(k) defines emission limitation as a requirement established by a state or EPA that "limits the quantity, rate, or concentration of emissions of air pollutants **on a continuous basis**." (Emphasis added.) Because of the exemption in R307–107–1, emission limits in the Utah SIP that have been relied on by the State to demonstrate attainment and maintenance of the NAAQS and meet other CAA requirements do not limit emissions on a continuous basis and are not fully enforceable.

R307–107–1 is also substantially inadequate because it applies to all regulated pollutants, not just NAAQS pollutants, and because it indicates that excess emissions from an unavoidable breakdown are not deemed a violation of "these regulations." "These regulations" includes the totality of Utah's air pollution control regulations, which include the regulations Utah has incorporated by reference to receive delegation of federal authority—for example, New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). *See* Utah rules R307–210 and R307–214. To the extent any exemptions with respect to malfunctions from these technology-based standards are warranted, the federal standards contained in EPA's regulations already specify the appropriate exemptions. *See, e.g.,* 40 CFR 60.48Da(c). No additional exemptions are warranted or appropriate. *See, e.g.,* 40 CFR 60.10(a); 40 CFR 63.12(a)(1); and the 1999 Policy, Attachment, page 3. Thus, R307–107–1 is substantially inadequate because it improperly provides an exemption not contained in and not sanctioned by the delegated federal standards.

Our interpretation, as it applies to both technology-based standards and SIP limits, is further supported by a 2008 U.S. Court of Appeals decision that vacated EPA's general malfunction exemption from CAA section 112(d) maximum achievable control technology (MACT) standards. *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), *cert. denied.* The court vacated the exemption because it was inconsistent with the CAA's requirement that emission standards—such as the 112(d) MACT standards—must apply continuously, as expressed in section 302(k) of the CAA. The court specifically held that a regulatory provision establishing a general duty to minimize hazardous air pollutant (HAP) emissions during malfunctions was not an emission standard under CAA section 112. Although the decision addressed the HAP program and not the SIP program, it carries significant weight for the SIP program as well because section 302(k) is equally relevant for the SIP program. R307–107–1's broad malfunction exemption from "these regulations" is inconsistent with section 302(k) as interpreted by the Court in *Sierra Club.*

As referenced in R307–107–1, "these regulations" would also include Utah's PSD and nonattainment major new source review (NSR) requirements. This means a source could use the provisions of R307–107 to claim an exemption from best available control technology (BACT) or lowest achievable emission rate (LAER) limits in a major source permit for excess emissions resulting from an unavoidable breakdown. We have consistently interpreted the Act to not allow for outright exemptions from BACT limits, and the same logic applies to LAER limits. *See, e.g.,* 1977 memorandum entitled "Contingency Plan for FGD Systems During Downtime as a Function of PSD," from Edward E. Reich to G.T. Helms and January 28, 1993 memorandum entitled "Automatic or Blanket Exemptions for Excess Emissions During Startup and Shutdowns under PSD," from John B. Rasnic to Linda M. Murphy. As noted, in order to ensure non-degradation of air quality at all times under the PSD program and protection of the NAAQS at all times, it is necessary for a source to comply with its permit limits at all times. This is another reason R307–107's exemption renders the Utah SIP substantially inadequate.

B. Deficiencies in R307–107–2

R307–107–2 requires the source to submit information regarding an unavoidable breakdown to the executive secretary of Utah's Air Quality Board (UAQB) and indicates that the information "shall be used by the executive secretary in determining whether a violation has occurred and/or the need of further enforcement action." In other words, the executive secretary shall determine whether the excess emissions were caused by an unavoidable breakdown and, thus, whether the excess emissions constitute a violation or not. This rule provision appears to give the executive secretary exclusive authority to determine whether excess emissions constitute a violation.[8] We believe this is inconsistent with the enforcement structure contemplated by the CAA. Specifically, the CAA provides authority to enforce violations of SIP and other CAA emission limits to EPA and citizens as well as to the states. Thus, the CAA provides EPA and citizens with authority to pursue a violation even if a state chooses not to. See sections 113 and 304 of the CAA. It is our interpretation, expressed in our 1999 Policy, that SIP provisions that give exclusive authority to a state to determine whether an enforcement action can be pursued for an exceedance of an emission limit are inconsistent

[7] The U.S. Court of Appeals for the Eleventh Circuit has recognized that a SIP call under CAA section 110(k)(5) is the appropriate mechanism for EPA to require a change to an existing SSM provision in a SIP: "EPA policy guidance cannot trump the SSM Rule adopted by Georgia and approved formally by the EPA * * * If the EPA believes that its current interpretation of the Clean Air Act requires Georgia to modify its SSM Rule, the EPA should require the state to revise its SIP to conform to EPA policy" (citing CAA section 110(k)(5)).

[8] As we noted earlier, in a 1980 approval of a predecessor to the current unavoidable breakdown rule, EPA indicated that EPA might not approve exemptions granted by the State and that the State's exemption would not apply as a matter of federal law. Thirty years later, we are not sanguine that a court would uphold our interpretation, or that five years from now, anyone will remember that interpretation. *See, e.g., U.S.* v. *Ford Motor Co.,* 736 F.Supp. 1539 (W.D. Mo. 1990) and *U.S.* v *General Motors Corp.,* 702 F.Supp. 133 (N.D. Texas 1988) (EPA could not pursue enforcement of SIP emission limits where states had approved alternative limits under procedures EPA had approved into the SIP.) While we do not agree with the holdings of these cases, we think the reasonable course is to eliminate any uncertainty about reserved enforcement authority by requiring the State to revise or remove the unavoidable breakdown rule from the SIP.

with the CAA's regulatory scheme. EPA and citizens, and any court in which they seek to file an enforcement claim, must retain the authority to independently evaluate whether a source's exceedance of an emission limit warrants enforcement action. Because a court could interpret section R307–107–2 as undermining the ability of EPA and citizens to independently exercise enforcement discretion granted by the CAA, it is substantially inadequate to comply with CAA requirements related to enforcement. Because it undermines the envisioned enforcement structure, attainment and maintenance of the NAAQS and compliance with other CAA requirements related to PSD, visibility, NSPS, and NESHAPS is less certain. Potential EPA and citizen enforcement provides an important safeguard in the event a state lacks resources or appropriate intention to enforce CAA violations. Thus, R307–107–2 renders the SIP substantially inadequate to attain or maintain the NAAQS or otherwise comply with the CAA.

C. Conclusion

For the reasons stated above, EPA is proposing to find, pursuant to sections 110(a)(2)(H) and 110(k)(5) of the CAA, that the Utah SIP is substantially inadequate to attain or maintain the NAAQS or to otherwise comply with the requirements of the CAA. Utah rule R307–107 improperly undermines EPA's, Utah's, and citizens' ability to enforce emission limitations that have been relied on in the SIP to ensure attainment and maintenance of the NAAQS or meet other CAA requirements. Pursuant to sections 110(a)(2)(H) and 110(k)(5) of the CAA, we are proposing to call for Utah to remove R307–107 from the SIP or revise it to be consistent with CAA requirements.

We are proposing that Utah must respond to our SIP call within 12 months of the effective date of a final rule issuing a SIP call. We think this is a reasonable amount of time for several reasons. First, Utah has been aware of our concerns for years. Utah previously initiated the State rulemaking process to address the SIP deficiencies but dropped its efforts when it couldn't achieve consensus. Second, industry and WildEarth Guardians' predecessor had extensive involvement in the development of the Colorado malfunction rule, which, as noted above, we approved in 2008. The Colorado malfunction rule is readily available online, and use of the Colorado rule as a template would give the UAQB a substantial head start in addressing the SIP deficiencies. Other examples of provisions that have been approved or promulgated by EPA for areas within the Region are also available. *See, e.g., https://yosemite.epa.gov/R8/R8Sips.nsf/641057911f6bd13987256b5f0054f380/722dcc2462e7856a87256ef3005f6d4f/$FILE/Ch%201%20Sect%205.pdf* (Wyoming air rules, Chapter 1, Section 5, approved at 75 FR 19886, April 16, 2010); 73 FR 21418, 21464, April 21, 2008. Third, another option to address the deficiencies is to simply remove R307–107 from the SIP. Under this option, no time would be needed to develop replacement SIP rule language.

IV. What happens if EPA issues a final SIP call and the State of Utah does not submit a complete SIP revision that responds to the SIP call or if EPA disapproves a SIP revision that responds to the SIP call?

If Utah fails to submit a complete SIP revision that responds to a final SIP call, CAA section 179(a) provides for EPA to issue a finding of State failure. Such a finding starts mandatory 18-month and 24-month sanctions clocks and a 24-month clock for promulgation of a federal implementation plan (FIP) by EPA. The two sanctions that apply under CAA section 179(b) are the 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment new source review program and restrictions on highway funding. However, section 179 leaves it up to the Administrator to decide the order in which these sanctions apply. EPA issued an order of sanctions rule in 1994 (59 FR 39832, August 4, 1994, codified at 40 CFR 52.31) but did not specify the order of sanctions where a state fails to submit or submits a deficient SIP in response to a SIP call. However, the order of sanctions specified in that rule (40 CFR 52.31) should apply here for the same reasons discussed in the preamble to that rule. Thus, if EPA issues a final SIP call and Utah fails to submit the required SIP revision, or submits a revision that EPA determines is incomplete or that EPA disapproves, EPA proposes that the 2-to-1 emission offset requirement will apply for all new sources subject to the nonattainment new source review program 18 months following such finding or disapproval unless the State corrects the deficiency before that date. EPA proposes that the highway funding restrictions sanction will also apply 24 months following such finding or disapproval unless the State corrects the deficiency before that date. EPA is also proposing that the provisions in 52.31 regarding staying the sanctions clock and deferring the imposition of sanctions would also apply.

Mandatory sanctions under section 179 generally apply only in nonattainment areas. By its definition, the emission offset sanction applies only in areas required to have a part D NSR program, typically areas designated nonattainment.[9] Section 179(b)(1) expressly limits the highway funding restriction to nonattainment areas. Additionally, EPA interprets the section 179 sanctions to apply only in the area or areas of the State that are subject to or required to have in place the deficient SIP and for the pollutant or pollutants the specific SIP element addresses. In this case, mandatory sanctions would apply in all areas designated nonattainment for a NAAQS within the State because Utah rule R307–107 applies statewide and applies for all NAAQS pollutants.

EPA has additional authority to impose discretionary sanctions under CAA section 110(m). EPA's authority to impose sanctions under section 110(m) is triggered by the same findings that trigger the mandatory imposition of sanctions. However, under section 110(m), EPA may impose sanctions more quickly than provided under the mandatory sanction provision and may also impose them in a broader area. Specifically, under section 110(m), EPA may impose sanctions "any time" after it has made a finding of deficiency or disapproved a SIP. In addition, EPA may impose the sanctions with respect to "any portion of the State the Administrator determines reasonable and appropriate." Finally, although imposition of the 2-to-1 offset sanction is still limited by its terms to areas with part D NSR programs, the highway funding restrictions can be applied in areas designated as attainment or unclassifiable as well as those designated nonattainment. *See* 59 FR 1476 (January 11, 1994); 40 CFR 52.30(d)(2). EPA may determine whether or not to use this authority in response to a SIP failure, and, thus, they are termed discretionary sanctions.

Because only limited portions of the State are designated nonattainment, the mandatory sanctions would not be applicable in all areas of the State that are covered by the rule we have proposed is deficient. EPA is requesting comment on whether to exercise its discretionary authority to impose the highway funding restrictions sanction in all areas of the State, regardless of

[9] An exception to this, not relevant here, is areas located in the Ozone Transport Region, which are required to have a part D NSR program regardless of the area's designation. See CAA section 184(b)(2).

designation, if it finalizes this proposed SIP call and the State fails to submit a complete SIP revision or EPA disapproves such revision. If EPA were to impose discretionary sanctions, EPA proposes that the same 24-month clock would apply to the highway funding sanction as would apply under the mandatory sanctions.

In addition to sanctions, if EPA finalizes this SIP call and then finds that the State failed to submit a complete SIP revision that responds to the SIP call or disapproves such revision, the requirement under section 110(c) would be triggered that EPA promulgate a FIP no later than two years from the date of the finding or the disapproval if the deficiency has not been corrected.

V. Proposed Action

EPA is proposing that the Utah SIP is substantially inadequate to attain or maintain the NAAQS or to otherwise comply with requirements of the CAA due to significant deficiencies created by Utah's unavoidable breakdown rule, R307–107. Pursuant to CAA sections 110(a)(2)(H) and 110(k)(5), EPA is proposing to require that Utah revise the SIP to correct the inadequacies and submit the revised SIP to EPA within 12 months of the effective date of a final rule finding the SIP substantially inadequate. EPA is proposing that mandatory sanctions under CAA section 179 would apply as provided in 40 CFR 50.31 should Utah not submit a complete SIP consistent with a final SIP call requirement or should EPA disapprove any such submission. EPA is also requesting comment on whether EPA should exercise its discretionary authority under section 110(m) to impose highway funding restrictions in all areas of the State if 24 months after a sanctions clock has been triggered, the State has still not corrected the deficiency that triggered the sanctions clock.

We are soliciting comments on these proposed actions. Final rulemaking will occur after consideration of any comments.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

This proposed action would only require the State of Utah to revise UAC R307–107 to address requirements of the CAA. Accordingly, the Administrator certifies that this proposed action would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this proposed action would not impose any requirements on small entities.

Since the only costs of this action would be those associated with preparation and submission of the SIP revision, EPA has determined that this proposed action would not include a Federal mandate that may result in expenditures of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector in any one year. Accordingly, this proposed action is not subject to the requirements of sections 202 or 205 of the unfunded mandates reform act (UMRA).

In addition, since the only regulatory requirements of this proposed action would apply solely to the State of Utah, this action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

Since this proposed action would impose requirements only on the State of Utah, it also does not have tribal implications. It would 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This proposed action also does not have Federalism implications because it would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it would simply maintain the relationship and the distribution of power and responsibilities between EPA and the states as established by the CAA. This proposed SIP call is required by the CAA because EPA believes the current SIP is substantially inadequate to attain or maintain the NAAQS or comply with other CAA requirements. Utah's direct compliance costs would not be substantial because the proposed SIP call would require Utah to submit only those revisions necessary to address the SIP deficiencies and applicable CAA requirements.

EPA interprets Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it would not establish an environmental standard, but instead would require Utah to revise a state rule to address requirements of the CAA.

Section 12 of the National Technology Transfer and Advancement Act of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with the National Technology Transfer and Advancement Act, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. In making a finding of a SIP deficiency, EPA's role is to review existing information against previously established standards. In this context, there is no opportunity to use VCS. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This proposed action would not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), since it would only require the State of Utah to revise UAC R307–107 to address requirements of the CAA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 10, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2010–29237 Filed 11–18–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 75, No. 223

Friday, November 19, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 15, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: Food Donation Programs (Food for Progress & Section 416(b) and McGovern-Dole International Food for Education and Child Nutrition Program).

OMB Control Number: 0551–0035.

Summary of Collection: The U.S. Department of Agriculture's Foreign Agricultural Service (FAS) provide U.S. agricultural commodities to feed millions of hungry people in needy countries through direct donations and concessional programs. USDA Food aid may be provided through four program authorities: Food for Progress; Section 416(b); the McGovern-Dole International Food for Education and Child Nutrition Program; and Public Law 480 (Pub. L. 480). The authorities to collection information for these programs are under 7 CFR part 1499, Foreign Donation Programs and 7 CFR part 1599, McGovern-Dole International Food for Education and Child Nutrition Program.

Need and Use of the Information: FAS will collect information from the Cooperating Sponsor to determine its ability to carry out a food aid program, to establish the terms under which the commodities will be provided, to monitor the progress of commodity distribution (including how transportation is procured), to monitor the progress of expenditure of monetization funds, and to evaluate both the program's success and the participant's effectiveness in meeting the agreed upon goals. Information is also collected from ship owners/brokers shipping the commodity to its destination.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 232.

Frequency of Responses: Recordkeeping; Reporting: Semi-annually; Quarterly.

Total Burden Hours: 141,989.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–29161 Filed 11–18–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 15, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Noninsured Crop Disaster Assistance Program.

OMB Control Number: 0560–0175.

Summary of Collection: The Noninsured Crop Assistance Program (NAP) is authorized under 7 U.S.C. 7333

and implemented under regulations issued at 7 CFR Part 1437. The NAP is administered under the general supervision of the Executive Vice-President of the Commodity Credit Corporation (CCC) (who also serves as Administrator, Farm Service Agency (FSA)), and is carried out by the FSA State and County committees. NAP is intended to reduce financial losses that occur when natural disasters cause a catastrophic loss of production or prevented planting of an eligible crop by providing coverage equivalent to the catastrophic risk protection level of Federal Crop Insurance. NAP provides assistance for losses of floriculture, ornamental nursery, Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea oats and sea grass, and industrial crops. FSA will collect information using several forms.

Need and Use of the Information: The information collected is necessary to determine whether a producer and crop or commodity meet applicable conditions for assistance and to determine compliance with existing rules. Producers must annually: (1) Request NAP coverage by completing an application for coverage and paying a service fee by the CCC-established application closing date; (2) file a current crop-year report of acreage for the covered crop or commodity; and (3) certify production of each covered crop or commodity. The information collected allows CCC to provide assistance under NAP for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under 7 U.S.C. Section 1508 is not available, and that are produced for food or fiber. If information is not collected FSA will not be able to identify and determine eligible participants and crops being planted or produced, or provide assistance to agricultural producers who as a result of natural disaster have suffered catastrophic losses of agricultural crops or commodities.

Description of Respondents: Farms.

Number of Respondents: 291,500.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Monthly; Annually.

Total Burden Hours: 2,119,280.

Farm Service Agency

Title: 7 CFR 766, Direct Loan Servicing—Special.

OMB Control Number: 0560–0233.

Summary of Collection: Authority to establish the regulatory requirements contained in 7 CFR 766 is provided under 5 U.S.C. 301 which provides that "The head of an Executive department or military department may prescribe regulations for the government of his department, the distribution and performance of its business * * *" The Secretary delegated authority to administer the provisions of the Act applicable to the Farm Loan Program (FLP) to the Under Secretary for Farm and Foreign Agricultural Service in section 2.16 of 7 CFR part 2. FLP provides loans to family farmers to purchase real estate equipment and finance agricultural production. The regulations covered by this information collection package describes the policies and procedures for the Farm Service Agency's (FSA) servicing of financially distressed or delinquent direct loan borrowers in accordance with the provisions of the Consolidated Farm and Rural Development Act (Act) (Pub. L. 87–128), as amended. FSA's loan servicing options include disaster set-aside, primary loan servicing (including reamortization, rescheduling, deferral, write down and conservation contracts), buyout at market value, and homestead protection.

Need and Use of the Information: Information collections are submitted by FLP direct loan borrowers to the local FSA office serving the country in which their business is headquartered. The collected information is necessary to evaluate a borrower's request for consideration of the special servicing actions.

Description of Respondents: Individuals or households; Business or other for-profit; Farms.

Number of Respondents: 14,505.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 15,236.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–29162 Filed 11–18–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0092]

Notice of Revision and Request for Extension of Approval of an Information Collection; Johne's Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise an information collection associated with the interstate movement of animals affected with Johne's disease and to request extension of approval of the information collection to protect the U.S. animal population.

DATES: We will consider all comments that we receive on or before January 18, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0092* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0092, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0092.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on the interstate movement of animals affected with Johne's Disease, contact Dr. Michael Carter, Assistant Director, Ruminant Health Programs, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737; (301) 734–4914. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Johne's Disease.

OMB Number: 0579–0338.

Type of Request: Revision and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection

Service (APHIS) is authorized, among other things, to prevent the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. In support of this mission, Veterinary Services (VS), APHIS, prohibits or restricts the interstate movement of livestock that have, or have been exposed to, certain diseases.

Johne's disease, also known as paratuberculosis, is caused by *Mycobacterium avium* subspecies *paratuberculosis* and primarily affects cattle, sheep, goats, and other domestic, exotic, and wild ruminants. The disease is a chronic and contagious enteritis that results in progressive wasting and eventual death. It is nearly always introduced into a healthy herd by an infected animal that is not showing symptoms of the disease.

The regulations in 9 CFR, chapter I, subchapter C, govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States. Subchapter C, part 71, contains general provisions for the interstate movement of animals, poultry, and their products, while part 80 pertains specifically to the interstate movement of domestic animals that are positive to an official test for Johne's disease.

These regulations provide that cattle, sheep, goats, and other domestic animals that are positive to an official test for Johne's disease may generally be moved interstate only to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment. Supplementing the regulations are standards outlined in the document, "Uniform Program Standards for the Voluntary Bovine Johne's Disease Control Program" (VBJDCP). The voluntary, cooperative program is administered by the States and supported by industry and APHIS.

As part of the Agency's efforts to protect the U.S. animal population and prevent the interstate spread of Johne's disease, VS uses certain information collection activities, including Johne's Disease Control Program Annual Reports (VS Form 4–29), quarterly reports, Johne's Vaccination Records (VS Forms 4–27 and 4–27A), VBJDCP test records (VS Forms 4–30 and 4–30A), Herd Enrollment forms (VS Form 4–28), Risk Assessment and Herd Management for Dairy Cattle forms (VS Form 4–32), Risk Assessment and Herd Management for Beef Cattle forms (VS Form 4–35), owner-shipper statements (VS Form 1–27), and official eartags.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

This information collection includes information collection requirements currently approved by OMB control numbers 0579–0148, "Johne's Disease in Domestic Animals; Interstate Movement," and 0579–0338, "Voluntary Bovine Johne's Disease Control Program." After OMB approves and combines the burden for both collections under a single collection titled "Johne's Disease" (0579–0338), the Department will retire number 0579–0148.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.57767189 hours per response.

Respondents: State animal health officials; State personnel performing VBJDCP activities; herd owners; producers; livestock shippers; Johne's-certified veterinarians; and accredited veterinarians.

Estimated annual number of respondents: 9,125.

Estimated annual number of responses per respondent: 7.244387.

Estimated annual number of responses: 66,105.

Estimated total annual burden on respondents: 38,187 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, November 15, 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–29254 Filed 11–18–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0106]

Notice of Request for Extension of Approval of an Information Collection; South American Cactus Moth; Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request extension of approval of an information collection associated with regulations for the interstate movement of regulated articles to prevent the spread of South American cactus moth.

DATES: We will consider all comments that we receive on or before January 18, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2010–0106* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2010–0106, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2010–0106.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information on regulations for the interstate movement of regulated articles to prevent the spread of South American cactus moth, contact Dr. Robyn Rose, Program Manager, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737; (301) 734–7121. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: South American Cactus Moth; Quarantine and Regulations.

OMB Number: 0579–0337.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture, either independently or in cooperation with States, may carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests that are new to or not widely distributed within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, which administers regulations to implement the PPA.

In accordance with the regulations in "Subpart—South American Cactus Moth" (§§ 301.55 through 301.55–9), APHIS restricts the interstate movement of cactus moth host material, including nursery stock and plant parts for consumption, from infested areas of the United States to help prevent the artificial spread of South American cactus moth into noninfested areas of the United States. The regulations contain requirements for the interstate movement of regulated articles and involve information collection activities, including compliance agreements (PPQ Form 519), limited permits (PPQ Form 530), and certificates (PPQ Form 540).

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.32352 hours per response.

Respondents: State plant health officials.

*Es*timated annual number of respondents: 6.

Estimated annual number of responses per respondent: 5.6666.

*Es*timated annual number of responses: 34.

Estimated total annual burden on respondents: 11 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC on November 15, 2010.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–29251 Filed 11–18–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Coconino Resource Advisory Committee will meet in Flagstaff, Arizona, to discuss proposal criteria, voting procedures, meeting dates, proposal deadlines, and various operating guideline protocols. No proposals will be heard at this meeting.

DATES: The meeting will be held December 17, 2010, beginning at 12 p.m. to approximately 4 p.m.

ADDRESSES: The meeting will be held in the Ponderosa Room of the Coconino County Health Department, 2625 N. King St., Flagstaff, Arizona 86004. Send written comments to Brady Smith, RAC Coordinator, Coconino Resource Advisory Committee, c/o Forest Service, USDA, 1824 S. Thompson St., Flagstaff, Arizona 86001 or electronically to *bradysmith@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Brady Smith, Coconino National Forest, (928) 527–3490.

SUPPLEMENTARY INFORMATION: Agenda items for this meeting include (1) Membership changes; (2) Caucus breakout and discussion; (3) Calendaring for future meetings and deadlines for proposals. The meeting is open to the public.

Dated: November 15, 2010.

M. Earl Stewart,

Forest Supervisor, Coconino National Forest.

[FR Doc. 2010–29243 Filed 11–18–10; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice—AMENDED

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, November 19, 2010; 8:45 a.m. EST.

PLACE: 624 Ninth Street, NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. Program Planning

- Approval of New Black Panther Party Enforcement Report
- Motion Regarding Healthcare Disparities Report Commissioner Statements & Rebuttals
- Consideration of Findings and Recommendations for Briefing Report on English-Only in the Workplace
- Update on FY 2011 Cy Pres Enforcement Report & Consideration of Project Outline and Discovery Plan
- Consideration of Policy on Commissioner Statements and Rebuttals
- Discussion of Possible Briefing Topics for FY 2011
- Update on Status of Briefing on Disparate Impact in School Discipline Policies
- Update on Sex Discrimination in Liberal Arts College Admissions—Some of the discussion of this agenda item may be held in closed session

- Update on Clearinghouse Project

III. State Advisory Committee Issues
- Kentucky SAC
- Maryland SAC
- Vermont SAC
- Wisconsin SAC
- Update on Status of Remaining SACs to Recharter

IV. Management & Operations
- Expiration of Commissioner Terms

V. Approval of Minutes of October 8 Meeting

VI. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. TDD: (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. TDD: (202) 376–8116.

Dated: November 17, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–29347 Filed 11–17–10; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: NTIA Broadband Technology Opportunities Program Post-Award Quarterly and Annual Performance Progress Reports.

OMB Control Number: 0660–0037.

Form Number(s): None.

Type of Request: Regular submission (revision and extension of a currently approved information collection).

Burden Hours:

Infrastructure and Comprehensive Community Infrastructure Reports (Quarterly and Annually)

Number of Respondents: 123.

Estimated Number of Responses per Respondent: 5.

Estimated Number of Responses: 615.

Average Burden Hours per Response: 4.80.

Estimated Total Annual Burden Hours: 2,952.

Public Computer Center Reports (Quarterly and Annually)

Number of Respondents: 65.

Estimated Number of Responses per Respondent: 5.

Estimated Number of Responses: 325.

Average Burden Hours per Response: 4.1.

Estimated Total Annual Burden Hours: 1,333.

Sustainable Broadband Adoption Application Reports (Quarterly and Annually)

Number of Respondents: 45.

Estimated Number of Responses per Respondent: 5.

Estimated Number of Responses: 225.

Average Burden Hours per Response: 3.78.

Estimated Total Annual Burden Hours: 851.

Need and Uses: NTIA collects performance progress information specific to Infrastructure and Comprehensive Community Infrastructure, Public Computer Center, and Sustainable Broadband Adoption BTOP grant recipients in order to effectively monitor, manage and evaluate individual projects and the overall success of the program in achieving statutory goals and objectives. Quarterly performance progress reports ask a series of questions that broadly address project progress and monitoring needs of program personnel by obtaining actual information on quarterly and cumulative project and milestone progress, and potential project barriers, if any. Annual performance progress reports ask a series of questions that broadly address BTOP programmatic objectives and outcomes, program compliance requirements, and the information needs of external audiences, such as OMB.

Affected Public: Businesses or other for-profit organizations; not-for-profit institutions; and State, local, or Tribal government organizations.

Frequency: Quarterly and annually.

Respondent's Obligation: Required to retain benefits.

OMB Desk Officer: Nicholas Fraser, (202) 395–5887.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nicholas Fraser, OMB Desk Officer, FAX number (202) 395–5806, or via the Internet at *Nicholas_A_Fraser@omb.eop.gov.*

Dated: November 15, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–29157 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Vessel Monitoring System and Pre-Trip Reporting Requirements.

OMB Control Number: 0648–0498.

Form Number(s): NA.

Type of Request: Regular submission (renewal of an existing information collection).

Number of Respondents: 5.

Average Hours per Response: Vessel monitoring system (VMS) installation, 4 hours; VMS annual maintenance, 2 hours; pre-trip notification, 5 minutes.

Burden Hours: 17.

Needs and Uses: This submission is for renewal of an existing information collection. Owners of vessels that fish out of West Coast ports for highly migratory species (HMS) such as tuna, billfish, and sharks are required to submit information in regards to their planned fishing activities. The information will enable the various local, national, and regional entities to effectively manage and enforce fisheries targeting transboundary HMS stocks as part of the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for HMS (developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act). This information collection addresses vessel monitoring systems (VMS) requirements and observer pre-trip notifications. The information is pertinent for the basic monitoring of the fishery and to obtain information needed by, among other agencies, National Marine Fisheries Service (NMFS), the United States (U.S.) Coast Guard, the Pacific Fishery Management

Council, and the Interamerican Tropical Tuna Commission to monitor the activities of the participating vessels and the performance of the fisheries. Knowing near real-time VMS position information for U.S. West Coast-based HMS fishing vessels enables effective monitoring of vessel activity for enforcement and assessment purposes. VMS units also provide confirmation of reported vessel fishing activity locations and can help in validation of logbook records accuracy. The requirements also generate information for evaluating the magnitude and distribution of impacts from any changes in regulations that might occur in the future. Observer pre-trip notifications allow for the timely placement of at-sea observers onboard vessels at the discretion of the NMFS to collect information on, among other things, bycatch and protected species interactions.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: November 15, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–29184 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Reporting of Sea Turtle Entanglement in Fishing Gear or Marine Debris

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 18, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kate Sampson, (978) 282–8470 or *kate.sampson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This notice is for renewal of a currently approved collection.

This collection of information involves sea turtles becoming accidentally entangled in active or discarded fixed fishing gear or marine debris. These entanglements may prevent the recovery of endangered and threatened sea turtle populations. The National Marine Fisheries Service (NMFS) Northeast Region (Maine to Virginia) has established the Sea Turtle Disentanglement Network to promote reporting and increase successful disentanglement of sea turtles. This Network is made up of sea turtle stranding network organizations, as well as federal, state, and municipal agencies. NMFS relies on the Network and opportunistic reports from fishermen and recreational boaters for information about entangled turtles. The information provided will help NMFS better assess the threat of sea turtle entanglement in vertical lines from fixed gear fisheries (lobster, whelk/conch, crab, fish trap, gill net), discarded gear and marine debris.

II. Method of Collection

Reports are made by telephone, fax, standard mail or e-mail.

III. Data

OMB Control Number: 0648–0496.

Form Number: None.

Type of Review: Regular submission (renewal of a currently approved collection).

Affected Public: Business or other for profit organizations, individuals or households, not-for-profit institutions, federal government, and state, local or tribal government.

Estimated Number of Respondents: 45.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 45.

Estimated Total Annual Cost to Public: $675.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 16, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–29225 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–503, C–351–504, A–122–503, A–570–502]

Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China: Continuation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce ("the Department") that revocation of the antidumping duty ("AD") orders on certain iron construction castings ("castings") from Brazil, Canada, and the People's Republic of China ("PRC") would likely lead to continuation or recurrence of dumping, that revocation of the countervailing duty ("CVD") order on castings from Brazil would likely lead to continuation or recurrence of a countervailable subsidy, and the

determinations by the International Trade Commission ("ITC") that revocation of these AD and CVD orders would likely lead to a continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of continuation of these AD and CVD orders.

DATES: *Effective Date:* November 19, 2010.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten (AD orders) or Christopher Hargett (CVD order), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1690 or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2010, the Department initiated and the ITC instituted the third sunset reviews of the AD orders on castings from Brazil, Canada, and the PRC and the CVD order on castings from Brazil, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), respectively. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 23240 (May 3, 2010). As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would be likely to lead to continuation or recurrence of subsidization, and the Department notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders to be revoked. *See Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 75 FR 54595 (September 8, 2010), and *Final Results of Expedited Sunset Review: Heavy Iron Construction Castings from Brazil,* 75 FR 54596 (September 8, 2010).

On November 2, 2010, the ITC determined that revocation of the AD orders on castings from Brazil, Canada, and the PRC and the CVD order on castings from Brazil would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. *See Iron Construction Castings From Brazil, Canada, and China; Determinations,* 75 FR 67395 (November 2, 2010), and USITC Publication 4191 (October 2010) entitled *Iron Construction Castings From Brazil, Canada, and China* (Investigation Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Third Review)).

Scope of the Orders

The merchandise covered by the AD orders is as follows:

Brazil—Certain iron construction castings from Brazil, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule ("HTS") item number 7325.10.0010; and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, classifiable as light castings under HTS item number 7325.10.0050. The HTS item numbers are provided for convenience and customs purposes only. The written product description remains dispositive.

Canada—Certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, clean-out covers, and frames used for drainage or access purposes for public utility, water and sanitary systems, classifiable as heavy castings under HTS item number 7325.10.0010. The HTS item number is provided for convenience and customs purposes only. The written product description remains dispositive.

PRC—Certain iron construction castings from the PRC, limited to manhole covers, rings and frames, catch basin grates and frames, cleanout covers and drains used for drainage or access purposes for public utilities, water and sanitary systems; and valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. This merchandise is currently classifiable under HTS item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

The merchandise subject to the CVD order consists of certain heavy iron construction castings from Brazil. The merchandise is defined as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames used for drainage or access purposes for public utility, water and sanitary systems. The merchandise is currently classified under HTS item number 7325.10.00. The HTS item number is provided for convenience and customs purposes. The written product description remains dispositive.

Determinations

As a result of the determinations by the Department and the ITC that revocation of these AD and CVD orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD orders on castings from Brazil, Canada, and the PRC and the CVD order on castings from Brazil. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year reviews of these orders not later than October 2015.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: November 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–29265 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 14, 2010 the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping order on polyethylene terephthalate film, sheet and strip (PET film) from the Republic of Korea (Korea). *See Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 40784 (July 14, 2010) (*Preliminary Results*). This review covers one manufacturer/exporter of the subject merchandise to the United States, Kolon Industries, Inc. (Kolon).

The period of review (POR) is June 1, 2008, through May 31, 2009.

Based on our analysis of the comments received, we have made changes in the margin calculation for Kolon. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin is listed below in the section entitled "Final Results of Review."

DATES: *Effective Date:* November 19, 2010.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5604 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers one manufacturer/exporter of the subject merchandise, Kolon. On July 14, 2010, the Department published in the **Federal Register** the preliminary results of the June 1, 2008, through May 31, 2009, administrative review of the antidumping order on PET film from Korea. *See Preliminary Results.*

We invited interested parties to comment on the preliminary results of review. On August 13, 2010, we received comments from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc. and Toray Plastics (America), Inc. (collectively petitioners) and Kolon. On August 18, 2010, we received rebuttal comments from Kolon. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

Imports covered by this order are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches (0.254 micrometers) thick.

PET film is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 3920.62.00. The HTSUS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case briefs submitted by Kolon and petitioners are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated November 12, 2010, which is adopted by this notice. A list of issues which parties have raised is in the Decision Memorandum and is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum which is on file in the Central Records Unit, Room 7046, of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn.* The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations which are discussed in the relevant sections of the Decision Memorandum and the Memorandum to the File, "Analysis of Data Submitted by Kolon Industries, Inc. (Kolon) for the Final Results of Polyethylene Terephthalate Film, Sheet, and Strip from Korea (A–580–807)", dated November 12, 2010.

Specifically, we have made the following changes to the margin calculation:

- We revised Kolon's general and administrative expense ratio to (1) exclude from the numerator a reported gain on the sale of land; and (2) offset the denominator by the reported scrap revenue sold during the POR.
- We also corrected clerical errors identified by Kolon which relate to SAS programming language in the U.S. Margin Program. In particular, we modified the U.S. Margin Program to reflect numeric values for certain product characteristics originally assigned a character value in the *Preliminary Results.*

Final Results of Review

We determine that the following weighted-average margin percentage exists for the period June 1, 2008, through May 31, 2009:

Manufacturer/exporter	Margin
Kolon Industries, Inc	*de minimis* (0.28 percent).

Assessment

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review. For assessment purposes, where possible, we calculated importer-specific (or customer-specific) *ad valorem* assessment rates for PET film from Korea based on the ratio of the total amount of the dumping duties calculated for the examined sales to the total entered value of those same sales. *See* 19 CFR 351.212(b). However, where Kolon did not report the entered value for its sales, we will calculate importer-specific (or customer-specific) per unit duty assessment rates. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) Because the rate for Kolon is *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for Kolon; (2) if the exporter is not a firm covered in this review or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all-others rate of 21.50 percent from the LTFV investigation. *See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Determination of Antidumping Duty Investigation,* 62 FR 50557 (September 26, 1997).

Notification to Interested Parties

The Department will disclose calculations performed in connection with the final results of review within five days of the date of publication of

this notice in accordance with 19 CFR 351.224(b).

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/disposition of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with section 751(a)(1) and 777(i) of the Act.

Dated: November 12, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—Comments in Decision Memo

Comment 1: Clerical Error
Comment 2: Kolon's Profit Ratios
Comment 3: G&A Expense Ratio (Gain on Sale of Land)
Comment 4: G&A Expense Ratio (Calculation of the Denominator)
Comment 5: U.S. Indirect Selling Expenses
Comment 6: Domestic Inland Freight
Comment 7: Offsetting of Negative Margins

[FR Doc. 2010–29271 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA018

Eastern North Pacific Gray Whale; Notice of Extension of Public Comment Period on Marine Mammal Protection Act Petition

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notification of availability; extension of public comment period.

SUMMARY: On November 9, 2010, NMFS announced receipt of a petition to designate the Eastern North Pacific population of gray whales (*Eschrichtius robustus*) as a depleted stock under the Marine Mammal Protection Act (MMPA) and solicited comments on the petition. NMFS is extending the public comment period on the petition until December 8, 2010.

DATES: Comments must be received by close of business on December 8, 2010.

ADDRESSES: A copy of the petition may be requested from Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

You may submit comments, identified by 0648–XA018, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* 301–713–0376, Attn: Chief, Marine Mammal and Sea Turtle Conservation Division.
- *Mail:* Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

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: Dr. Shannon Bettridge or Dr. Gregory Silber, Office of Protected Resources, Silver Spring, MD, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Interested persons may obtain the petition for review on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/* or by contacting Dr. Shannon Bettridge or Dr. Gregory Silber (*see* **FOR FURTHER INFORMATION CONTACT**).

The 2008 stock assessment report for Eastern North Pacific gray whales is available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2008whgr-en.pdf.* The Draft 2010 stock assessment report for Eastern North Pacific gray whales is available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010_draft.pdf.*

Background

The MMPA provides for interested parties to submit a petition to designate a population stock of marine mammals as depleted. Section 115(a)(3) of the MMPA (16 U.S.C. 1383b(a)(3)) requires NMFS to publish a notice in the **Federal Register** that such a petition has been received and is available for public review. Within 60 days of receiving a petition, NMFS must publish a finding in the **Federal Register** as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

On November 9, 2010, NMFS published a notice announcing receipt of a petition to designate the Eastern North Pacific population of gray whales (*Eschrichtius robustus*) as a depleted stock under the Marine Mammal Protection Act (MMPA) and solicited comments on the petition (75 FR 68756). That **Federal Register** notice began NMFS' 15-day public comment period ending on November 24, 2010. NMFS received the petition on October 21, 2010, and therefore must publish its 60-day finding no later than December 20, 2010.

NMFS subsequently received a request by the petitioners, the California Gray Whale Coalition, to extend the public comment period by 15 days to provide interested parties additional time to review the petition, compile additional materials, and prepare comments for submission to the agency. Since then, NMFS has received other requests to extend the public comment period. In this notice NMFS is extending the public comment period until December 8, 2010, to allow adequate time for the public to review and comment on the petition while allowing the agency sufficient time to thoughtfully consider public comments. To provide a more extended public comment period would preclude NMFS from meeting its statutory requirements under the MMPA to provide a determination within 60 days.

Dated: November 16, 2010.

David Cottingham,

Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–29259 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA047–1

South Atlantic Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council will hold a meeting of its Spiny Lobster Committee, Personnel Committee (Closed Session), King and Spanish Mackerel Committee, Ecosystem-Based Management Committee, Golden Crab Committee, Southeast Data, Assessment, and Review (SEDAR) Committee (a portion of the meeting will be closed), Joint Executive and Finance Committees, Standard Operating, Policy and Procedures (SOPPs) Committee, Snapper Grouper Committee, and a meeting of the Full Council. The Council will take action as necessary.

The Council will also hold an informal public question and answer session, a public comment session regarding agenda items, and public comment on Regulatory Amendment 10. See **SUPPLEMENTARY INFORMATION** for additional details.

DATES: The meeting will be held December 6–10, 2010. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton New Bern/Riverfront, 100 Middle Street, New Bern, NC 28562; Telephone: 1–800/326–3745 or 252/638–3585; Fax 252/638–8112. Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843/571–4366 or toll free at 866/SAFMC–10; fax: 843/769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. Spiny Lobster Committee: December 6, 2010, 1:30 p.m. Until 4:30 p.m.

The Spiny Lobster Committee will review the SEDAR Spiny Lobster Update regarding the stock status and review recommendations from the Science and Statistical Committee (SSC). The Committee will continue to review actions for Amendment 10 to the joint Fishery Management Plan (FMP) for Spiny Lobster for Gulf of Mexico and South Atlantic. Amendment 10 will address the requirements of the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSA) including establishment of Annual Catch Limits (ACLs) and Accountability Measures (AMs). The Committee will provide direction to staff and approve Amendment 10 and the Draft Environmental Impact Statement (DEIS) for public hearings.

2. Personnel Committee Meeting: December 6, 2010, 4:30 p.m. Until 5:30 p.m. (Closed Meeting)

The Personnel Committee will receive an update on staff positions and provide a performance review for the Executive Director.

3. Mackerel Committee Meeting: December 7, 2010, 8:30 a.m. Until 12 Noon

The Mackerel Committee will continue to review actions for draft Amendment 18 to the FMP for Coastal Migratory Pelagic Resources for the Gulf of Mexico and South Atlantic Region. Amendment 18 addresses requirements of the MSA to set ACLs and AMs for species managed in the FMP. The Committee will review the draft amendment and Environmental Assessment, provide direction to staff, and approve the Amendment for public hearings.

4. Ecosystem-Based Management Committee Meeting: December 7, 2010, 1:30 p.m. Until 3:30 p.m.

The Ecosystem-Based Management Committee will review the actions and alternatives currently in draft Comprehensive Ecosystem-Based Amendment 2, review recommendations from the Council's Habitat Advisory Panel, provide guidance to staff, and approve the Amendment for public hearings.

5. Golden Crab Committee Meeting: December 7, 2010, 3:30 p.m. Until 4:30 p.m.

The Golden Crab Committee will approve issues in Golden Crab Amendment 5 regarding the establishment of a catch share program for the commercial fishery and approve the amendment for public scoping.

6. SEDAR Committee Meeting: December 7, 2010, 4:30 p.m. Until 5:30 p.m. (Note: A Portion of the Meeting Will Be Closed)

The SEDAR Committee will receive an update on SEDAR activities, a report on the SEDAR Steering Committee meeting and follow-up actions, and approve sea bass assessment documents. (In Closed Session) the Committee will review applications to the SEDAR Pool and develop recommendations for SEDAR participants.

7. Joint Executive/Finance Committees Meeting: December 8, 2010, 8:30 a.m. Until 9:30 a.m.

The Executive Committee and Finance Committees will meet jointly and receive status reports on the Calendar Year (CY) 2010 budget and activities, and the Fiscal Year 2011 Congressional budget. The Committee will review and discuss the tentative 2011 Council budget and activities schedule.

8. SOPPs Committee Meeting: December 8, 2010, 9:30 a.m. Until 11 a.m.

The SOPPs Committee will review the final rule addressing Council SOPPs and develop recommendations for changes to the SOPPs in accordance with the final rule as proposed by staff.

9. Snapper Grouper Committee Meeting: December 8, 2010, 11 a.m. Until 5 p.m., and December 9, 2010, 8:30 a.m. Until 12 Noon

The Snapper Grouper Committee will receive a report on outreach and research activities associated with the Oculina Bank Experimental Closed Area, a report from the Council's SSC, and a report of the Snapper Grouper Advisory Panel.

The Committee will review, modify and approve the Comprehensive Annual Catch Limit (ACL) Amendment for public hearings. The Comprehensive ACL Amendment will specify ACLs, AMs and other values as mandated in the MSA for species managed by the Council and not subject to overfishing. This includes species in the Snapper Grouper, Coral, Golden Crab, Sargassum, and Dolphin Wahoo fishery management units.

The Committee will review public hearing comments regarding Amendment 18A to the Snapper Grouper Fishery Management Plan (FMP), modify the amendment as appropriate, and approve actions. Amendment 18A includes actions to modify the golden tilefish and black sea bass pot commercial fisheries, and improvements for fisheries statistics.

The Committee will review Regulatory Amendment 10 to the Snapper Grouper Fishery Management Plan addressing options for red snapper management (to be submitted to the Secretary of Commerce for review) and Regulatory Amendment 9 addressing

trip limits for black sea bass, vermilion snapper, gag, and greater amberjack. The Committee will modify draft Amendment 9 and approve it for public hearings.

The Committee will review Amendments 24, 21, and 22, provide appropriate guidance to staff, and approve the amendments for public scoping. Amendment 24 addresses requirements under the MSA for red grouper, including establishment of ACLs, AMs, and a rebuilding plan. Amendment 21 addresses alternatives for management of the snapper grouper fishery including: Implementation of trip limits, effort and participation reductions, endorsements, catch shares, and regional quotas. Amendment 22 includes options for long-term management measures for red snapper in the South Atlantic as the stock rebuilds. The Committee will receive a status report on Amendment 20 to modify and update the current Individual Transferable Quota (ITQ) program for wreckfish. The Committee will also discuss Amendment 18B and determine if the development of the Amendment is necessary. Amendment 18B includes options to extend the jurisdiction of the snapper grouper fishery management unit northward.

Note: There will be an informal public question and answer session with NOAA Fisheries Services' Regional Administrator and the Council Chairman on December 8, 2010 beginning at 5:30 p.m.

Council Session: December 9, 2010, 1:30 p.m. Until 5:30 p.m. and December 10, 2010, 8:30 a.m. Until 12 Noon

Council Session: December 9, 2010, 1:30 p.m. Until 5:30 p.m.

From 1:30 p.m.–1:45 p.m., the Council will call the meeting to order, adopt the agenda, and approve the September 2010 meeting minutes.

Note: A public comment period on Regulatory Amendment 10 (Red Snapper) will be held on December 9, 2010 beginning at 1:45 p.m. followed by public comment on any of the December meeting agenda items.

From 3 p.m.–3:30 p.m., the Council will receive a report from the Spiny Lobster Committee, approve Spiny Lobster Amendment 10/DEIS for public hearing, consider other Committee recommendations, and take action as appropriate.

From 3:30 p.m.–4 p.m., the Council will receive a report from the Mackerel Committee, approve Mackerel Amendment 18/EA for public hearing, consider other Committee recommendations, and take action as appropriate.

From 4 p.m.–4:15 p.m., the Council will receive a report from the Ecosystem-Based Management Committee, approve the Comprehensive Ecosystem-Based Amendment 2 for public hearing, consider other Committee recommendations, and take action as appropriate.

From 4:15 p.m.–4:30 p.m., the Council will receive a report from the Golden Crab Committee and approve issues in Golden Crab Amendment 5 for public scoping.

From 4:30 p.m.–4:45 p.m., the Council will receive a report from the SEDAR Committee, approve sea bass assessment documents, appoint SEDAR participants, consider other Committee recommendations and take action as appropriate.

From 4:45 p.m.–5:15 p.m. the Council will receive a legal briefing on litigation (Closed Session).

Council Session: December 10, 2010, 8:30 a.m. Until 12 Noon

From 8:30 a.m.–8:45 a.m., the Council will receive a report from the Executive/Finance Committees and take action as appropriate.

From 8:45 a.m.–9 a.m., the Council will receive a report from the SOPPs Committee and take action as appropriate.

From 9 a.m.–10:30 a.m., the Council will receive a report from the Snapper Grouper Committee, approve Regulatory Amendment 10 for submission to the Secretary of Commerce for review, approve actions in Amendment 18A, approve the Comprehensive ACL Amendment, and Regulatory Amendment 9 for public hearings, approve Amendments 21, 22, and 24 for public scoping, consider other Committee recommendations and take action as appropriate.

From 10:30 a.m.–12 noon, the Council will receive status reports from NOAA Fisheries' Southeast Regional Office, NOAA Fisheries' Southeast Fisheries Science Center, review Experimental Fishing Permits as necessary, receive agency and liaison reports, and discuss other business including upcoming meetings.

* * * * *

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

* * * * *

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal final Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequences specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by December 1, 2010.

Dated: November 15, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–29149 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council will hold a meeting to discuss topics related to the National Export Initiative, and to provide advice regarding how to promote U.S. exports, jobs, and growth.

DATES: December 9, 2010 at 9 a.m. (EST).

ADDRESSES: The President's Export Council will convene its next meeting via live webcast on the Internet at *http://whitehouse.gov/live*.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone: 202–482–1124, e-mail: *Marc.Chittum@trade.gov*.

SUPPLEMENTARY INFORMATION:

Background: The President's Export Council was first established by Executive Order on December 20, 1973 to advise the President on matters relating to U.S. export trade and report to the President on its activities and on its recommendations for expanding U.S. exports. The President's Export Council was renewed most recently by Executive Order 13511 of September 29, 2009, for

the two-year period ending September 30, 2011.

Public Submissions: The public is invited to submit written statements to the President's Export Council by C.O.B. December 2, 2010 by either of the following methods:

Electronic Statements

Send electronic statements to the President's Export Council Web site at *http://trade.gov/pec/peccomments.asp;* or

Paper Statements

Send paper statements to J. Marc Chittum, President's Export Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.

All statements will be posted on the President's Export Council Web site (*http://trade.pec/peccomments.asp*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Meeting minutes: Copies of the Council's meeting minutes will be available within 90 days of the meeting.

Dated: November 15, 2010.

J. Marc Chittum,

Executive Secretary, President's Export Council.

[FR Doc. 2010–29272 Filed 11–16–10; 4:15 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA045

Nominations to the Marine Fisheries Advisory Committee

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice; request for nominations.

SUMMARY: Nominations are being sought for appointment by the Secretary of Commerce to serve on the Marine Fisheries Advisory Committee (MAFAC or Committee) beginning in January 2011. MAFAC is the only Federal advisory committee with the responsibility to advise the Secretary of Commerce (Secretary) on all matters concerning living marine resources that are the responsibility of the Department of Commerce. The Committee makes recommendations to the Secretary to assist in the development and implementation of Departmental regulations, policies and programs critical to the mission and goals of the NMFS. Nominations are encouraged from all interested parties involved with or representing interests affected by NMFS actions in managing living marine resources. Nominees should possess demonstrable expertise in a field related to the management of living marine resources and be able to fulfill the time commitments required for two annual meetings. Individuals serve for a term of three years for no more than two consecutive terms if re-appointed. NMFS is seeking qualified nominees to fill upcoming vacancies being created by vacancies and the expiration of an existing appointment in January, thereby bringing the Committee to its full complement of 21 members.

DATES: Nominations must be postmarked on or before January 3, 2011.

ADDRESSES: Nominations should be sent to Dr. Mark Holliday, Executive Director, MAFAC, Office of Policy, NMFS F–14451, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, MAFAC Executive Director; (301) 713–2239 x120; e-mail: *Mark.Holliday@noaa.gov*.

SUPPLEMENTARY INFORMATION: The establishment of MAFAC was approved by the Secretary on December 28, 1970, and subsequently chartered under the Federal Advisory Committee Act, 5 U.S.C. App. 2, on February 17, 1971. The Committee meets twice a year with supplementary subcommittee meetings as determined necessary by the Committee Chairperson. No less that 15 and no more than 21 individuals may serve on the Committee. Membership is comprised of highly qualified individuals representing commercial and recreational fisheries interests, environmental organizations, academic institutions, governmental, tribal and consumer groups, and other living marine resource interest groups from a balance of U.S. geographical regions, including Puerto Rico, the Western Pacific, and U.S. Virgin Islands.

A MAFAC member cannot be a Federal employee, a member of a Regional Fishery Management Council, or a registered Federal lobbyist. Selected candidates must pass security checks and submit financial disclosure forms. Membership is voluntary, and except for reimbursable travel and related expenses, service is without pay.

Each nomination submission should include the submitting person or organization's name and affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, curriculum vitae and or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each nominee's submission: name, address, telephone number, fax number, and e-mail address (if available).

Nominations should be sent to (*see* **ADDRESSES**) and must be received by (*see* **DATES**). The full text of the Committee Charter and its current membership can be viewed at the NMFS' Web page at *http://www.nmfs.noaa.gov/mafac.htm.*

Dated: November 12, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–29260 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–905]

Certain Polyester Staple Fiber From the People's Republic of China: Partial Rescission of the Third Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 19, 2010.

FOR FURTHER INFORMATION CONTACT: Steven Hampton or Jerry Huang, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116 and (202) 482–4047, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2010, the Department of Commerce ("the Department") published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on certain polyester staple fiber ("PSF") from the People's Republic of China ("PRC") for the period of review ("POR") June 1, 2009, through May 31, 2010. *See Antidumping or Countervailing Duty*

Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 75 FR 30383 (June 1, 2010).

On June 29, 2010, in accordance with 19 CFR 351.213(b), the Department received timely requests from Ningbo Dafa Chemical Fiber Co., Ltd. ("Ningbo Dafa") and Cixi Santai Chemical Fiber Co., Ltd. ("Cixi Santai") to conduct an administrative review and requests for revocation of the associated antidumping duty order, in part, in accordance with section 771(9)(A) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.222(b)(2), based on three consecutive segments with a finding of *de minimis* sales at less than normal value. The Department also received timely requests from Hangzhou Sanxin Paper Co., Ltd. ("Hangzhou Sanxin"), Nantong Luolai Chemical Fiber Co., Ltd. ("Nantong Luolai"), NanYang Textiles Co., Ltd. ("NanYang Textiles"), Zhaoqing Tifo New Fiber Co., Ltd. ("Zhaoqing Tifo"), Cixi Sansheng Chemical Fiber Co., Ltd. ("Sansheng"), Zhejiang Waysun Chemical Fiber Co., Ltd., and Cixi Waysun Chemical Fiber Co., Ltd. for an annual administrative review. The Department also received a timely request from Fibertex Corporation ("Fibertex"), an importer of PSF from the PRC, to conduct an administrative review of Ningbo Dafa, Cixi Santai, Zhaoqing Tifo, Sansheng, and Far Eastern Industries Ltd. (Shanghai) and Far Eastern Polychem Industries (collectively "Far Eastern").

On June 30, 2010, in accordance with 19 CFR 351.213(b), the Department received a timely request from Huvis Sichuan Chemical Fiber Corporation ("Huvis Sichuan") to conduct an administrative review. Huvis Sichuan is a producer and exporter of the merchandise covered by the antidumping duty order on PSF from the PRC. The Department also received a timely request from DAK Americas and Nan Ya America Corp. (collectively "Petitioners") to conduct an administrative review of Ningbo Dafa and Cixi Santai.

On July 28, 2010, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on PSF from the PRC covering eleven respondents: Far Eastern; Sansheng; Cixi Santai; Cixi Waysun Chemical Fiber Co., Ltd.; Hangzhou Sanxin; Nantong Luolai; NanYang Textiles; Ningbo Dafa Chemical Fiber Co., Ltd.; Zhaoqing Tifo; Zhejiang Waysun Chemical Fiber Co., Ltd.; and Huvis Sichuan Chemical Fiber Corporation. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part,* 75 FR 44224 (July 28, 2010).

On August 17, 2010, Nantong Luolai, NanYang Textiles, and Sansheng timely withdrew their requests for review. On September 9, 2010, Fibertex timely withdrew its request for a review with respect to Far Eastern Industries, Ltd. (Shanghai) and Far Eastern Polychem Industries. On September 20, 2010, Cixi Waysun Chemical Fiber Co., Ltd. timely withdrew its request for review. On October 15, 2010, Fibertex timely withdrew its request for a review with respect to Sansheng. Thus, the Department is rescinding this administrative review with respect to these five companies.

Partial Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review in whole or in part, if the party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation further states that the Secretary may extend the deadline if it is reasonable to do so. Because the following five parties withdrew their respective requests for an administrative review within 90 days of the date of publication of the notice of initiation, and there are currently no outstanding requests for an administrative review, the Department is rescinding this review with respect to these entities, in accordance with 19 CFR 351.213(d)(1):

- Cixi Sansheng Chemical Fiber Co., Ltd. ("Sansheng").
- Cixi Waysun Chemical Fiber Co., Ltd.
- Far Eastern Industries, Ltd. (Shanghai) and Far Eastern Polychem Industries ("Far Eastern").
- Nantong Luolai Chemical Fiber Co., Ltd. ("Nantong Luolai").
- NanYang Textiles Co., Ltd. ("NanYang Textiles").

Assessment Instructions

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For the companies listed above which had a separate rate granted in a previously completed segment of this proceeding that was in effect during the instant review period, antidumping duties shall be assessed on entries subject to the separate rate at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions for such companies directly to CBP 15 days after the publication of this notice in the **Federal Register**. For any of the companies listed above that do not currently have a separate rate (and thus remain a part of the PRC-wide entity), the Department will issue assessment instructions upon the completion of this administrative review.

Notification to Importers

This notice serves as a final reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: November 12, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–29262 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–930]

Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: November 19, 2010.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander and Patrick O'Connor, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0182 and (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

On April 27, 2010, the Department of Commerce ("the Department") published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on circular welded austenitic stainless pressure pipe from the People's Republic of China. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 22107 (April 27, 2010). The period of review ("POR") is September 5, 2008, through February 28, 2010.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the "Act"), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. 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 365 days.

The Department is extending the preliminary results by 120 days because the Department needs additional time to analyze information pertaining to Zhejiang Jiuli Hi-Tech Metals Co., Ltd.'s ("Zhejiang Jiuli") sales practices, factors of production, subject merchandise and corporate relationships. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completing the preliminary results of the instant administrative review by 120 days from December 1, 2010, until March 31, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: November 10, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–29267 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the preliminary results of the administrative review of certain steel threaded rod from the People's Republic of China ("PRC"). The review covers the period October 8, 2008, through March 31, 2010.

DATES: *Effective Date:* November 19, 2010.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1655 or (202) 482–0116, respectively.

Background

On May 28, 2010, the Department published a notice of initiation of the administrative review of the antidumping duty order on certain steel threaded rod from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 29976, 29980–82 (May 28, 2010). The preliminary results of the reviews are currently due no later than December 31, 2010.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of these administrative reviews within the original time limit because the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires if necessary, and evaluate surrogate value submissions for purposes of the preliminary results.

Therefore, the Department is partially extending the time limit for completion of the preliminary results of the administrative review by 120 days. The preliminary results will now be due no later than May 2, 2011, the first business day following 120 days from the current deadline. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005). The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 12, 2010.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–29266 Filed 11–18–10; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency

employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 12/20/2010.

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:

Addition

On 9/24/2010 (75 FR 58367), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service:

Service Type/Location: Custodial Service, USARC Young Hall, 120 Mini Drive, Vallejo, CA.

NPA: Solano Diversified Services, Vallejo, CA.

Contracting Activity: Dept of the Army, XR W6BB ACA Presidio of Monterey, Presidio of Monterey, CA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–29241 Filed 11–18–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product and service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete the products previously furnished by such agency.

Comments Must Be Received ON OR Before: 12/20/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and service 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 product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and service 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 product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

NSN: 7350–00–838–3919—Toothpicks.

NPA: Volunteers of America, Dakotas, Sioux Falls, SD.

Contracting Activity: GSA/Federal Acquisition Service, Fort Worth, TX.

Coverage: B-List for the Broad Government Requirement as aggregated by the General Services Administration.

Service

Service Type/Location: Base Supply Center, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.

Contracting Activity: Federal Energy Regulatory Commission, Division of Procurement, Washington, DC.

Deletions

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 the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products Dispenser, Glue Tape & Refill Cartridge

NSN: 8040–01–441–0169.
NSN: 8040–01–441–0173.
NSN: 8040–01–441–0175.
NSN: 8040–01–441–0178.P≤*NPA:* Industries for the Blind, Inc., West Allis, WI.
Contracting Activities: GSA/FAS, FSS Regional Fleet Management Office, Kansas City, MO. GSA/FAS, FSS Tools Acquisition Division II, Kansas City, MO.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–29242 Filed 11–18–10; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review: Proposed Collection; Comment Request: Part 41 Relating to Security Futures Products

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before December 20, 2010.

FOR FURTHER INFORMATION OR A COPY CONTACT: David Steinberg, Commodity Futures Trading Commission, 202–418–5102, FAX: 202–418–5527, *e-mail: dsteinberg@cftc.gov,* and refer to OMB Control No. 3038–0059.

SUPPLEMENTARY INFORMATION:

Title: Part 41 Relating to Security Futures Products (OMB Control No. 3038–0059). This is a request for extension of a currently approved information collection.

Abstract: Section 4d(c) of the Commodity Exchange Act (CEA), 7 U.S.C. 6d(c), requires the CFTC to consult with the SEC and issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to firms that are fully registered with the SEC as brokers or dealers (broker-dealers) and the CFTC as futures commission merchants (FCMs) involving provisions of the CEA that pertain to the treatment of customer funds. The CFTC, jointly with the SEC, issued regulations requiring such dually-registered firms to make choices as to how its customers' transactions in security futures products (SFP) will be treated, either as securities transactions held in a securities account or as futures transactions held in a futures account. How an account is treated is important in the unlikely event of the insolvency of the firm. Only securities accounts receive insurance protection under provisions of the Securities Investor Protection Act. By contrast, only futures accounts are subject to the protections provided by the segregation requirements of the CEA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on September 16, 2010 (75 FR 56511).

Burden Statement: The respondent burden for this collection is estimated to average .59 hours per response. These estimates include the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 147.

Estimated number of responses: 2,739.90.

Estimated total annual burden on respondents: 1,624.08 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0059 in any correspondence.

David Steinberg, Special Counsel, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, and Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: November 15, 2010.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

PART 41—SECURITY FUTURES PRODUCTS

[OMB Collection #3038–0059]

	Estimated number of respondents or recordkeepers per year	Reports annually by each respondent	Total annual responses	Estimated average number of hours per response	Estimated total number of hours of annual burden in fiscal year
Reporting:					
41.3 Application for exemption by intermediaries	5	1	5	25,000	125
41.23(a)(1)–(5) Listing of SFPs	3	20	60	4	240
41.23(a)(6) and 41.24(a)(5)	3	25	75	.033	2.48
41.23(a)(7) and 41.24(a)(6)	3	.30	.90	4	3.6
41.23(a)(1) Reporting of data	3	20	60	1	60
41.27(c) Rules prohibiting exemptions	1	1	1	4	4
41.27(e) Rules permitting exemptions	1	1	1	4	4
41.31 SFPCM designation (one time only)	1	1	1	5	5
41.32 SFPCM continuing obligations	3	20	60	4	240
41.33 Application for exemption by SFPCM	1	1	1	40	40
41.41 FCM/B–D disclosure	60	40	2,400	.25	600
41.49 Margin rule changes	3	5	15	4	60

PART 41—SECURITY FUTURES PRODUCTS—Continued

[OMB Collection #3038–0059]

	Estimated number of respondents or recordkeepers per year	Reports annually by each respondent	Total annual responses	Estimated average number of hours per response	Estimated total number of hours of annual burden in fiscal year
Subtotal Reporting Requirements	87		2,679.90		1,384.08
Recordkeeping:					
41.41(a)(2) Handling of customer accounts	60	1	60	4	240
Subtotal Recordkeeping Requirements	60	1	60	4	240
Total Reporting and Recordkeeping	147		2,739.90	0.592	1,624.08

[FR Doc. 2010–29232 Filed 11–18–10; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Commodity Futures Trading Commission.

The following notice of scheduled meetings is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

TIMES AND DATES: The Commission has scheduled three meetings for the following dates:

December 1 from 9:30 a.m. to 5:30 p.m.

December 9 from 9:30 a.m. to 5:30 p.m.

December 16 from 9:30 a.m. to 5:30 p.m.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC, Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled these meetings to consider the issuance of various proposed rules. Agendas for each of the scheduled meetings will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the times or dates of the meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

ADDITIONAL INFORMATION: Meeting Cancellation.

The Commission has canceled the meeting scheduled for November 30, 2010.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–29357 Filed 11–17–10; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Third Party Testing for Certain Children's Products; Children's Sleepwear, Sizes 0 Through 6X and 7 Through 14: Requirements for Accreditation of Third Party Conformity Assessment Bodies

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Requirements.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a notice of requirements that provides the criteria and process for Commission acceptance of accreditation of third party conformity assessment bodies for testing of children's sleepwear pursuant to 16 CFR parts 1615 and 1616, the CPSC regulations under the Flammable Fabrics Act (FFA) relating to the flammability of children's sleepwear. The Commission is issuing this notice of requirements pursuant to section 14(a)(3)(B)(vi) of the CPSA, 15 U.S.C. 2063(a)(3)(B)(vi).

DATES: *Effective Date:* The requirements for accreditation of third party conformity assessment bodies to assess conformity with 16 CFR parts 1615 and 1616 are effective upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia K. Adair, Director, Division of Combustion and Fire Sciences, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone 301–504–7536; e-mail *padair@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314, directs the CPSC to establish and publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with "other children's product safety rules." Section 14(f)(1) of the CPSA defines "children's product safety rule" as "a consumer product safety rule under [the CPSA] or similar rule, regulation, standard, or ban under any other Act enforced by the Commission, including a rule declaring a consumer product to be a banned hazardous product or substance." Under section 14(a)(3)(A) of the CPSA, each manufacturer (including an importer) or private labeler of products subject to those regulations must have products that are manufactured more than 90 days after the establishment and **Federal Register** publication of a notice of the requirements for accreditation tested by a third party conformity assessment body accredited to do so, and must issue a certificate of compliance with the applicable regulations based on that testing. The Commission may extend the 90-day period by not more than 60 days if the Commission determines that an insufficient number of third party conformity assessment bodies have been accredited to permit certification for a children's product safety rule. Any requests for an extension should contain detailed facts showing why an extension is necessary.

Section 14(a)(2) of the CPSA, as added by section 102(a)(2) of the CPSIA, requires that certification be based on testing of sufficient samples of the product, or samples that are identical in all material respects to the product. The Commission also emphasizes that, irrespective of certification, the product in question must comply with applicable CPSC requirements (*see, e.g.,*

section 14(h) of the CPSA, added by section 102(b) of the CPSIA).

Section 14(a)(3)(G) of the CPSA, 15 U.S.C. 2063(a)(3)(G), exempts notices of requirements from the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. Therefore, the Commission finds good cause that notice and public procedure thereon are unnecessary.

B. The Children's Sleepwear Standards

The Standards applicable to children's sleepwear (the "Standards") are 16 CFR part 1615, *Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF3–71),* and 16 CFR part 1616, *Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (FF5–74).* The Standards were issued in the early 1970s to reduce the unreasonable risk of burn injuries and deaths from fires associated with children's sleepwear. Most burn incidents involving children's sleepwear do not occur while children are sleeping; rather, the incidents occur while the children are awake, unsupervised, and wearing the sleepwear. The primary hazard is ignition of sleepwear by contact with hot surfaces and/or small open-flame ignition sources, such as stove elements, matches, and lighters. The Standards require that children's sleepwear, and fabric intended for such sleepwear, stop burning when the flame source is removed.

The original children's sleepwear Standard for sizes 0 through 6X was revised in 1972, to include a statistical sampling plan for fabrics and garments. The sampling plan was devised to give assurance to manufacturers that sleepwear garments reaching the marketplace meet the flammability test, and that children wearing the sleepwear garments receive increased protection. The sampling plan also was intended to provide a framework for premarket testing, and thus, greatly assist in detecting noncomplying fabrics and garments before they are placed on the market. When the Standard for sizes 7 through 14 was issued in 1975, it incorporated the same sampling plan as the one in the Standard for sizes 0 through 6X.

The Standards require testing of the fabric to be used in children's sleepwear, of preproduction prototypes of the garment style or type which includes testing of the seams and the trim attached to the fabric, and of the seams of finished garments, by having fabric, seams, and trim exposed to a flame source under controlled conditions, as discussed below. To meet the criteria in § 1615.3(b) and § 1616.3(b), three samples of five specimens each are tested, and the average char length of the sample must not exceed 17.8 centimeters (cm) (7.0 inches (in)) and no individual specimen may have a char length of 25.4 cm (10.0 in).

In 1996, the Commission published amendments to the Standards that except products of wearing apparel from the definition of children's sleepwear for the purpose of testing to the flammability requirements if they are:

(1) Infant garments as defined in § 1615.1(c) or;

(2) Tight-fitting as defined in § 1615.1(o) and § 1616.2(m), provided the garment is labeled with its size and provided with a specified warning statement on a hangtag attached to the garment and on a label on any package in which the garment is sold.

All wearing apparel excepted pursuant to § 1615.1(c), § 1615.1(o) or § 1616.2(m) must otherwise comply with all the applicable requirements of the Standard for the Flammbility of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611).

Children's sleepwear garments subject to the Standards must follow specific sampling plans and be tested for flammability performance at several stages of production. The Standards have performance requirements for fabric, prototypes (seams and trims), and garment production units. There are recordkeeping requirements at each stage of testing. The following summarizes the three stages of testing:

(1) Fabric testing. Fabrics that are promoted for use in children's sleepwear are tested in the finished state (either original state or after one laundering) and must meet the requirements after 50 launderings (wash and dry) in either the fabric or finished garment state. Testing is of a Fabric Production Unit (FPU), which is a continuous length of fabric up to 5,000 linear yards, or 10,000 linear yards for reduced sampling, which has a specified identity that remains unchanged throughout the unit, except for color or print pattern, as specified in the Standards. Samples are taken from the beginning and end of the FPU.

(2) Prototype testing. Once a garment design is proposed, the seams and trims are tested to assure that satisfactory garment specifications have been chosen prior to production. All seam types and all seams over 10 inches are tested. Trims are tested in the orientation they will be used in the final garment; however, neckline, shoulder, and sleeve trim are only tested in the vertical configuration (the most severe scenario).

(3) Production testing. Garment Production Unit (GPU) testing is carried out to assess the flammability of the garment as produced. The longest seam type is tested at this stage. Tests are conducted on each GPU, and each GPU is either accepted or rejected. The maximum number of garments in a GPU is 500 dozen (6,000 garments).

C. This Notice of Requirements

This notice provides the criteria and process for the Commission's acceptance of accreditation of third party conformity assessment bodies for testing pursuant to 16 CFR part 1615, *Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X (FF3–71),* and 16 CFR part 1616, *Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14 (FF5–74).* Section 3(a)(2) of the CPSA defines a "children's product" as "a consumer product designed or intended primarily for children 12 years of age and younger." The sizes of sleepwear covered by the cited regulations are primarily intended for children age 12 years and younger; these sizes of sleepwear are therefore "children's products" as that term is defined in the CPSA.

This notice of requirements applies to all third party conformity assessment bodies as described in section 14(f)(2) of the CPSA that desire to test children's sleepwear to the requirements of 16 CFR parts 1615 and/or 1616, where the test results will be used as the basis for a certification that the sleepwear complies with those requirements. Such third party conformity assessment bodies can be grouped into three general categories: (1) Third party conformity assessment bodies that are not owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes; (2) "firewalled" conformity assessment bodies (those that are owned, managed, or controlled by a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body for certification purposes and that seek accreditation under the additional statutory criteria for "firewalled" conformity assessment bodies); and (3) third party conformity assessment bodies owned or controlled, in whole or in part, by a government.

This notice of requirements is effective on November 19, 2010. Further, the publication of this notice of requirements lifts the Commission's previous stay of enforcement with

regard to testing and certifications related to 16 CFR parts 1615 and 1616. Therefore, each manufacturer of children's sleepwear subject to these regulations that is manufactured after February 17, 2011 must have samples of any such product, or samples that are identical in all material respects to such product, tested by a third party conformity assessment body accredited to do so and, based on such testing, issue a certificate that the sleepwear complies with the applicable Standard, before the sleepwear is imported for consumption or warehousing or distributed in commerce. (Under section 3(a)(11) of the CPSA, the term "manufacturer" includes anyone who manufactures or imports a product.) The Commission also is recognizing limited circumstances in which it will accept certifications based on product testing conducted before the third party conformity assessment body is accepted as accredited by the CPSC. The details regarding those limited circumstances are in part IV of this document below.

As noted above, these Standards require testing at three stages in the process of developing and producing the sleepwear (fabric, prototype seams and trim, and production seams). The tests at each of these stages are designed to detect risks that can be reflected in the production garments. In addition, the results of the tests cannot have meaning unless the sampling criteria in the Standards are followed. Therefore, in order for third party testing to serve as the basis for the required certificate that the garment complies with the applicable Standard, it is necessary for the tests by a third party conformity assessment body whose accreditation has been accepted by the Commission be performed as specified in the Standards, that is, tests at the three stages specified in the Standards according to the sampling criteria in the Standards. Of course, responsible parties must, in addition, comply with all recordkeeping requirements of the Standards. We do note, however, that 16 CFR 1615.35(b)(1) and 1616.35(c)(1) allow a firm to use another testing regime if the firm has proof that the other test is at least as stringent as the Standards.

In addition, the Commission will not require third party testing to demonstrate that a product meets the exception for "tight-fitting garments" as defined by §§ 1615.1(c) and 1616.2(m), as these garments are not subject to the Standards. However, all fabrics intended for sleepwear meeting the tight-fitting exception from 16 CFR parts 1615 and 1616 must meet the flammability requirements of 16 CFR part 1610, *Standard for the Flammability of Clothing Textiles,* and 16 CFR part 1611, *Standard for the Flammability of Vinyl Plastic Film.* The Commission also will not require that the presence of the required labels and hangtags for tight-fitting garments be subject to third party testing. This is consistent with the exemption from testing accorded to labeling requirements under the Federal Hazardous Substances Act (*see* NEWS from CPSC, December 18, 2009 (Release No. 10–083)).

D. Lifting the Stay of Enforcement of Section 14(a) of the CPSA as to Children's Sleepwear

The Commission stayed the enforcement of certain provisions of section 14(a) of the CPSA in a notice published in the **Federal Register** on February 9, 2009 (74 FR 6396). The stay applied to testing and certification of various products, including children's sleepwear. On December 28, 2009, the Commission published a notice in the **Federal Register** (74 FR 68588) revising the terms of the stay. The December 28, 2009 notice did not lift the stay with regard to testing and certification of children's sleepwear because no notice of requirements had been published applicable to the Standards for these products. Since this notice provides such a notice of requirements, it has the effect of lifting the stay with regard to 16 CFR parts 1615 and 1616.

II. Accreditation Requirements

A. Baseline Third Party Conformity Assessment Body Accreditation Requirements

For a third party conformity assessment body to be accredited to test children's products for conformity with the test methods in the regulations identified earlier in part I of this document, it must be accredited by an ILAC–MRA signatory accrediting body, and the accreditation must be registered with, and accepted by, the Commission. A listing of ILAC–MRA signatory accrediting bodies is available on the Internet at *http://ilac.org/membersbycategory.html.* The accreditation must be to ISO Standard ISO/IEC 17025:2005, *General Requirements for the Competence of Testing and Calibration Laboratories,* and the scope of the accreditation must expressly include testing to the regulations in 16 CFR parts 1615 and/or 1616. (A description of the history and content of the ILAC–MRA approach and of the requirements of the ISO/IEC 17025:2005 laboratory accreditation standard is provided in the CPSC staff briefing memorandum, "Third Party Conformity Assessment Body Accreditation Requirements for Testing Compliance with 16 CFR part 1501 (Small Parts Regulations)," dated November 2008, and available on the CPSC's Web site at *http://www.cpsc.gov/ibrary/foia/foia09/brief/smallparts.pdf.* A true copy, in English, of the accreditation and scope documents demonstrating compliance with the requirements of this notice must be registered with the Commission electronically. The additional requirements for accreditation of firewalled and governmental conformity assessment bodies are described in parts II.B and II.C of this document below.

The Commission will maintain on its Web site an up-to-date listing of the third party conformity assessment bodies whose accreditations it has accepted and the scope of each accreditation. Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV below, once the Commission adds a third party conformity assessment body to that list, the third party conformity assessment body may commence testing of children's products to support the manufacturer's certification that the product complies with the regulations identified earlier in part I of this document.

B. Additional Accreditation Requirements for Firewalled Conformity Assessment Bodies

In addition to the baseline accreditation requirements in part II.A of this document above, firewalled conformity assessment bodies seeking accredited status must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. This additional requirement applies to any third party conformity assessment body in which a manufacturer or private labeler of a children's product to be tested by the third party conformity assessment body owns an interest of 10 percent or more. While the Commission is not addressing common parentage of a third party conformity assessment body and a children's product manufacturer at this time, it will be vigilant to see if this issue needs to be addressed in the future.

As required by section 14(f)(2)(D) of the CPSA, the Commission must

formally accept, by order, the accreditation application of a third party conformity assessment body before the third party conformity assessment body can become an accredited firewalled conformity assessment body. The Commission's order must also find that accrediting the firewalled conformity assessment body would provide equal or greater consumer safety protection than the manufacturer's or private labeler's use of an independent conformity assessment body.

C. Additional Accreditation Requirements for Governmental Conformity Assessment Bodies

In addition to the baseline accreditation requirements of part II.A of this document above, the CPSIA permits accreditation of a third party conformity assessment body owned or controlled, in whole or in part, by a government if:

- To the extent practicable, manufacturers or private labelers located in any nation are permitted to choose conformity assessment bodies that are not owned or controlled by the government of that nation;
- The third party conformity assessment body's testing results are not subject to undue influence by any other person, including another governmental entity;
- The third party conformity assessment body is not accorded more favorable treatment than other third party conformity assessment bodies which have been accredited in the same nation;
- The third party conformity assessment body's testing results are accorded no greater weight by other governmental authorities than those of other accredited third party conformity assessment bodies; and
- The third party conformity assessment body does not exercise undue influence over other governmental authorities on matters affecting its operations or on decisions by other governmental authorities controlling distribution of products based on outcomes of the third party conformity assessment body's conformity assessments.

The Commission will accept the accreditation of a governmental third party conformity assessment body if it meets the baseline accreditation requirements of part II.A of this document above and meets the additional conditions stated here. To obtain this assurance, CPSC staff will engage the governmental entities relevant to the accreditation request.

III. How Does a Third Party Conformity Assessment Body Apply for Acceptance of Its Accreditation?

The Commission has established an electronic accreditation registration and acceptance system accessed via the Commission's Internet site at *http://www.cpsc.gov/about/cpsia/labaccred.html.* The applicant provides, in English, basic identifying information concerning its location and the type of accreditation it is seeking, as well as electronic copies of its ILAC–MRA accreditation certificate and scope statement and its firewalled third party conformity assessment body training document(s), if applicable.

Commission staff will review the submission for accuracy and completeness. In the case of baseline third party conformity assessment bodies and government-owned or government-controlled conformity assessment bodies, when that review and any necessary discussions with the applicant are satisfactorily completed, the third party conformity assessment body in question is added to the CPSC's list of accredited third party conformity assessment bodies at *http://www.cpsc.gov/about/cpsia/labaccred.html.* In the case of a firewalled conformity assessment body seeking accredited status, when the staff's review is complete, the staff transmits its recommendation on accreditation to the Commission for consideration. (A third party conformity assessment body that ultimately may seek acceptance as a firewalled third party conformity assessment body also initially can request acceptance as a third party conformity assessment body accredited for testing of children's products other than those of its owners.) If the Commission accepts a staff recommendation to accredit a firewalled conformity assessment body, the Commission will issue an order making the required statutory findings, and the firewalled conformity assessment body then will be added to the CPSC's list of accredited third party conformity assessment bodies. In each case, the Commission will notify the third party conformity assessment body electronically of acceptance of its accreditation. All information to support an accreditation acceptance request must be provided in the English language.

Subject to the limited provisions for acceptance of "retrospective" testing noted in part IV of this document below, once the Commission adds a third party conformity assessment body to the list, the third party conformity assessment body may begin testing of children's products to support certification of compliance with the regulations for which it has been accredited.

IV. Limited Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to the Commission's Acceptance of Accreditation

The Commission will accept a certificate of compliance with 16 CFR part 1615 and/or 16 CFR part 1616 based on testing performed by an accredited third party conformity assessment body (including a government-owned or government-controlled conformity assessment body, or a firewalled conformity assessment body) prior to the Commission's acceptance of its accreditation if all the following conditions are met:

- When the product was tested, the testing was done by a third party conformity assessment body that at that time was ISO/IEC 17025 accredited by an ILAC–MRA signatory and the scope of the accreditation included the regulations specified in this notice. For firewalled conformity assessment bodies, the Commission will not accept a certificate of compliance based on testing performed by the third party conformity assessment body unless the firewalled conformity assessment body was accredited by order as a firewalled conformity assessment body before the product was tested, even though the order will not have included the test methods in the regulations specified in this notice.
- The third party conformity assessment body's application for testing using the test methods in the regulations identified in this notice is accepted by the CPSC on or before January 18, 2011.
- The product was tested on or after November 19, 2009, with respect to the regulations identified in this notice.
- The test results show compliance with the applicable current standards and/or regulations.
- The third party conformity assessment body's accreditation remains in effect from the date of testing through the effective date for mandatory third party testing and manufacturer certification for conformity with 16 CFR parts 1615 and/or 1616.

Dated: November 15, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–29209 Filed 11–18–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License for a U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7 (a)(1)(i) and 37 CFR 404.7 (b)(1)(i), announcement is made of the intent to grant an exclusive, revocable license for the invention claimed in the patent application PCT/US2009/045818, filed June 1, 2009, entitled, "Meningococcal Multivalent Native Outer Membrane Vesicle Vaccine, Methods of Making and Use Thereof," to Merck Sharp & Dohme Corp., with its principal place of business at One Merck Drive, Whitehouse Station, NJ 08889–3400.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (*see* **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–29206 Filed 11–18–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

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

FOR FURTHER INFORMATION CONTACT: Angel Wolfrey, Civilian Senior Leader Management Office, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Department of the Army Performance Review Board are:

1. Ms. Stephanie A. Barna, Deputy General Counsel (Operations and Personnel), Office of the General Counsel.
2. Dr. Craig E. College, Deputy, Deputy Assistant Chief of Staff for Installation Management, Office of the Assistant Chief of Staff for Installation Management.
3. Ms. Kathryn A. Condon, Executive Director of the Army National Cemeteries Program, Office of the Secretary of the Army.
4. Gwendolyn R. DeFilippi, Director, Civilian Senior Leader Management Office, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
5. Major General Genaro J. Dellarocco, Commanding General, Army Test and Evaluation Command.
6. Major General Ann E. Dunwoody, Commanding General, United States Army Materiel Command.
7. Ms. Sue A. Engelhardt, Director of Human Resources, United States Army Corps of Engineers.
8. Mr. Kevin M. Fahey, Program Executive Officer, Combat Support and Combat Service Support, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
9. Ms. Teresa W. Gerton, Executive Deputy to the Commanding General, United States Army Materiel Command.
10. Mr. Louis J. Hansen, Principal Deputy to the Assistant Secretary of the Army (Installations and Environment), Office of the Assistant Secretary of the Army (Installations and Environment).
11. Ms. Ellen M. Helmerson, Deputy Chief of Staff, G–1/4 (Personnel and Logistics), United States Army Training and Doctrine Command.
12. Mr. Thomas R. Lamont, Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
13. Mr. Mark R. Lewis, Assistant Deputy Chief of Staff for Operations (G–3/5/7), Office of Deputy Chief of Staff for Operations.
14. Mr. Joseph M. McDade, Assistant Deputy Chief of Staff, G–1, Office of the Assistant G–1.
15. Ms. Joyce E. Morrow, Administrative Assistant to the Secretary of the Army, Office of the Secretary of the Army.
16. Mr. John B. Nerger, Executive Director/Director of Services, Assistant Chief of Staff for Installation Management, Installation Management Command.
17. Mr. Levator Norsworthy Jr., Deputy General Counsel (Acquisition)/Senior Deputy General Counsel, Office of the General Counsel.
18. Mr. Gerald B. O'Keefe, Deputy Administrative Assistant to the Secretary of the Army/Director, Shared Services, Office of the Administrative Assistant to the Secretary of the Army.
19. Dr. Malcolm R. O'Neill, Assistant Secretary of the Army (Acquisition, Logistics and Technology), Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
20. Lieutenant General James H. Pillsbury, Deputy Commanding General, United States Army Material Command.
21. Mr. Wimpy D. Pybus, Deputy Assistant Secretary of the Army for Integrated Logistics Support, Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology).
22. Mr. Craig R. Schmauder, Deputy General Counsel (Installation, Environment and Civil Works), Office of the General Counsel.
23. Mr. Karl F. Schneider, Principal Deputy to the Assistant Secretary of the Army (Manpower and Reserve Affairs), Office of Assistant Secretary of the Army, Manpower and Reserve Affairs.
24. Dr. James J. Streilein, Executive Director, Army Test and Evaluation Command.
25. Lawrence Stubblefield, Deputy Assistant Secretary of the Army (Diversity and Leadership), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
26. Major General Bo Temple, Deputy Commanding General, United States Army Corps of Engineers.
27. Lieutenant General Robert L. Van Antwerp Jr., Commanding General, United States Army Corps of Engineers.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–29207 Filed 11–18–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Surplus Properties; Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: This amended notice provides information regarding the Chattanooga (Volunteer Army Ammunition Plant) USARC that was determined surplus to the United States needs in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended, and the 2005 Base Closure and Realignment Commission Report, as approved, and following screening with Federal agencies and Department of Defense components. This Notice amends the Notice published in the **Federal Register** (71 FR 26081) on May 8, 2007.

DATES: Effective immediately, by adding the following surplus property notice.

FOR FURTHER INFORMATION CONTACT: Headquarters, Department of the Army, Assistant Chief of Staff for Installation Management, Base Realignment and Closure (BRAC) Division, Attn: DAIM–BD, 600 Army Pentagon, Washington, DC 20310–0600 or at *ArmyBRAC2005@hqda.army.mil.*

SUPPLEMENTARY INFORMATION:

Tennessee

Chattanooga—Chattanooga (Volunteer Army Ammunition Plant) USARC, 6703 Bonny Oaks Drive; Notice corrects surplus property to approximately two acres, including buildings 228, 229 and a small storage building.

Authority: This action is authorized by the Defense Base Closure and Realignment Act of 1990, Title XXIX of the National Defense Authorization Act for Fiscal Year 1991, Public Law 101–510; the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Public Law 103–421 and 10 U.S.C. 113.

Dated: November 2, 2010.

Joseph F. Calcara,

Deputy Assistant Secretary of the Army (Installations and Housing) (OASA (I&E).

[FR Doc. 2010–29205 Filed 11–18–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before December 20, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

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. The OMB 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.

Dated: November 16, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title of Collection: Lender's Request for Payment of Interest and Special Allowance—LaRS.

OMB Control Number: 1845–0013.

Agency Form Number(s): ED Form 799.

Frequency of Responses: Quarterly.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Estimated Number of Annual Responses: 11,600.

Total Estimated Annual Burden Hours: 28,275.

Abstract: The Lender's Request for Payment of Interest and Special Allowance (ED Form 799) is used by approximately 2,900 lenders participating in the Title IV, Part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4366. 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 the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

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. 2010–29273 Filed 11–18–10; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–OAR–2010–0836; FRL–9228–8]

Notice of Prevention of Significant Deterioration Applicability Determination for the Carlsbad Energy Center Project, Carlsbad, CA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Action.

SUMMARY: This notice announces that on October 13, 2010, the EPA issued a determination that the proposal to modify the Encina Power Station is not subject to the Prevention of Significant Deterioration (PSD) permit program under the Clean Air Act (CAA). This modification is for constructing the Carlsbad Energy Center Project, a proposed natural gas-fired power plant, at the existing Encina Power Station in

the city of Carlsbad in San Diego County, California. EPA reviewed applicability for the criteria pollutants expected to be affected by the modification, including nitrogen oxides, carbon monoxide, particulates, volatile organic compounds, and sulfur oxides.

ADDRESSES: EPA's determination and other related documents used in the determination are available electronically on EPA's Web site at *http://www.epa.gov/region9/air/permit/r9-permits-issued.html.* These documents are also available for public inspection during normal business hours at the following address: EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105. For more information or to arrange viewing of these documents, contact Shaheerah Kelly at (415) 947–4156 or *kelly.shaheerah@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Shaheerah Kelly, EPA Region 9, Air Division (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4156, *kelly.shaheerah@epa.gov.*

SUPPLEMENTARY INFORMATION: The Carlsbad Energy Center Project is a proposed 540 MW net (558 MW gross) combined cycle natural gas-fired power plant that will be built at the existing Encina Power Station in the city of Carlsbad in San Diego County, California. The Carlsbad Energy Center Project will replace three of five existing natural gas-fired boilers located at the eastern end of the property site at the Encina Power Station. The Encina Power Station is owned by NRG Energy, Inc. (NRG), and currently has a total of five natural gas-fired boilers, which are allowed to use No. 6 fuel oil during curtailments, and three fuel oil storage tanks. The Encina Power Station is an existing major source, and the addition of the Carlsbad Energy Center Project would be physical change to the facility.

EPA Region 9 has authority to implement the Clean Air Act Prevention of Significant Deterioration Program at 40 CFR section 52.21 for San Diego County, California. Because the Carlsbad Energy Center Project is a physical change to an existing major stationary source, EPA Region 9 evaluated whether the physical change is a major modification by determining whether the physical change will result in a net emission increase for pollutants regulated under the PSD permit program. We received emissions information from NRG on June 5, 2009, as well as additional information since that time. This emissions information addressed the following criteria pollutants associated with the modification: Nitrogen oxides, carbon monoxide, particulates, volatile organic compounds, and sulfur oxides. Based on our review, we have determined that the Carlsbad Energy Center Project will not cause or result in a significant net emissions increase for these pollutants, and will, therefore, not be subject to the PSD permit requirements.

If available, judicial review of EPA's determination may be sought by filing a petition for review pursuant to section 307(b)(1) of the CAA in the United States Court of Appeals for the Ninth Circuit within 60 days from the date on which this notice is published in the **Federal Register**.

Dated: November 9, 2010.

Elizabeth Adams,

Acting Director, Air Division, Region 9.

[FR Doc. 2010–29222 Filed 11–18–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8993–7]

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 11/08/2010 Through 11/12/2010.

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. 20100444, Final EIS, BLM, NV, Tonopah Solar Energy Crescent Dunes Solar Energy Project, a 7,680-Acre Right-of-Way (ROW) on Public Lands to Construct a Concentrated Solar Thermal Power Plant Facility, Nye County, NV, Wait Period Ends: 12/20/2010, Contact: Timothy Coward 775–482–7800

EIS No. 20100445, Final EIS, NPS, NC, Cape Hatteras National Seashore Off-Road Vehicle Management Plan, Implementation, NC, Wait Period Ends: 12/20/2010, Contact: Mike Murray 252–473–2111 Ext 148.

EIS No. 20100446, Draft EIS, FHWA, CA, Ferguson Slide Permanent Restoration Project, Proposes to Restore Full Highway Access along State Route 140 from 8 miles east of Briceburg to 7.6 miles west of El Portal in Mariposa County, CA, Comment Period Ends: 01/13/2011, Contact: Kristen Helton 559–243–8224.

EIS No. 20100447, Final EIS, FTA, AK, Hatcher Pass Recreation Area Access Trails, and Transit Facilities, To Develop Transportation Access and Transit-Related Infrastructure, Northern and Southern Areas, Hatcher Pass, AK, Wait Period Ends: 12/20/2010, Contact: Dan Drais 206–220–7954.

EIS No. 20100448, Final EIS, USACE, NM, U.S. Steel Keetac Taconite Mine Expansion Project, Propose to Restart an Idled Production Line and Expand Contiguous Sections of the Open Pit Iron Ore Mine, located near Keewatin, Itasca and St. Louis Counties, MN, Wait Period Ends: 12/20/2010, Contact: Ralph Augustin 651–290–5378.

Amended Notices

EIS No. 20100386, Draft EIS, BLM, UT, Uinta Basin Natural Gas Development Project, To Develop Oil and Natural Gas Resources within the Monument Butte-Red Wash and West Tavaputs Exploration and Developments Area, Applications for Permit of Drill and Right-of-Way Grants, Uintah and Duchesne Counties, UT, Comment Period Ends: 12/30/2010, Contact: Mark Wimmer 435–781–4464.

Revision to FR Notice Published 10/01/2010: Extending Comment Period from 11/15/2010 to 12/30/2010.

EIS No. 20100431, Final EIS, USFS, WA, Dosewallips Road Washout Project, To Reestablish Road Access to both Forest Service Road (FSR) 2610 and Dosewallips Road, Hood Canal Ranger District Olympic National Forest, Olympic National Park, Jefferson County, WA, Wait Period Ends: 12/06/2010, Contact: Tim Davis 360–956–2375.

Revision to FR Notice Published 11/05/2010: Correction to Contract Phone Number.

EIS No. 20100438, Draft EIS, USA, CO, PROGRAMMATIC—Growth, Realignment, and Stationing of Army Aviation Assets, Evaluates Environmental Impacts of Stationing Army Combat Aviation Brigade at Fort Carson, CO and Joint Base Lewis-McChord, WA, Comment Period Ends: 12/20/2010, Contact: Mike Ackerman 210–295–2273.

Revision to FR Notice Published 11/05/2010; Correction to Lead Agency from COE to USA and Correction to the Title.

Dated: November 16, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–29227 Filed 11–18–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0001; FRL–8853–5]

SFIREG Full Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG) Full Committee will hold a 2–day meeting, beginning on December 6, 2010, and ending December 7, 2010. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, December 6, 2010, from 8:30 a.m. to 5 p.m. and Tuesday, December 7, 2010, from 8:30 a.m. to noon.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington VA, 1st Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561; fax number: (703) 308–2962; e-mail address: *kendall.ron@epa.gov* or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford, DE 19963; telephone number: (302) 422–8152; fax number: (302) 422–2435; e-mail address: *Grier Stayton@aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action apply to me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 ID number EPA–HQ–OPP–2010–0001. 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. Background

This unit sets forth the tentative agenda for the meeting:

1. Issue Paper on Differentiation of Label Language.
2. Issue Paper on "For Use By" Label Statements.
3. Issue Paper on Expiration Dates—Supplemental Labeling.
4. Issue Paper on Revision of PR Notice 87–1 (Chemigation).
5. Status of Drift PRN.
6. Total Release Fogger investigation.
7. Rewrite of Pesticide Inspectors Manual by the Office of Enforcement and Compliance Assurance (OECA).
8. Survey on decline in state pesticide program resources.
9. Federal credentialing resource issues.
10. Fumigation Label review process.
11. Discussion on State Lead Agency (SLA) enforcement issues for which EPA can provide assistance.
12. Discussion on providing for more input from SLAs in rule-making process.
13. Discussion on providing for more review of enforceability of label language during label review process.
14. SFIREG Committee Reports.
15. Revisions to State Tribal Assistance Grants (STAG) grant funding.
16. Discussion of revised State Label Issues Tracking System (SLITS) process.
17. Association of Structural Pest Control Regulatory Officials Update.
18. Association of American Pesticide Safety Educators Report.
19. Tribal Pesticide Program Council Report.
20. Pesticide Program Dialogue Committee Update.

III. How can I request to participate in this meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: November 10, 2010.

Robert McNally,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2010–29143 Filed 11–18–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9229–6]

Meeting of the National Drinking Water Advisory Council—Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is

hereby given of a meeting of the National Drinking Water Advisory Council (NDWAC), established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*). The primary focus of the meeting will be for the Council to discuss the Climate Ready Water Utility Work Group Report. The Council will be evaluating the report and determining what recommendations the Council will transmit to the Administrator. The Council will also discuss several other activities including, the Agency's drinking water strategy, the Underground Injection Control (UIC) Program, and revisions to the 1989 Total Coliform Rule (RTCR).

DATES: The Council meeting will be held on December 8, 2010, from 8:30 a.m. to 5 p.m., and December 9, 2010, from 8:30 a.m. to 5 p.m., Eastern time.

ADDRESSES: The meeting will be held at the Phoenix Park Hotel, 520 North Capitol Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Members of the public who would like to attend the meeting, present an oral statement, or submit a written statement, should contact Suzanne Kelly, by e-mail at: *kelly.suzanne@epa.gov,* by phone, 202–564–3887, or by regular mail at the U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (MC 4606M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The Council encourages the public's input and will allocate one hour (11 a.m.–12 p.m.) on December 9, 2010, for this purpose. Oral statements will be limited to five minutes. It is preferred that only one person present the statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Suzanne Kelly by telephone at 202–564–3887 no later than November 30, 2010. Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received by November 30, 2010 will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received December 1, 2010, or after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Special Accommodations

For information on access or services for individuals with disabilities, please contact Suzanne Kelly by telephone at 202–564–3887 or by e-mail at *kelly.suzanne@epa.gov.* To request accommodation of a disability, please contact Suzanne Kelly, preferably, at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: November 15, 2010.

Eric G. Burneson,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–29239 Filed 11–18–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, November 16, 2010, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2010–29072 Filed 11–18–10; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background:* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment On Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, 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 collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by FR 28, FR H–5, or FR 3016, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket

number in the subject line of the message.

• *FAX:* 202/452–3819 or 202/452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer 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: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Acting Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

Report title: Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks.

Agency form number: Reg H–5.

OMB control number: 7100–0261.

Frequency: Aggregate report, quarterly; policy statement, annually.

Reporters: State member banks.

Estimated annual reporting hours: 16,860 hours.

Estimated average hours per response: Aggregate report: 5 hours; Policy statement: 20 hours.

Number of respondents: 843.

General description of report: This information collection is mandatory pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (12 U.S.C. 1828(o)) which authorizes the Federal Reserve to require the recordkeeping requirements associated with the Board's Regulation H (12 CFR 208.51). Since the information is not collected by the Federal Reserve, no issue of confidentiality under the Freedom of Information Act (FOIA) arises. However, information gathered by the Federal Reserve during examinations of state member banks would be deemed exempt from disclosure under exemption 8 of FOIA. 5 U.S.C. 552(b)(8). In addition, exemptions 4 and 6 of FOIA, (5 U.S.C. 552(b)(4) and (b)(6)) also may apply to certain data (specifically, individual loans identified as in excess of supervisory loan-to-value limits) collected in response to these requirements if gathered by the Federal Reserve, depending on the particular circumstances. These exemptions relate to confidential commercial and financial information, and personal information, respectively. Applicability of these exemptions would be determined on a case-by-case basis.

Abstract: State member banks must adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Proposal to approve under OMB delegated authority the extension for three years, with minor revision, of the following reports:

1. Report title: Application for Employment with the Board of Governors of the Federal Reserve System.

Agency form numbers: FR 28, FR 28s, FR 28i.

OMB control number: 7100–0181.

Frequency: On Occasion.

Reporters: Employment applicants.

Annual reporting hours: 3,558 hours.

Estimated average hours per response: FR 28: 1 hour; FR 28s: 1 minute; FR 28i: 5 minutes.

Number of respondents: FR 28: 3,500; FR 28s: 2,000; FR 28i: 300.

General description of report: This information collection is required to obtain a benefit and is authorized pursuant to Sections 10 and 11 of the Federal Reserve Act (12 U.S.C. 244 and 248(1)). Information provided will be kept confidential under exemption (b)(6) of the FOIA to the extent that the disclosure of information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6).

Abstract: The Application collects information to determine the qualifications and availability of applicants for employment with the Board such as information on education and training, employment record, military service record, and other information since the time the applicant left high school. Included with the Application are two supplemental questionnaires: (1) The Applicant's Voluntary Self-Identification Form (FR 28s), which collects information on the applicant's gender and ethnic group and (2) The Research Assistant Candidate Survey of Interests (FR 28i), which collects information from candidates applying for Research Assistant positions on their level of interest in economics and related areas.

Current Actions: The Federal Reserve proposes minor revision to the FR 28i by (1) expanding the list of research topics of interest to candidates, (2) updating the list of software packages and statistical languages used by candidates, and (3) eliminating the portion of the survey that asks for the future objective of the candidates.

2. *Report title:* Ongoing Intermittent Survey of Households.

Agency form numbers: FR 3016.

OMB control number: 7100–0150.

Frequency: On Occasion.

Reporters: Households and individuals.

Annual reporting hours: 633 hours.

Estimated average hours per response: Division of Research & Statistics, 1.58 minutes; Division of Consumer & Community Affairs (DCCA), 3 minutes; Other divisions, 5 minutes; and Non-SRC surveys, 90 minutes.

Number of respondents: 500.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263 and 15 U.S.C. 1691b). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Federal Reserve Board. However, exemption 6 of the FOIA (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.

Abstract: The Federal Reserve uses this voluntary survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. Currently, the University of Michigan's Survey

Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and asks questions of special interest to the Federal Reserve intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments. The Federal Reserve primarily uses the survey to study consumer financial decisions, attitudes, and payment behavior.

Current Actions: The Federal Reserve proposes to revise the FR 3016 by decreasing the number of SRC surveys that would be conducted per year by DCCA from four to two. This decrease is due to DCCA's restructuring of its research function as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Board of Governors of the Federal Reserve System, November 16, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–29188 Filed 11–18–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 101 0061]

Simon Property Group, Inc.; Analysis of Proposed Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

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

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to "Simon Property, File No. 101 0061" to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: *https://ftcpublic.commentworks.com/ftc/simonproperty* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink: *https://ftcpublic.commentworks.com/ftc/simonproperty*. If this Notice appears at *http://www.regulations.gov/search/index.jsp,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the "Simon Property, File No. 101 0061" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act ("FTC Act") and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm.*

FOR FURTHER INFORMATION CONTACT: Joe Lipinsky (206–220–4473), FTC Northwest Regional Office, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 10, 2010), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission" or "FTC") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Simon Property Group, Inc. ("Simon") that will remedy the anticompetitive effects likely to result from Simon's acquisition of Prime Outlets Acquisition Company, LLC ("Prime"). Under the terms of the proposed Consent Agreement, Simon is required, among other things, to divest either Prime Outlets-Jeffersonville or Simon's Cincinnati Premium Outlets, both located in Southwest Ohio. Additionally, the proposed Consent Agreement prohibits Simon from enforcing any radius restriction with respect to any lease with any tenant in either of the following geographic areas: the Chicago, IL, metropolitan area or Orlando, FL. Finally, from the time when the Order becomes final through January 1, 2015, all tenants in Prime Outlets Orlando, Prime Outlets Orlando Marketplace, and Orlando Premium Outlets may unilaterally opt to extend any existing lease under its existing terms, without penalty, until January 1, 2015.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement, and will decide whether to withdraw from the proposed Consent Agreement, modify it, or make it final.

On December 8, 2009, Simon and Prime entered into an acquisition agreement under which Simon would acquire the entire Prime portfolio of outlet centers, consisting of 22 properties. The total value of the transaction was approximately $2.3 billion. On June 28, 2010, the parties amended the agreement to remove Prime's St. Augustine, FL, outlet center and its development projects at Livermore, CA, and Grand Prairie, TX, from the schedule of properties to be acquired by Simon. The acquisition was consummated on August 30, 2010. The Commission's complaint alleges that Simon's acquisition violates Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating an actual, direct, and substantial competitor from certain local markets in the United States.

II. Description of the Parties

Simon, a publicly traded real estate investment trust, is based in Indianapolis, Indiana. Simon is engaged in the business of developing and managing real estate. In particular, Simon develops and operates outlet centers under the Premium Outlets and Mills brands. Simon also develops and operates other real estate platforms.

Prime is a privately held subsidiary, jointly owned by entities controlled by David Lichtenstein and the Lightstone Group, a real estate investment company. Headquartered in Baltimore, MD, Prime is a developer and operator of outlet centers under the Prime Outlets brand.

III. The Complaint

The Commission's complaint alleges that Simon's acquisition of Prime may substantially lessen competition in the provision of retail space at outlet centers in the Southwest Ohio; Chicago, IL; and Orlando, FL, areas in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

The complaint alleges that the relevant product market in which to analyze the effects of the acquisition is retail space at outlet centers. Outlet centers are shopping centers featuring outlet stores, which sell discounted brand name merchandise. By clustering together, outlet tenants derive strong benefits from the network effect of creating a shopping destination, which is strengthened by the presence of tenants with desirable brands.

The complaint also alleges that the relevant geographic markets are local in nature. Competition between owners and developers of outlet centers occurs in local areas where more than one outlet center exists. In local overlap areas, tenants are able to use competition between landlords to get more favorable price and non-price terms in leases. The three geographic areas of concern outlined in the complaint are: (1) Southwest Ohio; (2) the Chicago, IL, metropolitan area; and (3) Orlando, FL.

In Southwest Ohio, Simon owns one outlet center, Cincinnati Premium Outlets in Monroe, OH, and Prime owns one, Prime Outlets-Jeffersonville in Jeffersonville, OH. These are the only outlet centers serving Southwest Ohio. Absent the proposed divestiture of one of these outlet centers, Simon's acquisition of Prime would give Simon a monopoly in the retail space in outlet centers market in Southwest Ohio, increasing the risk that Simon would unilaterally raise rents or reduce non-price benefits provided to tenants.

In the Chicago metropolitan area, the acquisition of Prime's Huntley, IL, and Pleasant Prairie, WI, outlet centers would give Simon ownership of all five outlet centers currently serving the Chicago metropolitan area market. However, there are two other outlet centers planned for this market: Craig Realty Group's planned outlet center in Country Club Hills, IL; and AWE Talisman's planned outlet center in Rosemont, IL. Absent the proposed relief in the Chicago metropolitan area, Simon may be able to prevent or limit this planned entry. Many of the tenants at the current Chicago area outlet centers have radius restrictions in their leases. This prevents or makes it very expensive for these outlet tenants to open additional stores within the Chicago, IL metropolitan area, which has the effect of preventing potential entry because the new developers cannot sign many of the tenants that are subject to radius restrictions.

In Orlando, the acquisition of Prime's outlet centers would give Simon ownership of three of the six outlet centers serving the Orlando area. However, Simon is acquiring the two closest competitors for many tenants. Absent the proposed relief in Orlando, Simon's acquisition of Prime would increase the risk that Simon would unilaterally raise prices or otherwise reduce tenant benefits due to lost competition.

Based on the above facts, the complaint alleges that Simon's acquisition of Prime could eliminate actual, direct, and substantial competition between Simon and Prime in the relevant markets, and increase Simon's ability to unilaterally exercise market power in Southwest Ohio; Chicago; and Orlando.

As stated in the complaint, entry would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of this acquisition. It takes more than two years to develop an outlet center, or to reposition another type of shopping center into an outlet center. In addition, entry is not likely because the relevant markets affected by this transaction are protected by radius restrictions, which prevent or make it very expensive for outlet tenants to open additional stores within a certain proscribed radius of an existing outlet center. This has the effect of preventing potential entry because new developers cannot sign tenants already bound by radius restrictions.

IV. The Terms of the Proposed Consent Agreement

The proposed Consent Agreement will remedy the likely competitive effects resulting from Simon's acquisition of Prime's outlet centers in each of the relevant markets discussed above. Pursuant to the proposed Consent Agreement, Simon will divest one outlet center in Southwest Ohio. This will remedy the competitive harm in that market by ensuring that Simon will not have a monopoly. The proposed Consent Agreement also requires Simon to waive enforcement of radius restrictions in the Chicago metropolitan area, which will eliminate a significant entry barrier that otherwise would likely preclude entry in Chicago. Finally, in Orlando, the proposed Consent Agreement requires Simon to waive enforcement of radius restrictions, which will make new entry substantially easier. Additionally, the proposed Consent Agreement requires Simon to provide tenants at all three outlet centers it will own in Orlando with the unilateral right to extend existing leases under existing lease terms up to January 1, 2015, with no penalty.

Finally, the proposed Consent Agreement requires Simon to maintain the Southwest Ohio outlet centers at full economic viability, marketability, and competitiveness until the divestiture of one of the outlet centers to a Commission-approved acquirer is complete.

V. Opportunity for Public Comment

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the comments received, and decide whether to withdraw from the proposed Consent Agreement, modify it, or make it final. By accepting the proposed Consent Agreement subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to inform and invite public comment on the proposed Consent Agreement, including the proposed divestiture, and to aid the Commission in its determination of whether to make the proposed Consent Agreement final. This analysis is not intended to constitute an official interpretation of the proposed Consent Agreement, nor to modify the terms of the proposed Consent Agreement in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–29163 Filed 11–18–10; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on December 17, 2010, from 9 a.m. to 3 p.m./Eastern Time.

Location: The meeting will be conducted virtually only. Dial into the meeting: 1–877–705–6006; webcast: *http://altarum.adobeconnect.com/HITstandards.*

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW, Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, email: judy.sparrow@hhs.gov. Please call the contact person for up-to-date information on this meeting. A notice in the Federal Register about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 10, 2010. Oral comments from the public will be scheduled between approximately 2 and 3 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: November 8, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–29217 Filed 11–18–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Policy Committee.

General Function of the Committee: to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is

consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The meeting will be held on December 13, 2010, from 10 a.m. to 3:15 p.m./Eastern Time.

Location: The Marriott Renaissance Washington Dupont Circle Hotel, 1143 New Hampshire Avenue, NW., Washington, DC. For up-to-date information, go to the ONC Web site, *http://healthit.hhs.gov*.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW, Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Privacy & Security Tiger Team, the Information Exchange Workgroup, the Enrollment Workgroup, and the Governance Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 8, 2010. Oral comments from the public will be scheduled between approximately 2:30 p.m. to 3 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: November 8, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–29219 Filed 11–18–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Tiger Team, Enrollment, Governance, Adoption/Certification, and Information Exchange workgroups.

General Function of the Committee: to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The HIT Policy Committee Workgroups will hold the following public meetings during December 2010: December 3rd Privacy & Security Tiger Team, 10 a.m. to 12 p.m./ET; December 3rd Meaningful Use Workgroup, 9 a.m. to 2:30 p.m./ET; December 6th Information Exchange Workgroup, 11 a.m. to 2 p.m./ET; December 8th Enrollment Workgroup, 11 a.m. to 2 p.m./ET; December 9th Privacy & Security Tiger Team, 9 a.m. to 4 p.m./ET, Marriott Metro Center; December 10th Privacy & Security Tiger Team, 10 a.m. to 12 p.m./ET; and December 10th Meaningful Use Workgroup, 1 p.m. to 2:30 p.m./ET.

Location: All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov.* Please check the ONC Web site for additional information or revised schedules as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, email: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, e.g., meaningful use, information exchange, privacy and security, enrollment, governance, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures

on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: November 9, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–29220 Filed 11–18–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT; Standards Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Standards Committee's Workgroups: Clinical Operations Vocabulary, Implementation, and Privacy & Security workgroups.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The HIT Standards Committee Workgroups will hold the following public meetings during December 2010: December 2nd Implementation Workgroup, 2 p.m. to 3:30 p.m./ET; and Clinical Operations Workgroup and Vocabulary Task Force meetings TBD.

Location: All workgroup meetings will be available via Webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available. *Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* clinical operations vocabulary standards, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: November 10, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–29221 Filed 11–18–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Medicare Program; Meeting of the Technical Advisory Panel on Medicare Trustee Reports

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Technical Advisory Panel on Medicare Trustee Reports (Panel). Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Medicare Trustees on how the Trustees might more accurately estimate health spending in the long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately measure health spending. Although panelists are not limited in the topics they may discuss, the Panel is not expected to discuss or recommend changes in current or future Medicare provider payment rates or coverage policy. This notice also announces the appointment of nine individuals to serve as members of the Panel.

Meeting Date: November 23, 2010, 9:30 a.m.–5 p.m. e.d.t.

ADDRESSES: The meeting will be held at HHS headquarters at 200 Independence Ave., SW., 20201, Room 738G.

Comments: The meeting will allocate time on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Donald T. Oellerich, OASPE, 200 Independence Ave., SW., 20201, Room 405F. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Donald T. Oellerich (202) 690–8410, *Don.oellerich@hhs.gov.* **Note:** Although the meeting is open to the public, procedures governing security procedures and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Oellerich by Friday November 19, 2010, so that their name may be put on a list of expected attendees and forwarded to the security officers at HHS Headquarters.

SUPPLEMENTARY INFORMATION: On July 30, 2010, we published a notice announcing the establishment and requesting nominations for individuals to serve on the Panel. This notice also announces the appointment of nine individuals to serve as members of the Panel. They are: Joseph Newhouse, John Bertko, Barry Bosworth, Michael Chernew, John Cookson, Uwe Reinhardt, Geoffrey Sandler, Louise Sheiner, and Cori Uccello.

Topics of the Meeting: The Panel is specifically charged with discussing and possibly making recommendations to the Medicare Trustees on how the Trustees might more accurately estimate the long term rate of health spending in the United States. The discussion is expected to focus on highly technical aspects of estimation involving economics and actuarial science. Panelists are not restricted, however, in the topics that they choose to discuss.

Procedure and Agenda: This meeting is open to the public. First, the

appointees will be sworn in by a Federal official. Each Panel member will then be given an opportunity to make a self introduction. The Panel will likely hear presentations from HHS staff introducing them to the topic. After any presentations, the Commission will deliberate openly on the topic. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Commission will also allow an open public session for any attendee to address issues specific to the topic.

Authority: 42 U.S.C. 217a; Section 222 of the Public Health Services Act, as amended. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: November 9, 2010.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–29215 Filed 11–18–10; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date: December 1, 2010, 9 a.m.–2:30 p.m., December 2, 2010, 9:30 a.m.–1 p.m.

Place: Marriott Washington Hotel, 1221 22nd Street, NW., Washington, DC 20037, (202) 872–1500.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department and the Office of the National Coordinator. There will also be a report on the NCVHS Executive Subcommittee's discussion of the Committee's review and decision-information flow process. In the afternoon there will be a discussion of a letter to the HHS Secretary regarding the quality measures roadmap.

On the morning of the second day there will be a review of the final letter to the Secretary regarding the quality measures roadmap. There will also be an update from the Centers for Medicaid and Medicare Services (CMS) and an update on HHS Data Initiatives from the Department. Subcommittees will also present their reports.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and second day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: November 15, 2010.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation—Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–29216 Filed 11–18–10; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10207, CMS–R–131, CMS–10215, CMS–724, CMS–10227, and CMS–10244]

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:* Extension of a currently approved collection; *Title of Information Collection:* Physician Self-Referral Exceptions for Electronic Prescribing and Electronic Health Records; *Form Number:* CMS–10207 (OMB#: 0938–1009); *Use:* Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) directed the Secretary to create an exception to the physician self-referral prohibition in section 1877 of the Social Security Act for certain arrangements in which a physician receives compensation in the form of items or services (not including cash or cash equivalents) ("nonmonetary remuneration") that is necessary and used solely to receive and transmit electronic prescription information. Also, CMS created a separate regulatory exception for certain arrangements involving the provision of nonmonetary remuneration in the form of electronic health records software or information technology and training services necessary and used predominantly to create, maintain, transmit, or receive electronic health records.

The conditions for both exceptions require that arrangements for the items and services provided must be set forth in a written agreement, be signed by the parties involved, specify the items or services being provided and the cost of those items or services, and cover all of the electronic prescribing and/or electronic health records technology to be provided by the donating entity. CMS would use the collected information for enforcement purposes; specifically, if we were investigating the financial relationships between the donors and the physicians to determine whether the provisions in the exceptions were met. *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 9,796; Total *Annual Responses:* 38,959; *Total Annual Hours:* 12,451.5. . (For policy questions regarding this collection contact Kristin Bohl at 410–

786–8680. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Advance Beneficiary Notice of Noncoverage (ABN); *Form Number:* CMS–R–131 (OMB#: 0938–0566); *Use:* Under section 1879 of the Social Security Act, a physician, provider, practitioner, or supplier of items or services participating in the Medicare program, or taking a claim on assignment, may bill a Medicare beneficiary for items or services usually covered under Medicare, but denied in an individual case under one of the several statutory exclusions, if they inform the beneficiary, prior to furnishing the service, that Medicare is likely to deny payment. Sections 42 CFR 411.404(b) and (c), and 411.408(d)(2) and (f), require written notice be provided to inform beneficiaries in advance of potential liability for payment. *Frequency:* Once; *Affected Public:* Reporting: Weekly, Monthly, Yearly, Biennially and Occasionally; *Number of Respondents:* 1,326,282; Total *Annual Responses:* 43,725,850; *Total Annual Hours:* 5,099,309. (For policy questions regarding this collection contact Evelyn Blaemire at 410–786–1803. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Payment for Prescription Drugs—Physicians and Hospital Outpatient Departments Collecting and Submitting Drug Identifying Information to State Medicaid Programs; *Use:* Section 6002 of the Deficit Reduction Act (DRA) of 2005 added provisions under section 1927 of the Social Security Act to require physicians in their offices and hospital outpatient settings or other entities (*e.g.,* non-profit facilities) to collect and submit the drug National Drug Code (NDC) numbers on Medicaid claims to their State in order for Federal Financial Participation to be available for these drugs. *Form Number:* CMS–10215 (OMB#: 0938–1026); *Frequency:* Weekly; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 20,000; Total *Annual Responses:* 3,910,000; *Total Annual Hours:* 15,836. (For policy questions regarding this collection contact Bernadette Leeds at 410–786–9463. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare/Medicaid Psychiatric Hospital Survey Data; *Use:* The CMS–724 form is used to collect data that is not collected elsewhere and assists CMS in program planning and evaluation and in maintaining an accurate database on providers participating in the psychiatric hospital program. *Form Number:* CMS–724 (OMB#: 0938–0378); *Frequency:* Annually; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 500; Total *Annual Responses:* 150; *Total Annual Hours:* 75. (For policy questions regarding this collection contact Kelley Leonette at 410–786–6664. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* PACE State Plan Amendment Pre-print; *Use:* The Balanced Budget Act of 1997 created section 1934 of the Social Security Act that established the Program for the All-Inclusive Care for the Elderly (PACE). The legislation established the PACE program as a Medicaid State plan option serving the frail and elderly in the home and community. Pursuant to the notice given in 64 FR 66271 (November 24, 1999), if a State elects to offer PACE as an optional Medicaid benefit, it must complete a State Plan Amendment described as Enclosures #3, 4, 5, 6 and 7. The information collected is used by CMS to affirm that the State elects to offer PACE an optional State plan service and the specifications of eligibility, payment and enrollment for the program. *Form Number:* CMS–10227 (OMB#: 0938–1027); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 36; Total *Annual Responses:* 12; *Total Annual Hours:* 240. (For policy questions regarding this collection contact Angela Taube at 410–786–2638. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid State Program Integrity Assessment (SPIA); *Use:* Under the provisions of the Deficit Reduction Act (DRA) of 2005, the Congress directed CMS to establish the Medicaid Integrity Program (MIP), CMS' first national strategy to combat Medicaid fraud, waste, and abuse. CMS has two broad responsibilities under the MIP: (1) Reviewing the actions of individuals or entities providing services or furnishing items under Medicaid; conducting audits of claims submitted for payment; identifying overpayments; and educating providers and others on payment integrity and quality of care; and (2) Providing effective support and assistance to States to combat Medicaid fraud, waste, and abuse.

In order to fulfill the second of these requirements, CMS developed SPIA. CMS uses SPIA to collect data on State Medicaid program integrity activities, develop reports for each State based on these data, determine areas to provide States with technical support and assistance, and develop measures to assess States' performance. *Form Number:* CMS–10244 (OMB#: 0938–1033); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; Total *Annual Responses:* 56; *Total Annual Hours:* 1,400. (For policy questions regarding this collection contact Mary Jo Cook at 410–786–3231. 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 *December 20, 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: November 12, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–29074 Filed 11–18–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10334 and CMS–10339]

Agency Information Collection Activities: Proposed Collection; 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) 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Enrollment Application for Coverage in the Pre-Existing Condition Insurance Plan; *Use:* The Department of Health and Human Services (HHS) is requesting an extension of this information collection request by the Office of Management and Budget (OMB). This information collection request originally received OMB approval on 6/29/2010. HHS is now seeking a three-year approval for this collection. On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148. Section 1101 of the law establishes a "temporary high risk health insurance pool program" (which has been named the Pre-Existing Condition Insurance Plan, or PCIP) to provide health insurance coverage to currently uninsured individuals with pre-existing conditions.

In order for individuals to be considered for eligibility into the federally-run PCIP program, they must submit a completed enrollment application to HHS. The enrollment application is used by HHS or its designee to obtain information from potentially eligible individuals applying for coverage in the PCIP program. PCIP is also referred to as the temporary qualified high risk insurance pool program, as it is called in the Affordable Care Act, but we have adopted the term PCIP to better describe the program and avoid confusion with the existing state high risk pool programs. The data collection will be used by HHS to obtain information from potential eligible individuals applying for coverage in the PCIP. *Form Number:* CMS–10334 (OMB#: 0938–1095); *Frequency:* Once; *Affected Public:* Individuals and households; *Number of Respondents:* 100,000; Total *Annual Responses:* 100,000; *Total Annual Hours:* 92,000. (For policy questions regarding this collection contact Laura Dash at 410–786–8623. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Pre-Existing Health Insurance Plan and Supporting Regulations; *Use:* The Department of Health and Human Services (HHS) is requesting an extension of this information collection request by the Office of Management and Budget (OMB). This information collection request originally received OMB approval on 7/26/2010. HHS is now seeking a three-year approval for this collection. On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148. Section 1101 of the law establishes a "temporary high risk health insurance pool program" (which has been named the Pre-Existing Condition Insurance Plan, or PCIP) to provide health insurance coverage to currently uninsured individuals with pre-existing conditions. The law authorizes HHS to carry out the program directly or through contracts with states or private, non-profit entities.

We are requesting an extension for this package because this information is needed to assure that PCIP programs are established timely and effectively. This request is being made based on regulations that have been issued and contracts which have been executed by HHS with States or an entity on their behalf participating in the PCIP program. PCIP is also referred to as the temporary qualified high risk insurance pool program, as it is called in the Affordable Care Act, but we have adopted the term PCIP to better describe the program and avoid confusion with the existing state high risk pool programs. *Form Number:* CMS–10339 (OMB#: 0938–1100); *Frequency:* Reporting—On occasion; *Affected Public:* State governments; *Number of Respondents:* 51; *Total Annual Responses:* 2,652; *Total Annual Hours:* 36,924. (For policy questions regarding this collection contact Laura Dash at 410–786–8623. 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 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.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *January 18, 2011:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 16, 2010.

Martique Jones,

Director, Regulations Development Group Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–29253 Filed 11–18–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10356]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and 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 and 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 functions;

(2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. In accordance with 5 CFR 1320.13, we are requesting an emergency review to ensure compliance with an initiative of the Administration.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Evaluation of Practice Models for Dual Eligibles and Medicare Beneficiaries with Serious Chronic Conditions *Use:* The Affordable Care Act (ACA) established the Federal Coordinated Health Care Office (FCHCO) to more effectively integrate benefits under Medicare and Medicaid and improve Federal and State coordination for dual-eligible beneficiaries (duals). Duals are among the most vulnerable beneficiaries—most face multiple and severe chronic conditions that require complex and intense care—and because they receive both Medicare and Medicaid coverage, they must navigate two separate health care programs, often leading to fragmented, inefficient, and costly care. The Centers for Medicare & Medicaid Services (CMS) Office of Policy (OP) has contracted L&M Policy Research and its partner Thomson Reuters to explore variations in patterns of care and best practices for duals and other Medicare beneficiaries with complex health needs.

This project comprises qualitative information-gathering through open-ended, in-person discussions with providers, local health care and community leaders, patient advocates, and professionals involved in implementing care coordination initiatives. To determine factors associated with high quality and cost effective care as well as better understand the barriers to delivering it, the research team will hold in-person discussions during visits to 16 hospital referral regions (HRRs). In two of these HRRs, there will be a particular focus on the role of the Program for All-Inclusive Care for the Elderly (PACE). Many different organizations and types of programs will be explored during this field work, varying in their approach to health care delivery and the extent to which they are directly involved in the coordination of care for vulnerable populations. Lessons learned, to include critical challenges and success factors, will be used to inform the pressing work of the FCHCO to support initiatives and policies that improve care coordination for duals, as well as other priorities outlined in the ACA. *Form Number:* CMS–10356 (OMB#: 0938–New); *Frequency:* Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 368; *Total Annual Responses:* 368; *Total Annual Hours:* 494. (For policy questions regarding this collection contact John Oswald at 202–260–0835. For all other issues call 410–786–1326.)

CMS is requesting OMB review and approval of this collection by *December 29, 2010,* with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by December 20, 2010.

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/regulations/pra* 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.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by December 20, 2010.

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

3. *By Facsimile or E-mail to OMB.* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: November 16, 2010.

Martique Jones,

Director, Regulations Development Group—Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–29252 Filed 11–18–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–10ES]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Data Calls for the Laboratory Response Network—Existing collection in use without an OMB Control Number (Generic Clearance)—National Center for Emerging and Zoonotic Infectious Diseases, NCEZID, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This request is for approval of an Existing collection in use without an OMB Control Number (Generic clearance).

The Laboratory Response Network (LRN) was established by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39, which outlined national anti-terrorism policies and assigned specific missions to federal departments and agencies. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond to acts of biological, chemical, or radiological terrorism and other public health emergencies. Federal, state and local public health laboratories voluntarily join the LRN.

The LRN Program Office maintains a database of information through a restricted Web site available only to member laboratories that include contact information (*i.e.* phone numbers, e-mail address) as well as staff and equipment inventories. The collection of personal identifiable information for the purpose of communication with members was approved under OMB 0920–0850. However, semiannually or during emergency response the LRN Program Office may conduct a Special Data Call to obtain additional information from LRN Member Laboratories in regards to biological or chemical terrorism preparedness. Special Data Calls may be conducted via queries that are distributed by broadcast e-mails or by survey tools (*i.e.* Survey Monkey). These special data calls vary in nature. Some requested information may be the number of surge staff available to support an emerging threat like H1N1. As technology changes, LRN may also query laboratories to see if they have already purchased equipment to support this new technology.

There will be no cost to respondents other than their time to respond to the data call. The total annualized burden for this information collection request is 400 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondents	Forms	Number of respondents	Average number of responses per respondent	Average burden per response (hours)
Public Health Laboratorians	Special Data Call	200	4	30/60

Dated: November 15, 2010.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–29240 Filed 11–18–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10360 and CMS–10106]

Agency Information Collection Activities: Proposed Collection; 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) 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 functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Consumer Research on Public Reporting of Hospital Outpatient Measures; *Use:* One of the primary missions of CMS is to improve the quality and efficiency of care in the Fee-for-Service (FFS) program. One of the several vehicles used for this mission is the public reporting of quality, efficiency and cost information about hospital care on the *Hospital Compare* Web site. This vehicle also serves to provide Medicare beneficiaries and other consumers with the type of data needed to make informed decisions about which providers to use for their care.

In 2001, the Department of Health and Human Services (DHHS) announced the *Quality Initiative* to ensure the quality of health care for all Americans through accountability and public disclosure. The goals of the initiative are to empower consumers with quality-of-care information so they can make more informed decisions about their health care and to stimulate and support providers and clinicians to improve the quality of health care. As part of the DHHS Transparency Initiative on Quality Reporting, CMS plans to add new patient safety measures in the areas of hospital acquired conditions and healthcare associated infections, to the Hospital Compare Web site in 2011. CMS also intends to begin utilizing displays of composite measures summarizing both process and outcome measures. This information collection request covers consumer research on displays, labels, and explanatory language to insure that the Web site is understood by viewers in a manner consistent with CMS's intended communication message. *Form Number:* CMS–10360 (OMB#: 0938–New); *Frequency:* Once; *Affected Public:* Individuals and Households; *Number of Respondents:* 248; Total *Annual Responses:* 248; *Total Annual Hours:* 241. (For policy questions regarding this collection contact David Miranda at 410–786–7819. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Medicare Authorization to Disclose Personal Health Information; *Use:* Unless permitted or required by law, the Health Insurance Portability and Accountability Act (HIPAA) prohibits Medicare (a HIPAA covered entity) from disclosing an individual's protected health information without a valid authorization. In order to be valid, an authorization must include specified core elements and statements. Medicare will make available to Medicare beneficiaries a standard, valid authorization to enable beneficiaries to request the disclosure of their protected health information. This standard authorization will simplify the process of requesting information disclosure for beneficiaries and minimize the response time for Medicare. The completed authorization will allow Medicare to disclose an individual's personal health information to a third party at the individual's request. *Form Number:* CMS–10106 (OMB#: 0938–0930); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 1,004,000; *Total Annual Responses:* 1,004,000; *Total Annual Hours:* 251,000. (For policy questions regarding this collection contact Lindsay Dixon-Brown at 410–786–1178. 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 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.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *January 18, 2011:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 12, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–29076 Filed 11–18–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Evaluation of Head Start Early Learning Mentor Coach Initiative.

OMB No.: New Collection.

Billing Accounting Code (BAC): 418422 (CAN G994426).

Description: The Administration for Children and Families is requesting comments on plans to collect information as part of an implementation evaluation of the Head Start Early Learning Mentor-Coach Initiative. The study will collect information necessary for understanding the methods and approaches being used by Head Start grantees who were awarded funds under the American Recovery and Reinvestment Act of 2009—Early Learning Mentor Coach funding announcement (Funding Opportunity Number HHS–201–ACF–OHS–ST–0120)

The study will describe the range of approaches being used by the grantees, including descriptions of the role of the mentor coach within the grantee agency; the types of teachers and caregivers with whom the mentor coaches are working; the quality, frequency and content of interactions between the mentor coaches and teachers and caregivers; and the types of approaches and resources used by the mentor coaches. The study will also examine the characteristics of the settings and the systems in which the mentor coaching is embedded. Finally the study will examine the degree to which the approach used by grantees and mentor coaches and the fit between the two—relate to factors likely to affect the success of the mentor coach's efforts, such as the quality of relationships with teachers and caregivers or changes in teacher or caregiver approaches and attitudes about caring for young children over time.

The data collection will include a survey of the grantees, telephone interviews with mentor coaches and teachers, and the collection of monthly tracking data indicating the frequency and content of mentors' contact with each teacher.

Respondents: Individuals or Households, Grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Grantee Survey	131	1	.5	66
Mentor Coach Interview	131	2	.5	131
Teacher Interview	262	2	.5	262
Mentor Coach Contact Tracking sheet	131	12	.2	314

Estimated Total Annual Burden Hours: 773.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. *E-mail address: OPREinfoco11ection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 12, 2010.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2010–29071 Filed 11–18–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: ACF Program Instruction: Children's Justice Act.

OMB No.: 0980–0196.

Description: The Program Instruction, prepared in response to the enactment of the Childrens Justice Act (CJA), as set forth in Title II of Public Law 108–36, Child Abuse Prevention and Treatment Act Amendments of 2003, provides direction to the States and Territories to accomplish the purposes of assisting States in developing, establishing and operating programs designed to improve: (1) The handling of child abuse and neglect cases, particularly child sexual abuse and exploitation, in a manner that limits additional trauma to the child victim; (2) the handling of cases of suspected child abuse or neglect-related fatalities; (3) the investigation and prosecution of cases of child abuse and neglect, particularly child sexual abuse and exploitation; and (4) the handling of cases involving children with disabilities or serious health-related problems who are victims of abuse and neglect. This Program Instruction contains information collection requirements that are found in Public Law 108–36 at Sections 107(b) and 107(d), and pursuant to receiving a grant award. The information being collected is required by statute to be submitted pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute; to monitor, evaluate and measure grantee achievements in addressing the investigation and prosecution of child abuse and neglect; and to report to Congress.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application & Annual Report	52	1	60	3,120

Estimated Total Annual Burden Hours: 3,120.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 16, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–29189 Filed 11–18–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Office of the Secretary

Office of the Commissioner of Food and Drugs; Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner of Food and Drugs the authorities vested in the Secretary of Health and Human Services under section 4 of the Federal Cigarette Labeling and Advertising Act (FCLAA)(15 U.S.C. 1333), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act).

These authorities may be redelegated. These authorities shall be exercised under the Department's policy on regulations and the existing delegation of authority to approve and issue regulations.

I hereby ratify and affirm any actions taken by the Commissioner of Food and Drugs, or other FDA officials, which involved the exercise of the authorities delegated herein prior to the effective date of this delegation. This delegation is effective upon date of signature.

Dated: November 9, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–29150 Filed 11–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Joint Meeting of the Anesthetic and Life Support Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee scheduled for December 2, 2010, is cancelled. This meeting was announced in the **Federal Register** of November 1, 2010 (75 FR 67093). This meeting has been cancelled because the Agency believes the information received from previous advisory committee meetings is adequate to allow the Agency to address the specific concerns in the application that were delineated in the **Federal Register** notice of November 1, 2010.

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417,

Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *kalyani.bhatt@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512529 or 3014512535. Please call the Information Line for up-to-date information on this meeting.

Dated: November 15, 2010.

Joanne Less,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–29280 Filed 11–18–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 8, 2010, from 8 a.m. to 3:30 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center, Rm. 1503, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking and transportation may be accessed at: *http://www.fda.gov/Advisory Committees/default.htm*; under the heading "Resources for You", click on "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings". Please note that visitors to the White Oak Campus must have a valid driver's license or other picture ID, and must enter through Building 1.

Contact Person: Elaine Ferguson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *elaine.ferguson@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512533. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On December 8, 2010, from 8 a.m. to 11:30 a.m., the committee will discuss and provide general advice on the appropriate clinical study design for thromboxane receptor antagonists for prevention of cardiovascular events (such as heart attacks) in patients with aspirin intolerance due to immunologically-based adverse reactions (adverse events related to immune system function), specifically in the setting of coronary artery bypass grafting (also referred to as "heart bypass surgery").

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/Advisory Committees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: On December 8, 2010, from 8 a.m. to 11:30 a.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before December 6, 2010. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 29, 2010. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 30, 2010.

Closed Presentation of Data: On December 8, 2010, from 12:30 p.m. to 3:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Elaine Ferguson at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/Advisory Committees/AboutAdvisory Committees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 15, 2010.

Joanne Less,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–29278 Filed 11–18–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: November 24, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Noni Byrnes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892. (301)–435–1023. *byrnesn@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; Cardiac/cardiovascular Signaling.

Date: November 30, 2010.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Russell T Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892. (301) 435–1850. *dowellr@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29198 Filed 11–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Research Resources; 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 Center for Research Resources Special Emphasis Panel.

Date: February 1, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NCRR/OR, Democracy I, 6701 Democracy Blvd., 1066, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Bonnie Dunn, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Democracy Blvd., Dem. 1, Room 1074, MSC 4874, Bethesda, MD 20892–4874. 301–435–0824. *dunnbo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: November 15, 2010.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–29197 Filed 11–18–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation of SEA, Ltd., as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of SEA, Ltd., as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, SEA, Ltd., 7349 Worthington-Galena Road, Columbus, OH 43085, has been accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation of SEA, Ltd., as commercial laboratory became effective on June 22, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29177 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 327 Erickson Ave., Essington, PA 19029, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete

listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on June 16, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29164 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 4041 Home Road, Suite A, Bellingham, WA 98226, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 06, 2010. The next triennial inspection date will be scheduled for August 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29179 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 481 A East Shore Parkway, New Haven, CT 06512, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 04, 2010. The next triennial inspection date will be scheduled for May 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29185 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 1941 Freeman Ave., Suite A, Signal Hill, CA 90755, has been approved to gauge and accredited to test petroleum and petroleum products, for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective

on July 21, 2010. The next triennial inspection date will be scheduled for July 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29183 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 1881 W. State Road 84, Bay 105, Fort Lauderdale, FL 33315, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 26, 2010. The next triennial inspection date will be scheduled for August 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29182 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 3306 Loop 197 North, Texas City, TX 77590, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on March 30, 2010. The next triennial inspection date will be scheduled for March 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29181 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 2 Williams Street, Chelsea, MA 02150, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on June 25, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania

Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29180 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 4350 Oakes Rd., Suite 521 A, Davie, FL 33314, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 24, 2010. The next triennial inspection date will be scheduled for August 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29178 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Robinson International (USA) Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Robinson International (USA) Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Robinson International (USA) Inc., 4400 S. Wayside Drive, Suite 107, Houston, TX 77207, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Robinson International (USA) Inc., as commercial gauger and laboratory became effective on July 07, 2010. The next triennial inspection date will be scheduled for July 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29175 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Accreditation and Approval of Camin Cargo Control, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Camin Cargo Control, Inc., 3001 SW 3rd Ave, Suite #8, Fort Lauderdale, FL 33315, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on August 25, 2010. The next triennial inspection date will be scheduled for August 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29174 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Inspectorate America Corporation, 2501 SE Columbia Way, STE 300, Vancouver, WA 98661, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 02, 2010. The next triennial inspection date will be scheduled for August 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29172 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–1020]

Information Collection Request to Office of Management and Budget; OMB Control numbers: 1625–0108.

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0108, Standard Numbering System for Undocumented Vessels. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before January 18, 2011.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2010–1020], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand deliver:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, a copy is available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, US Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION: Contact Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public participation and request for comments: The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. *Please see* the "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2010–1020], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider

all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Enter the docket number for this Notice [USCG–2010–1020] in the Search box, and click "Go >." You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Request.

Title: Standard Numbering System for Undocumented Vessels.

OMB Control Number: 1625–0108.

Summary: The Standard Numbering System (SNS) collects information on undocumented vessels and vessel owners operating on waters subject to the jurisdiction of the United States. Federal, State, and local law enforcement agencies use information daily or as warranted from the system for enforcement of boating laws or theft and fraud investigations. Since the September 11, 2001 terrorist attacks on the United States, the need has increased for identification of undocumented vessels to meet port security and other missions to safeguard the homeland.

Need: Subsection 12301(a) of Title 46, United States Code, requires undocumented vessels equipped with propulsion machinery of any kind to be numbered in the State where the vessel is principally operated. Title 46 U.S.C. 12302(a) authorized the Secretary to prescribe, by regulation, a SNS that may be implemented by the States to perform this function on behalf of the Federal Government. The Secretary shall approve a State numbering system that is consistent with the SNS. The Secretary has delegated his authority under 46 U.S.C. 12301 and 12302 to the Coast Guard (DHS Delegation No. 0170.1). Regulations requiring the numbering of undocumented vessels are in 33 CFR part 173; those establishing the SNS for States to voluntarily carry out this function are contained in part 174. For States that do not have an approved system, the Coast Guard administers vessel numbering. Currently, all 56 States and Territories have approved numbering systems. The approximate number of undocumented vessels registered by the States in 2009 was nearly 13 million. States submit reports annually to the Coast Guard on the number, size, construction, etc., of vessels they have numbered. This information is used by the Coast Guard in (1) publication of an annual "Boating Statistics" report required by 46 U.S.C. 6102(b), and (2) for allocation of Federal funds to assist States in carrying out the Recreational Boating Safety (RBS) Program established by 46 U.S.C. chapter 131. When encountering a vessel suspected of illegal activity, information from the SNS increases safety by assisting boarding officers in determining how best to approach a vessel. Since, the September 11, 2001 terrorist attacks on the United States, the need has increased for identification of undocumented vessels and their owners for port security and other missions to safeguard the homeland; this statutory requirement dates back to 1918.

Forms: None.

Respondents: Owners of all undocumented vessels propelled by machinery. "Owners" may include individuals or households, non-profit organizations, and small businesses (*e.g.,* liveries that offer recreational vessels for rental by the public) or other for-profit organizations.

Frequency: On occasion.

Burden Estimate: The estimated burden remains the same at 286,458 hours a year.

Dated: November 10, 2010.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2010–29167 Filed 11–18–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Approval of SAYBOLT LP, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 780B Primos Avenue, Folcroft, PA 19032, has been approved to gauge and accredited to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on June 15, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29169 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Saybolt LP, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Saybolt LP, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 7308 North Main Street, Jacksonville, FL 32208, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request

and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Saybolt LP, as commercial gauger became effective on June 29, 2010. The next triennial inspection date will be scheduled for June 2013.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: November 8, 2010.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2010–29171 Filed 11–18–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5832–N–14]

Notice of Proposed Information Collection for Public Comment: 2011 Rental Housing Finance Survey

AGENCY: Office of the Assistant Secretary for Policy Development and Research, 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 of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* January 18, 2011.

ADDRESSES: Interested persons are invited to submit comments on this interim rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Wendy Y. Chi, Office of Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; via telephone (202) 402–6534 (this is not a toll-free number); via e-mail at *Wendy.Y.Chi@hud.gov.*

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: 2011 Rental Housing Finance Survey.

OMB Control Number: 0000–0000.

Description of the need for the information and proposed use: The Rental Housing Finance Survey (RHFS) provides a measure of financial, mortgage, and property characteristics of multifamily rental housing properties in the United States. The RHFS focuses on mortgage financing of multifamily rental housing properties, with emphasis on new originations for purchase, capital improvement, refinancing, and the loan terms and property characteristics associated with these originations.

The RHFS will collect data on property values of residential structures, characteristics of residential structures, rental status and rental value of units within the residential structures, commercial use of space within residential structures, property management status, ownership status, a detailed assessment of mortgage financing, and benefits received from federal, state, local, and non-governmental programs. Many of the questions are the same or similar to those found on the 1995 Property Owners and Managers Survey and the rental housing portion of the 2001 Residential Finance Survey. This survey does not duplicate work done in other existing HUD surveys or studies that are pertinent to mortgage finance of multifamily rental properties.

Policy analysts, program managers, budget analysts, and Congressional staff can use the survey's results to advise executive and legislative branches about the mortgage finance characteristics of the multifamily rental housing stock in the United States and the suitability of public policy initiatives. Academic researchers and private organizations will also be able to utilize the data to facilitate their research and projects.

The Department of Housing and Urban Development (HUD) needs the RHFS data for the following two reasons:

1. This is the only data source that provides a comprehensive picture of mortgage financing of the multifamily rental properties with two or more units.

2. With the data, HUD can gain a better understanding of mortgage

origination volumes, loan and property characteristics associated with these originations, and operating cost and revenue characteristics for the multifamily rental housing stock in the United States. This information will help HUD to evaluate, monitor, and design national housing policies, priorities, and programs affecting the entire spectrum of the multifamily rental stock.

Agency Form Numbers: 000000000000.

Members of affected public: Owners and managers of rental properties.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 3,600.

Estimate of Responses per Respondent: 1 every 2 years.

Time (minutes) per respondent: 30.

Total hours to respond: 1800.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: November 12, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–29276 Filed 11–18–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–110]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Federal Housing Administration (FHA): Home Energy Retrofit Loan Pilot Program; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 3, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within zero (0) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Ross A. Rutledge, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Ross.A.Rutledge@omb.eop.gov;* fax: 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 4517th Street, SW., Washington, DC 20410; e-mail *Colette.Pollard@HUD.gov;* telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to implementing an FHA Energy Efficient Mortgage Innovation pilot program targeted to the single family housing market. The Consolidated Appropriations Act, 2010 (Pub. L. 111–117, approved December 16, 2009, 123 Stat. 3034) (2010 Appropriations Act), which appropriated fiscal year 2010 funds for HUD, among other agencies, appropriated $50 million for an Energy Innovation Fund to enable HUD to catalyze innovations in the residential energy efficiency sector that have the promise of replicability and help create a standardized home energy efficient retrofit market. Of the $50 million appropriated for the Energy Innovation Fund, the 2010 Appropriations Act stated that "$25,000,000 shall be for the Energy Efficient Mortgage Innovation pilot program directed at the single family housing market." (See Pub. L. 111–117, at 123 Stat. 3089). The FHA Home Energy Retrofit Loan Pilot Program (Retrofit Pilot Program) is designed by HUD to meet this statutory directive and provides funding to support that effort. Under the Retrofit Pilot Program, HUD, through FHA-approved lenders, will insure loans for homeowners who are seeking to make energy improvements to their homes.

Lender participation in the Retrofit Pilot Program is voluntary. To facilitate HUD's evaluation of lender performance and assessment of the success and replicability of the pilot program, HUD will select lenders to participate in the program. To be eligible for participation, lenders must submit an Expression of Interest that demonstrates the eligibility of the lender to participate in the Retrofit Pilot Program.

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: Federal Housing Administration (FHA): Home Energy Retrofit Loan Pilot Program.

Description of Information Collection: Lender eligibility to participate in the Retrofit Pilot Program.

OMB Control Number: Pending.

Agency Form Numbers: None.

Members of Affected Public: FHA-approved lenders.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 600, the estimated number of respondents is 15, the frequency response is one time, and the estimated number of hours per response is 40.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: *November 16, 2010.*

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–29274 Filed 11–18–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–45]

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.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Room 8536, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (202) 601–2545; *COE:* Mr. Scott Whiteford, Army Corps of Engineers, Director of Real Estate, CEMP–CR, 441 G St., NW., Washington, DC 20314; (202)761–5542; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mr. Albert Johnson, Director of Real Estate, Department of the Navy, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685–9305; (These are not toll-free numbers).

Dated: November 10, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/19/2010

Suitable/Available Properties

Building

Oregon

Residence
140 Government Road
Malheur Natl Forest
John Day OR 97845
Landholding Agency: GSA
Property Number: 54201040012
Status: Excess
GSA Number: 9–A–OR–0786–AA
Comments: 1560 sq. ft., presence of asbestos/lead paint, off-site use only

Land

California

Drill Site #3A
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040004
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #4
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040005
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Comments: 2.21 acres, mineral rights, utility easements

Drill Site #6
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040006
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Comments: 2.13 acres, mineral rights, utility easements

Drill Site #9
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040007
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #20
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040008
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #22
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040009
Status: Surplus
GSA Number: 9–B–CA–1673–AF
Comments: 2.07 acres, mineral rights, utility easements

Drill Site #24
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040010
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Comments: 2.06 acres, mineral rights, utility easements

Drill Site #26
null
Ford City CA 93268
Landholding Agency: GSA
Property Number: 54201040011
Status: Surplus
GSA Number: 9–B–CA–1673–AA
Comments: 2.07 acres, mineral rights, utility easements

Hawaii

Property Record 1–11032
Naval Station
Pearl Harbor HI 96818
Landholding Agency: Navy
Property Number: 77201040011
Status: Unutilized
Comments: 2.752 acres, harbor sediments/petro pipeline

Unsuitable Properties

Building

Alabama

4 Bldgs.
Anniston Army Depot
Calhoun AL 36201
Landholding Agency: Army
Property Number: 21201040001
Status: Unutilized
Directions: 00051, 0084A, 0084B, 00614
Reasons: Extensive deterioration

Arizona

4 Bldgs.
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21201040002
Status: Excess
Directions: 22009, 22010, 22011, 22012
Reasons: Within 2000 ft. of flammable or explosive material

California

13 Bldgs.
Fort Irwin
San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21201040003
Status: Unutilized
Directions: 100, 338, 343, 385, 411, 412, 413, 486, 489, 490, 491, 493, 5006
Reasons: Secured Area

Colorado

Bldgs. 5510, 6216
Fort Carson
El Paso CO 80913
Landholding Agency: Army
Property Number: 21201040004
Status: Unutilized
Reasons: Secured Area

Hawaii

Bldg. 1000
Wheeler Army Airfield
Wahiawa HI 96786
Landholding Agency: Army
Property Number: 21201040005
Status: Unutilized
Reasons: Extensive deterioration

17 Bldgs.
Schofield Barracks
Wahiawa HI 96786
Landholding Agency: Army
Property Number: 21201040006
Status: Unutilized
Directions: I0011 thru I0027
Reasons: Extensive deterioration

Bldg. 177
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77201040015
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Illinois

Bldg. 1712
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77201040012
Status: Unutilized
Reasons: Extensive deterioration

Iowa

Bldgs. A0190, 00190, 01069
Iowa AAP
Middletown IA 52601
Landholding Agency: Army
Property Number: 21201040007
Status: Unutilized
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Kansas

19 Toilets
John Redmond Lake
Burlington KS 66839
Landholding Agency: COE
Property Number: 31201040002
Status: Unutilized
Reasons: Extensive deterioration

Maryland

Bldgs. 136, 607
Fort Detrick
Forrest Glen Annex
Silver Spring MD 20901
Landholding Agency: Army
Property Number: 21201040008
Status: Unutilized
Reasons: Secured Area

Bldgs. 1687, 1689
Fort Detrick
Frederick MD 21702
Landholding Agency: Army
Property Number: 21201040009
Status: Unutilized
Reasons: Secured Area

16 Bldgs.
Naval Support Activity
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201040014
Status: Underutilized
Directions: 28, 163, 164/164A, 164B, 165, 166, 167, 273, 489, 496, 629, 898, 899, 1738, 1904, 3030
Reasons: Secured Area

Missouri

14 Bldgs.
Lake City AAP
Independence MO 64051
Landholding Agency: Army
Property Number: 21201040010
Status: Unutilized
Directions: 59, 59A, 59B, 59C, 60, 66A, 66B, 66C, 66D, 66E, 67, 70A 70B 80D
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

10 Bldgs.
Fort Leonard Wood
Pulaski MO 65473
Landholding Agency: Army
Property Number: 21201040011
Status: Unutilized
Directions: 1228, 1255, 1269, 2101, 2112, 2551, 2552, 5280, 5506, 6824
Reasons: Secured Area

Facility 29995
Fort Leonard Wood
Pulaski MO 65473
Landholding Agency: Army
Property Number: 21201040012
Status: Unutilized
Reasons: Secured Area

New Jersey

9 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21201040013
Status: Unutilized
Directions: 23, 48, 49, 50, 111, 454B, 620, 620C, 641B
Reasons: Secured Area

6 Bldgs.
Piccatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21201040014
Status: Unutilized
Directions: 1181, 1182, 1351, 1354A, 1521, 1522
Reasons: Secured Area

4 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21201040015
Status: Unutilized
Directions: 3052, 3339, 3340, 3341
Reasons: Secured Area

7 Bldgs.
Picatinny Arsenal
Dover NJ 07806
Landholding Agency: Army
Property Number: 21201040016
Status: Unutilized
Directions: 3604, 3605, 3606, 3609, 3613, 3615, 3627
Reasons: Secured Area

New Mexico

7 Bldgs.

White Sands Missile Range
Dona Ana NM 88002
Landholding Agency: Army
Property Number: 21201040017
Status: Unutilized
Directions: 301, 384, 1529, 1650, 1735, 1798, 1825
Reasons: Extensive deterioration, Secured Area

8 Bldgs.
White Sands Missile Range
Dona Ana NM 88002
Landholding Agency: Army
Property Number: 21201040018
Status: Unutilized
Directions: 19310, 21623, 23638, 23653, 23673, 27104, 34175, FOI
Reasons: Secured Area, Extensive deterioration

New York

Bldg. 110
Fort Hamilton
Brooklyn NY 11252
Landholding Agency: Army
Property Number: 21201040019
Status: Underutilized
Reasons: Secured Area

North Carolina

Bldg. 83022
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21201040020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

North Dakota

Bldgs. 455, 456—Bunkers
Stanley Mickelsen Property
Nekoma ND 58355
Landholding Agency: GSA
Property Number: 54201040014
Status: Surplus
GSA Number: 7–D–ND–0499
Reasons: Secured Area

Oklahoma

3 Gatehouses
Oologah Lake
Oologah OK 74053
Landholding Agency: COE
Property Number: 31201040003
Status: Unutilized
Reasons: Secured Area

2 Vault Toilets
Washington Irving Rec Area
Sand Springs OK 74063
Landholding Agency: COE
Property Number: 31201040004
Status: Unutilized
Reasons: Extensive deterioration

Puerto Rico

7 Bldg.
Fort Buchanan
Guaynabo PR
Landholding Agency: Army
Property Number: 21201040021
Status: Excess
Directions: 76, 83, 84, 85, 86, 87, 98
Reasons: Extensive deterioration, Secured Area

Rhode Island

Bldgs. 0A65V, 340, 382
Camp Fogarty Training Site
Kent RI 02818
Landholding Agency: Army
Property Number: 21201040022
Status: Excess
Reasons: Secured Area

South Carolina

Naval Health Clinic
3600 Rivers Ave.
Charleston SC 29405
Landholding Agency: GSA
Property Number: 54201040013
Status: Excess
GSA Number: 4–N–SC–0606
Reasons: Within 2000 ft. of flammable or explosive material

Tennessee

8 Bldgs.
Fort Campbell
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21201040023
Status: Unutilized
Directions: 1595, 2310, 2607, 3207, 3208, 3209, 3210, 3218
Reasons: Secured Area

9 Bldgs.
Fort Campbell
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21201040024
Status: Unutilized
Directions: 6817, 6818, 6819, 6824, 6847, 6849, 6850, 6898, 6899
Reasons: Secured Area

7 Bldgs.
Fort Campbell
Montgomery TN 42223
Landholding Agency: Army
Property Number: 21201040025
Status: Unutilized
Directions: 7005, 7006, 7051, 7202, 7814, 8064, MM001
Reasons: Secured Area

4 Bldgs.
Milan AAP
Gibson TN 38358
Landholding Agency: Army
Property Number: 21201040026
Status: Excess
Directions: W001A, W0062, W0063, W0064
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Texas

4 Bldgs.
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21201040027
Status: Unutilized
Directions: 1273, 1274, 1278, 1279
Reasons: Extensive deterioration

Utah

Bldgs. 222 thru 227
MTA–L Camp Williams
Eagle Mountain UT 84005
Landholding Agency: Army
Property Number: 21201040028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 4535
Deseret Chemical Depot
Stockton UT 84071
Landholding Agency: Army
Property Number: 21201040029
Status: Excess
Reasons: Secured Area

15 Bldgs.
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21201040030
Status: Unutilized
Directions: 25, 25A, 25B, 26, 26A, 26B, 27, 27A, 27B, 28, 28A, 28B, 29, 29A, 29B
Reasons: Secured Area

Virginia

5 Bldgs.
Fort A.P. Hill
Bowling Green VA 22427
Landholding Agency: Army
Property Number: 21201040031
Status: Unutilized
Directions: 1105, 1218, 1274, 1293, 1296
Reasons: Extensive deterioration

Bldg. ANTEN
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21201040032
Status: Unutilized
Reasons: Extensive deterioration

Bldgs. 1132, 1133, 1134
Fort Belvoir
Fairfax VA 22060
Landholding Agency: Army
Property Number: 21201040033
Status: Excess
Reasons: Extensive deterioration

Bldg. HH025
Joint Base Myer
Arlington VA 22211
Landholding Agency: Army
Property Number: 21201040034
Status: Unutilized
Reasons: Secured Area

Bldgs. 8000, 8134
Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21201040035
Status: Unutilized
Reasons: Secured Area

6 Bldgs.
Radford AAP
Radford VA 24143
Landholding Agency: Army
Property Number: 21201040036
Status: Unutilized
Directions: 1000, 1010, 2000, 2010, 22116, USO43
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Property JHK–16643
John H. Kerr Lake & Dam
Mecklenburg VA 23917
Landholding Agency: COE
Property Number: 31201040005
Status: Unutilized
Reasons: Extensive deterioration

Washington

Bldgs. 2607, 2613
Fort Lewis

Pierce WA 98433
Landholding Agency: Army
Property Number: 21201040037
Status: Underutilized
Reasons: Secured Area

Land

Florida

Tract L 1113/Portion
Jim Woodruff Reservoir
Chattahoochee FL 32324
Landholding Agency: COE
Property Number: 31201040001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material

Maryland

Site A
Naval Support Activity
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201040013
Status: Underutilized
Reasons: Secured Area

[FR Doc. 2010–28858 Filed 11–18–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–R–2010–N209; 20131–1265–2CCP S3]

Caddo National Wildlife Refuge, Harrison County, TX; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and environmental assessment (EA) for Caddo Lake National Wildlife Refuge, Harrison County, TX. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please send your written comments by May 18, 2011. We will announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Send your comments or requests for more information by any of the following methods.

E-mail: Jeffrey_missal@fws.gov. Include "Caddo Lake National Wildlife Refuge CCP NOI" in the subject line of the message.

Fax: Attn: Jeffrey Missal, Natural Resource Planner, 505–248–7409.

U.S. Mail: Jeffrey Missal, Natural Resource Planner, P.O. Box 1306, Albuquerque, NM 87103–1306.

In-Person Drop-off: You may drop off comments during regular business hours at the Refuge Headquarters located at 15600 Highway 134, Karnack, TX 75661.

FOR FURTHER INFORMATION CONTACT: Jeffrey Missal, Natural Resource Planner, Telephone: 505–248–7409; Fax: 505–248–6803; e-mail: *Jeffrey_missal@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Caddo Lake NWR (Refuge), located in Harrison County, TX. This notice complies with our CCP policy to (1) advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this Refuge, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide Refuge Managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act, as amended.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Caddo Lake NWR.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Caddo Lake National Wildlife Refuge

Caddo Lake National Wildlife Refuge is located in Harrison County, TX, and encompasses approximately 7,500 acres of Piney Woods, mature Baldcyprus Forests, and wetlands. On October 19, 2000, the Director of the U.S. Fish and Wildlife Service approved the establishment of the Caddo Lake National Wildlife Refuge on portions of the Longhorn Army Ammunition Plant. It was officially opened as a national wildlife refuge on September 26, 2009, for the purpose of migratory bird and other fish and wildlife management, conservation, and protection.

In contrast to the more arid and thinly wooded areas that predominate much of the rest of Texas, Caddo Lake NWR is one of the richest examples of the lush and abundant Piney Woods Belt, where rainfall is plentiful and rivers and bayous twist through forests teeming with a great diversity of aquatic and terrestrial plant specimens. Portions of the Refuge and Caddo Lake constitute one of only 25 such areas in the United States recognized by the RAMSAR Convention on Wetlands as a Wetland of International Significance. Residing in these forests and wetlands associated with the Refuge are a variety of birds, amphibians, reptiles, and fish. A number of animals and plants here are considered rare, threatened, or endangered under national and international laws; these species

include, but are not limited to, the peregrine falcon, the alligator snapping turtle, and the eastern big-eared bat.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

Ecoregional Issues

- Potential impacts of climate change

Habitat Issues

- Bottomland Hardwood habitat maintenance and restoration
- Timber harvesting
- Using fire on the landscape for habitat restoration and maintenance
- Property transfer from the Department of the Army and subsequent contaminant issues

Wildlife Issues

- Migratory waterfowl and neotropical migrants using the Refuge as a stopover and/or nesting site
- Refuge hunts for population management of White-tailed Deer
- Construction/maintenance of bat, wood duck, and bluebird boxes for nesting purposes

Public Use Opportunities and Access

- Identification, construction, and maintenance of wildlife observation trail(s) and auto-tour loop(s)
- Develop/Increase participation of Caddo Lake NWR friends group

Facilities

- Remodel or replace current Refuge headquarters (currently an old U.S. Army office building)
- Identify location and construct Refuge Fire Station Facilities (currently co-located in the Refuge shop and bunkhouse)
- Identify location and construct Refuge Visitor Center and Classroom Building (currently located in an old FEMA Trailer)

Public Meetings

We will give the public an opportunity to provide input at a public meeting (or meetings). You can obtain the schedule from the planning team leader or project leader (*see* **ADDRESSES**). You may also send comments anytime during the planning process by U.S. mail, e-mail, or fax (*see* **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 30, 2010.

Joy E. Nicholopoulos,

Regional Director, U.S. Fish and Wildlife Service, Region 2.

[FR Doc. 2010–29111 Filed 11–18–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2010–N249; 50120–1113–0000–C2]

Endangered and Threatened Wildlife and Plants; Assisting States, Federal Agencies, and Tribes in Managing White-Nose Syndrome in Bats; Draft National Plan; Extension of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), are extending the public comment period for the draft national plan to assist States, Federal agencies, and Tribes in managing white-nose syndrome (WNS) in bats. *See* **SUPPLEMENTARY INFORMATION** for details. If you have already submitted comments, please do not resubmit them; we have already incorporated them in the public record and will fully consider them in our final decision.

DATES: Submit comments on this document on or before December 26, 2010.

ADDRESSES: Send your written comments on the draft plan, by U.S. mail to Dr. Jeremy Coleman, National WNS Coordinator, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, New York 13045; or by electronic mail to *WhiteNoseBats@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Jeremy Coleman, National WNS Coordinator, at the New York Field Office (*see* **ADDRESSES**) or by phone at 607–753–9334.

SUPPLEMENTARY INFORMATION: On October 28, 2010, we published a **Federal Register** notice (75 FR 66387) announcing availability for public review of a draft national plan to assist States, Federal agencies, and Tribes in managing WNS in bats. That notice mistakenly announced a 33-day public comment period instead of a 60-day public comment period. We are extending the public comment period on the draft plan to the originally planned 60 days.

WNS is a fungal disease responsible for unprecedented mortality in hibernating bats in the northeastern United States. It has spread rapidly since its discovery in January 2007, and poses a potentially catastrophic threat to hibernating bats throughout North America, including several species listed as endangered or threatened under the Endangered Species Act (ESA). Listed bats include the Indiana bat (*Myotis sodalis*), Virginia big-eared bat (*Corynorhinus townsendii virginianus), Ozark big-eared bat (Corynorhinus townsendii ingens*), and gray bat (*Myotis grisescens*).

The draft plan was prepared by representatives of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service and Forest Service; U.S. Department of Defense's Army Corps of Engineers; U.S. Department of the Interior's Bureau of Land Management, National Park Service, and FWS; St. Regis Mohawk Tribe; Kentucky Department of Fish and Wildlife Resources; Missouri Department of Conservation; New York State Department of Environmental Conservation; Pennsylvania Game Commission; Vermont Department of Fish and Wildlife; and Virginia Department of Game and Inland Fisheries.

Document Availability

An electronic copy of the draft plan is available online at *http://www.fws.gov/WhiteNoseSyndrome/.* The document is also available from the FWS's New York Field Office (*see* **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, electronic 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 may 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

As a number of federally listed bat species are threatened by WNS, the FWS is issuing this notice primarily under the authority of the ESA of 1973 (16 U.S.C. 1531). This plan is intended to guide recovery of listed bats. It was developed so that it can be easily adopted or incorporated into existing or future recovery plans.

Dated: November 3, 2010.

Wendi Weber,

Deputy Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 2010–29257 Filed 11–18–10; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2010–N253; 81331–1334–8TWG–W4]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 9:30 a.m. to 5 p.m. on Tuesday, December 14, 2010.

ADDRESSES: The meeting will be held at the Redding Library, 1100 Parkview, Redding, CA 96001.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Randy A. Brown, TAMWG Designated Federal Officer, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) Information:* Jennifer Faler, Acting Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; e-mail: *jfaler@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- TMC Chair report,
- Hatchery operations review,
- Acting Executive Director's Report,
- Channel rehabilitation program,
- TRRP adaptive management practices,
- TRRP interaction with Central Valley Project Operations Office,
- Preliminary 2012 TRRP work plan,
- Water year forecasting,
- South Fork Trinity River, and
- TAMWG recommendations/status of previous recommendations.

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: November 10, 2010.

Randy A. Brown,

Designated Federal Officer, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2010–28928 Filed 11–18–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Oil Pollution Act

Notice is hereby given that on November 15, 2010, a proposed consent decree in *United States, et al.* v. *Bouchard Transportation Company, Inc., et al.,* Civil Action No. 1:10–cv–11958–NMG, was lodged with the United States District Court for the District of Massachusetts.

The proposed consent decree will settle a portion of the claims of the United States (on behalf of the Department of Commerce/National Oceanic and Atmospheric Administration and the Department of the Interior/Fish and Wildlife Service), the Commonwealth of Massachusetts, and the State of Rhode Island for natural resource damages under the Oil Pollution Act, 33 U.S.C. 2701, *et seq.,* ("Trustees") against Bouchard Transportation Company, Inc., and related companies ("Defendants") relating to an oil spill from the tank barge *Bouchard No. 120,* which occurred in April 2003 in Buzzards Bay. Pursuant to the proposed consent decree, the Defendants will pay $6,076,393 as natural resource damages to the Trustees. In addition, the Defendants acknowledge the payment of $1,573,529 to the Trustees for reimbursement of their assessment costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States, et al.,* v. *Bouchard Transportation Company, Inc., et al.,* Civil Action No. 1:10–cv–11958–NMG, D.J. Ref. 90–5–1–1–08159.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Bouchard Transportation Company, Inc.,* D.J. Ref. 90–11–3–08159.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice website, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $13.50 (25 cents per page reproduction costs of Consent Decree and Appendices) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–29158 Filed 11–18–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act

Notice is hereby given that on November 15, 2010, a proposed Consent Decree was filed with the United States District Court for the Western District of Missouri in *United States et al.* v. *HPI Products, Inc., et al.,* No. 08–06133 (W.D. Mo.). The proposed Consent Decree entered into by the United States and the State of Missouri and Defendants HPI Products, Inc., St. Joseph Properties, LLC, and William

Garvey, resolves the United States' and Missouri's claims against the Defendants under the hazardous waste generation, storage, and transport provisions of the Resource Conservation and Recovery Act, 42 U.S.C. 6901 (RCRA) *et seq.,* the pre-treatment requirements of the Federal Water Pollution Control Act (Clean Water Act), 40 CFR Part 403 and 33 U.S.C. 1311, 1317, 33 U.S.C. 1251 *et seq.,* and the Emergency Planning and Community Right to Know Act (EPCRA), 42 U.S.C. 11001 *et seq.,* related to their generation, storage, and transport of hazardous wastes at six HPI facilities in St. Joseph, Missouri. Under the terms of the Consent Decree, the Defendants shall pay a civil penalty to the United States of $75,000 and a civil penalty to the State of $75,000 and Garvey will be required to sell his collection of classic cars, boats, and parts and turn over ninety percent of the proceeds to the United States and Missouri as a further civil penalty. In addition, HPI will investigate and clean up any contamination at the six facilities.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al.* v. *HPI Products, Inc., et al.,* DJ Ref. No. 90–5–1–1–09338.

The proposed Agreement may be examined at the Office of the United States Attorney for the Western District of Missouri, Charles Evans Whittaker Courthouse, Room 5510, 400 East 9th Street, Kansas City, MO 64106, and at the Environmental Protection Agency, Region 7, 901 N. 5th St., Kansas City, KS 66101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.50, or 37.25 (if attachments are requested) (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–29159 Filed 11–18–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Extension of the Approval of Information Collection Requirements

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs is soliciting comments concerning its proposal to extend the Office of Management and Budget (OMB) approval of the Information Collection: Complaint Form CC–4, Complaint of Discrimination in Employment under Federal Government Contracts. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by Control Number 1250–0002, by either one of the following methods:

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

Mail, Hand Delivery, Courier: Sandra M. Dillon, Deputy Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY).

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via the regulations.gov Web site or to submit them by mail early. Comments, including any personal information provided, become a matter of public record and will be posted to the regulations.gov Web site. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Terry R. Hankerson, Chief, Regulations Development and Evaluation Branch, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room N3422, Washington, DC 20210. Telephone: (202) 693–0102 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0102 (not a toll-free number). TTY/TDD callers may call (202) 693–1337 (not a toll-free number) to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of three equal opportunity programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 U.S.C. 4212, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). These programs require affirmative action by Federal contractors and subcontractors and prohibit discrimination on the basis of race, color, sex, religion, national origin, status as a qualified individual with disabilities or protected veteran. No private right of action exists under the three programs that are enforced by the U.S. Department of Labor (DOL), *i.e.,* a private individual may not bring a lawsuit against an employer (or prospective employer) for

noncompliance with its contractual obligations under the laws enforced by OFCCP. However, any employee or applicant for employment with a Government contractor may file a complaint with the Department of Labor alleging discrimination by completing Complaint Form CC–4, Complaint of Discrimination in Employment under Federal Government Contracts. DOL investigates the complaint but retains the discretion whether to pursue prosecution. If a complaint filed under Executive Order 11246, as amended, involves discrimination against only one person, the OFCCP may refer it to the U.S. Equal Employment Opportunity Commission (EEOC). Such referrals are made under a Memorandum of Understanding between the two Federal agencies. Complaints that involve groups of people or indicate patterns of discrimination are generally investigated by the OFCCP. The program also investigates individual or group complaints filed under the disability and veterans laws. Under Executive Order 11246, as amended, the authority for collection of complaint information is Section 206(b). The implementing regulations which specify the content of this information collection are found at 41 CFR 60–1.23(a).

Under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, the authority for collecting complaints information is at 38 U.S.C. 4212(b). The implementing regulations which specify the content of this information collection are found at 41 CFR 60–250.61(b) and 41 CFR 60–300.61(b). Section 503 of the Rehabilitation Act of 1973, as amended, is the authority for collecting complaint information under the statute. The implementing regulations which specify the content of this information collection are found at 41 CFR 60–741.61(c). This information collection request covers the recordkeeping and reporting requirements for the Complaint Form CC–4, Complaint of Discrimination in Employment under Federal Government Contracts. A separate information collection request covers the recordkeeping and reporting requirements for supply and service industries, and is approved under OMB 1250–0003. This information collection is currently approved for use through September 30, 2011.

II. *Review Focus:* The DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. *Current Actions:* The DOL seeks the approval of the extension of this information in order to carry out its responsibility to enforce the affirmative action and anti-discrimination provisions of the three Acts, which it administers.

Type of Review: Extension.

Agency: Office of Federal Contract Compliance Programs.

Title: Complaint Form CC–4, Complaint of Discrimination in Employment under Federal Government Contracts.

OMB Number: 1250–0002.

Agency Number: None.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Total Respondents: 602.

Total Annual Responses: 602.

Average Time per Response: 1.28 hours.

Estimated Total Burden Hours: 770.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $282.94.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 15, 2010.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2010–29218 Filed 11–18–10; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection for the Evaluation of the Aging Worker Initiative; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The U.S. Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of information for Evaluation of the Aging Worker Initiative (AWI). The information collection will not be conducted until approved by OMB and it will display the OMB control number. There will be no penalty assessed for failure to respond to this approved information collection. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before January 18, 2011.

ADDRESSES: Submit written comments to Charlotte Schifferes, Office of Policy Development and Research, Room N–5641, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–3655 (this is not a toll-free number). Fax: 202–693–2766. E-mail: *schifferes.charlotte@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The proposed information collection is for an evaluation of 10 grants, totaling $13 million, which comprise the AWI. The AWI grants, provided to local agencies, are being used to test new

occupational training and workforce services for workers aged 55 and older. The evaluation will examine implementation of the grants, document the types of interventions, assess attributes of these treatments, estimate their success in helping aging workers become or remain employed, and discuss the potential for implementation of various methods in the broader workforce system.

Office of Management and Budget (OMB) clearance of the information collection is needed since it will involve (1) two rounds of site visits with the ten grantees, (2) phone reconnaissance with the ten grantees, and (3) additional participant-level data, beyond what is needed for the OMB-approved quarterly and Common Measures reporting requirements for High Growth Job Training Grants (as required for the AWI grants). The additional data is needed to understand in greater detail the characteristics of participants, the services provided to them, and the linkages among different programs in providing services. Each grantee will also need to provide the participant data to the evaluation contractor on two occasions, using a secure FTP site or by CD, at the grantee's discretion.

II. Review Focus

The U.S. Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: New.

Agency: Employment and Training Administration.

Title: Evaluation of the Aging Worker Initiative Grants.

OMB Number: 1205–0NEW.

Record Keeping: NA.

Affected Public: Staff in local organizations administering the AWI grants; partner organizations (such as community colleges, local workforce agencies, and businesses); and individuals who apply for services under the AWI grants.

Total Respondents: 7,300.

Frequency: Varies according to type of respondent and the nature of the data collection; once for participants and twice for administrative personnel.

Total Annual Responses: Varies.

Average Time per Response: Varies as per type of data collected.

Estimated Total Burden Hours: 4,351 hours.

Total Burden Cost: The estimated total burden cost is $98,422 as shown below:

	Average number respondents per site	Total number respondents	Hours/ respondent	Total hours	Average cost/ hour	Total cost
Round 1 site visit	18	180	1.2	216	$29.82	$6,441
Round 2 site visit	25	250	1.2	300	30.92	9,276
Data/MIS—participants	685	6,850	0.5	3,425	20.25	69,356
Data/MIS—Grantee staff	1	10	40.0	400	32.50	13,000
Telephone Reconnaissance	1	10	1.0	10	34.94	349
Total	730	7,300		4,351		98,422

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed: At Washington, DC, this 15th day of November 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–29202 Filed 11–18–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Lily Group, Inc. dba Landree Mine/Indianapolis, Indiana.

Principal Product/Purpose: The loan, guarantee, or grant application is to construct a new mine and related buildings, purchase mining equipment, and to create working capital. The office and mine are to be located in Sullivan, Indiana and Greene County, Indiana, respectively. The NAICS industry code for this enterprise is: 212112 Bituminous Coal Underground Mining.

DATES: All interested parties may submit comments in writing no later than December 3, 2010.

Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number

(202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed: At Washington, DC, this 15th day of November 2010.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2010–29200 Filed 11–18–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–148)]

NASA Advisory Council; NASA Commercial Space Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Commercial Space Committee of the NASA Advisory Council.

DATES: Tuesday, December 14, 2010, 1:30 p.m.–4:30 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Glennan Conference Center Room 1Q39, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John Emond, Office of Chief Technologist, National Aeronautics and Space Administration, Washington, DC 20546. Phone 202–358–1686, fax: 202–358–3878, *john.l.emond@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes a briefing from the NASA Commercial Space Team, a briefing on activities of the Education and Public Outreach Committee, and an administrative discussion on Committee plans for the coming year.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the NASA Advisory Council Commercial Space Committee meeting in the Glennan Conference Center room 1Q39 before receiving an access badge. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., fax to John Emond, NASA Advisory Council Commercial Space Committee Executive Secretary, FAX: (202) 358–3878, by no later than Wednesday December 7, 2010. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting John Emond via email at *john.l.emond@nasa.gov* or by telephone at (202) 358–1686 or fax: (202) 358–3878.

Dated: November 15, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–29142 Filed 11–18–10; 8:45 am]

BILLING CODE P

NATIONAL COUNCIL ON DISABILITY (NCD)

Sunshine Act Meetings

Notice, Correction

TYPE: Quarterly Meeting.

SUMMARY: NCD published a Sunshine Act Meeting Notice in the **Federal Register** on November 12, 2010, notifying the public of a quarterly meeting in Washington, DC. The times have been changed for a portion of the meeting on December 3.

FOR FURTHER INFORMATION CONTACT: Mark Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 TTY; 202–272–2022 Fax.

Correction

In the **Federal Register** on November 12, 2010, in FR Doc. 2010–28647, on page 69473, correct Matters to be Considered for December 3 to read:

December 3

8:30 a.m.–9:30 a.m. Speaker on Fiscal/Deficit Commission

9:30 a.m.–11:30 a.m. Continuation of NCD Open Meeting

11:30 a.m. Adjournment

Dated: November 17, 2010.

Aaron Bishop,

Executive Director.

[FR Doc. 2010–29378 Filed 11–17–10; 4:15 pm]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: LIGO Laboratory Annual Review at Hanford Observatory for Physics (1208).

Date and Time: Tuesday, December 7, 2010: 8:15 a.m.–5 p.m.

Wednesday, December 8, 2010: 8:15 a.m.–5 p.m.

Thursday, December 9, 2010: 8:30 a.m.–11:30 a.m.

Place: LIGO site at Hanford, Washington.

Type of Meeting: Partially Closed.

Contact Person: Thomas Carruthers, Program Director, Division of Physics, National Science Foundation, (703) 292–7373.

Purpose of Meeting: To provide an evaluation of the project construction for implementation of the AdvLIGO project to the National Science Foundation.

Agenda

Tuesday, December 7, 2010

8:15 a.m.–8:30 a.m. Open—Sign in

8:45 a.m.–9:15 a.m. Closed—Executive Session

9:15 a.m.–11:45 a.m. Open—Welcome, LIGO status, Reporting Metrics

12:45 p.m.–2:45 p.m. Open—S6 Science run, performance, risk reduction

3:15 p.m.–4:30 p.m. Data Management, LIGO Australia, LSC status
5 p.m. Closed—Executive Session

Wednesday, December 8, 2010

8:15 a.m.–8:30 a.m. Open—Sign in
9:45 a.m.–9:15 a.m. Closed—Executive Session
10:00 a.m.–10:30 a.m. Open—Meeting with LIGO Oversight Committee
10:45 a.m.–11:45 a.m. Open—EPO, diversity, Review of AdvLIGO MREFC
12:45 p.m.–4:15 p.m. Open—Project discussions, tour, Q&A discussions
5 p.m. Closed—Executive Session

Thursday, December 9, 2010

8:30 a.m.–8:45 a.m. Open—Sign in
9 a.m.–10:45 a.m. Closed—Executive Session report writing
11:30 a.m. Adjourn

Reason for Closing: The proposal contains proprietary or confidential material, including technical information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(2)(4) and (6) of the Government in the Sunshine Act.

Dated: November 16, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–29187 Filed 11–18–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Columbia University FY11 Site Visit (1208).

Date and Time: Thursday, December 2, 2010, 8:15 a.m.–6:45 p.m. Friday, December 3, 2010, 8:30 a.m.–2:30 p.m.

Place: Columbia University, New York, NY.

Type of Meeting: Partially Closed.

Contact Person: Dr. Marvin Goldberg, Program Director for Elementary Particle Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7392.

Purpose of Meeting: To provide an evaluation concerning the proposal submitted to the National Science Foundation.

Agenda

Thursday–Dec. 2

8:15 a.m.–9 a.m. Executive session (closed)
9 a.m.–9:45 a.m. Lab overview (Shaevitz)
9:45 a.m.–10:30 a.m. Veritas, ACT (Humensky)
10:30 a.m.–10:45 a.m. Break
10:45 a.m.–11:30 a.m. MiniBoone/SciBoone (Shaevitz)
11:30 a.m.–12:15 p.m. Double Chooz (Camilleri)
12:15 p.m.–1:15 p.m. Lunch with grad students
1:15 p.m.–2:30 p.m. Tour
2:30 p.m.–3:15 p.m. Microboone (Willis)
3:15 p.m.–4 p.m. ATLAS/D0 (Parsons)
4 p.m.–4:15 p.m. Break
4:15 p.m.–5 p.m. ATLAS/D0 (Brooijmans)
5 p.m.–5:45 p.m. Budget Discussion
5:45 p.m.–6:45 p.m. Executive session (closed)

Friday–Dec. 3

8:30 a.m.–9:15 a.m. Executive session (closed)
9:15 a.m.–10 a.m. ATLAS (Hughes)
10 a.m.–10:15 a.m. Break
10:15 a.m.–11 a.m. ATLAS (Tuts)
11 a.m.–11:30 a.m. Outreach (Parsons)
11:30 a.m.–12:15 p.m. Panel-PI discussions
12:15 p.m.–1:15 p.m. Lunch with postdocs
1:15 p.m.–2:30 p.m. Executive session (closed)

Reason for Closing: The proposal contains proprietary or confidential material including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in the Sunshine Act.

Dated: November 16, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–29214 Filed 11–18–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Stony Brook FY11 Site Visit (1208).

Date and Time: Tuesday, November 30, 2010, 1 p.m.–5:20 p.m. Wednesday, December 1, 2010, 8:30 a.m.–4:15 p.m.

Place: Stony Brook—Long Island Campus.

Type of Meeting: Partially Closed.

Contact Person: Dr. Marvin Goldberg, Program Director for Elementary Particle Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7392.

Purpose of Meeting: To provide an evaluation concerning the proposal submitted to the National Science Foundation.

Agenda

Tuesday, Nov. 30

1 p.m. Executive session (Closed)
1:15 p.m. Group Overview (JH)
1:30 p.m. Atlas Overview (JH)
2 p.m. D0 Overview (PG)
2:30 p.m. Outreach (RM)
3:10 p.m. Break
3:20 p.m. Tour
4 p.m. Grannis research
4:40 p.m. Tsybychev research
5:20 p.m. Executive session (Closed)

Wednesday, Dec. 1

8:30 a.m. Executive session (Closed)
9:15 a.m. Rijssenbeek research (video)
9:55 a.m. Schamberger research
10:35 a.m. Break
10:50 a.m. Engelmann research
11:30 a.m. Hobbs research
12:10 p.m. Lunch
1:15 p.m. McCarthy research
2 p.m. Budget and Panel-PI discussion
3 p.m. Break
3:15 p.m. Executive session (Closed)

Reason for Closing: The proposal contains proprietary or confidential material including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in the Sunshine Act.

Dated: November 16, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–29213 Filed 11–18–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0435]

Extension of Public Comment Period on the Draft Environmental Assessment and Draft Finding of No Significant Impact for the Proposed License Renewal for Nuclear Fuel Services, Inc., Erwin, TN

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Extension of public comment period.

SUMMARY: On October 15, 2010, the U.S. Nuclear Regulatory Commission (NRC) published a notice in the **Federal Register** (75 FR 63519), which announced, in part, that the public comment period for the U.S. Nuclear Regulatory Commission's (NRC's) Draft Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI) for the proposed license renewal for operations at the Nuclear Fuel Services, Inc. (NFS) fuel fabrication facility in Erwin, Tennessee, closed on November 13, 2010. The purpose of this notice is to extend the public comment period on the Draft EA and Draft FONSI to December 31, 2010. On October 26, 2010, the NRC held a public meeting in Erwin, Tennessee, as part of the public comment process for the Draft EA and Draft FONSI. Additionally, members of the public have been submitting written comments on the Draft EA and Draft FONSI since the initial notice of availability of these documents was

published on October 15, 2010. In response to requests received in writing, the comment period on the Draft EA and Draft FONSI is being extended to December 31, 2010.

DATES: The comment period for the notice published October 15, 2010 (75 FR 63519), is extended to December 31, 2010. The NRC will consider comments received or postmarked after that date to the extent practical. Written comments should be submitted as described in the **ADDRESSES** section of this notice.

ADDRESSES: Members of the public may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0435 in the subject line of your comments.

Electronic Mail: Comments may be sent by electronic mail to the following address: *NuclearFuel_DraftEA@nrc.gov.*

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0435. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher, 301–492–3668, e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at 301–492–3446.

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Unless your comments contain sensitive information typically not released to the public by NRC policy, the NRC will make all comments publicly available. Because your comments will not be edited to remove any identifying information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Availability: Publicly available documents related to this notice can be accessed using any of the methods described in this section.

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents related to the NFS facility and license renewal at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Members of the public can contact the NRC's PDR reference staff by calling 1–800–397–4209, by faxing a request to 301–415–3548, or by e-mail to *pdr.resource@nrc.gov.*

NRC's Agencywide Documents Access and Management System (ADAMS): Members of the public can access the NRC's ADAMS at *http://www.nrc.gov/reading-rm/adams.html.* From this Web site, the Draft FONSI (ADAMS Accession Number: ML102790260) and supporting Draft EA (ADAMS Accession Number: ML102650505) can be obtained by entering the accession numbers provided.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0435.

Additionally, copies of the Draft FONSI and supporting Draft EA are available at the following public libraries:

Unicoi County Public Library, 201 Nolichucky Avenue, Erwin, Tennessee 37650–1239. 423–743–6533.

Jonesborough Branch, Washington County Library, 200 Sabin Drive, Jonesborough, Tennessee 37659–1306. 423–753–1800.

Greeneville/Green County Public Library, 210 North Main Street, Greeneville, Tennessee 37745–3816. 423–638–5034.

FOR FURTHER INFORMATION CONTACT: For information about the Draft FONSI, the Draft EA, or the environmental review process, please contact James Park at 301–415–6935 or *James.Park@nrc.gov.* For general or technical information associated with the review of the NFS license renewal application, please contact Kevin Ramsey at 301–492–3123 or *Kevin.Ramsey@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Draft FONSI and supporting Draft EA are a preliminary analysis of the environmental impacts of the proposal by NFS to renew its NRC license and reasonable alternatives to that proposal. Based on comments received on the Draft FONSI and Draft EA, the staff may publish a Final FONSI and Final EA, or instead may find that preparation of an Environmental Impact Statement (EIS) is warranted should significant impacts resulting from the proposed action be identified. Should an EIS be warranted, a Notice of Intent to prepare the EIS will be published in the **Federal Register**.

Pursuant to 10 CFR 51.33(a), the NRC staff is making the Draft FONSI and Draft EA available for public review and comment. The public comment period is extended with publication of this Notice and continues until December 31, 2010.

Dated at Rockville, Maryland, this 16th day of November 2010.

For the Nuclear Regulatory Commission.

Kevin Hsueh,

Acting Deputy Director, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2010–29364 Filed 11–18–10; 8:45 am]

BILLING CODE 7509–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302; NRC–2010–0105]

Florida Power Corporation, et al.; Crystal River Unit 3 Nuclear Generating Plant; Exemption

1.0 Background

Florida Power Corporation (FPC, the licensee) is the holder of Facility Operating License No. DPR–72, which authorizes operation of the Crystal River Unit 3 Nuclear Generating Plant (CR–3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Citrus County, Florida.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published as a final rule in the **Federal Register** on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security plans. The amendments to 10 CFR 73.55 published on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees.

In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders.

By letter dated March 25, 2010 (ADAMS Accession No. ML100630530), the NRC granted an exemption to the licensee for four specific items subject to the revised rule in 10 CFR 73.55, allowing the implementation of two items to be extended until November 15, 2010, and the implementation of two other items until December 15, 2010. All other physical security requirements established by this rulemaking have been implemented by the licensee.

By letter dated September 8, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the licensee's September 8, 2010, letter contain security-related information and, accordingly, a redacted version of this letter is available for public review in the Agencywide Documents Access and Management System Accession (ADAMS) No. ML102530129. The licensee requested this exemption to allow an additional extension from the current implementation dates granted in the prior exemption for the four specific remaining requirements that involve significant physical upgrades to the CR–3 security systems. The licensee requested the previous exemption based on the conceptual design information available at that time. The licensee has further developed its design changes and has completed its discovery phase. Due to the unforeseen need for design changes and the associated analysis necessary to achieve full compliance with the Final Rule, additional time is needed to complete the complex revised design and construction. Specifically, the licensee's request is to extend the implementation dates from November 15 and December 15, 2010, to December 15, 2011, and March 15, 2012, respectively. Granting this exemption extending the implementation dates for the four remaining items would allow the licensee to perform necessary design changes and to complete significant physical modifications to the CR–3 security system including constructing a new two-story building to meet the Final Rule requirements.

3.0 Discussion of Part 73 Schedule Exemption From the March 31, 2010, Full Implementation Date

Pursuant 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" In accordance with 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption would allow an additional extension from the implementation dates approved under a previous exemption from November 15 and December 15, 2010, to December 15, 2011, and March 15, 2012, respectively, for four specific remaining requirements of the final rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute (ADAMS Accession No. ML091410309)). The licensee's request for an exemption is, therefore, consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Crystal River Schedule Exemption Request

The licensee provided detailed information in its letter dated September 8, 2010, describing the reason and justification for an exemption to extend the implementation dates for the four remaining requirements. Additionally, the licensee has provided information regarding the expanded scope for projects at CR–3 and the impacts on the licensee's ability to meet the current implementation dates of November 15, and December 15, 2010. The licensee changed the scope significantly to ensure that its new plans will meet regulatory requirements. Because of the change, the licensee could not meet the implementation dates granted by the previous exemption. The licensee is now constructing a new two-story building to meet these requirements and this excavation and construction expands the project to well beyond the implementation dates in the previously granted exemption, thus prompting this exemption request. Portions of the September 8, 2010, letter contain security-related information regarding the site security plan, details of specific portions of the regulation from which the licensee seeks exemption, justification for the additional extension request, a description of the required changes to the site's security configuration, and a revised timeline with critical path activities that would enable the licensee to achieve full compliance by March 15, 2012. The timeline provides dates indicating when (1) Design activities will be completed and approved, (2) construction of a new two-story building will be completed, and (3) the new and relocated equipment will be installed and tested.

The site-specific information provided within the CR–3 exemption request is relative to the requirements from which the licensee requested exemption and demonstrates the need for modification to meet the four specific remaining requirements of 10 CFR 73.55. The proposed implementation schedule depicts the critical activity milestones of the security system upgrades; is consistent with the licensee's solution for meeting the requirements; is consistent with the scope of the modifications and the issues and challenges identified; and is consistent with the licensee's requested compliance date.

Notwithstanding the proposed schedule exemption for these four remaining requirements, the licensee will continue to be in compliance with all other applicable physical security

requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By March 15, 2012, CR–3 physical security system will be in full compliance with all of the regulatory requirements of 10 CFR 73.55, as published on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the previously authorized implementation dates from November 15 and December 15, 2010, with regard to four specified requirements of 10 CFR 73.55, to December 15, 2011, and March 15, 2012, respectively. This conclusion is based on the NRC staff's determination that the licensee has made a good faith effort to meet the requirements in a timely manner, has sufficiently described the reason for the unanticipated delays, and has provided an updated detailed schedule with adequate justification to the additional time requested for the extension.

The long-term benefits that will be realized when the security systems upgrade is complete justify extending the full compliance date with regard to the specific requirements of 10 CFR 73.55 for this particular licensee. The security measures that CR–3 needs additional time to implement are new requirements imposed by amendments to 10 CFR 73.55, as published on March 27, 2009, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Accordingly, an exemption from the March 31, 2010, implementation date is authorized by law and will not endanger life or property or the common defense and security, and the Commission hereby grants the requested exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the March 31, 2010, implementation date for the four items specified in Attachment 1 of the FPC letter dated September 8, 2010, the licensee is required to implement two items by December 15, 2011, and to implement the remaining two items by March 15, 2012. The licensee is required to be in full compliance with 10 CFR 73.55 by March 15, 2012. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

In accordance with 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 69710 dated November 15, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of November 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–29212 Filed 11–18–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on December 13, 2010, to discuss: (1) Patient release following iodine-131 therapy; (2) rulemaking and implementation guidance for physical protection of byproduct material; and (3) the impacts of the draft safety culture policy statement for medical licensees. A copy of the agenda for the meeting will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by contacting Ms. Ashley Cockerham using the information below.

DATES: The teleconference meeting will be held on Monday, December 13, 2010, from 1 p.m. to 4 p.m. Eastern Standard Time.

Public Participation: Any member of the public who wishes to participate in the teleconference discussion should contact Ms. Cockerham using the contact information below.

Contact Information: Ashley M. Cockerham, e-mail: *ashley.cockerham@nrc.gov,* telephone: (240) 888–7129.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Cockerham at the contact information listed above. All submittals must be received by December 8, 2010, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript will be available on the ACMUI's Web site (*http://www.nrc.gov/reading-rm/doc-collections/acmui/tr/*) on or about January 13, 2011. A meeting summary will be available on or about January 27, 2011.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations,* Part 7.

Dated: November 15, 2010.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2010–29211 Filed 11–18–10; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans, *29 CFR Part 4062* (OMB control number 1212–0017; expires March 31, 2011). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by January 18, 2011.

ADDRESSES: Comments may be submitted by any of the following methods:

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

E-mail: paperwork.comments@pbgc.gov.

Fax: 202–326–4224.

Mail or Hand Delivery: Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.*

Copies of the collection of information and comments may be obtained without charge by writing to the Disclosure Division, Office of General Counsel, at the above address or by visiting the Disclosure Division or calling 202–326–4040 during normal business hours. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulation on Liability for Termination of Single-Employer Plans can be accessed on PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974, as amended, provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group ("the employer") incur liability ("employer liability") if the plan terminates with assets insufficient to pay benefit liabilities under the plan. PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of PBGC's employer liability regulation (*29 CFR 4062.6*) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify PBGC and to submit net worth information. This information is necessary to enable PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

The collection of information under the regulation has been approved by OMB under control number 1212–0017 through March 31, 2011. PBGC intends to request that OMB extend its approval for another three years. 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.

PBGC estimates that an average of five contributing sponsors or controlled group members per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information will be 12 hours and $3,996 per respondent, with an average total annual burden of 60 hours and $19,980.

PBGC is soliciting public comments to:

○ Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

○ Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

○ Enhance the quality, utility, and clarity of the information to be collected; and

○ Minimize the burden of the collection of information on those who are 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 submission of responses.

Issued in Washington, DC, November 15, 2010.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–29154 Filed 11–18–10; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–2; Order No. 586]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Lancaster, Tennessee post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioner, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* November 23, 2010; *deadline for petitions to intervene:* December 10, 2010. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 404(d), the Commission has received a petition for review of the closing of the Lancaster Post Office located in Lancaster, Tennessee. The petition which was filed by Allen Mason (Petitioner) is postmarked November 5, 2010 and was posted on the Commission's Web site November 10, 2010. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–2 to consider the Petitioner's appeal. If the petitioner would like to further explain his position with supplemental information or facts, he may either file a Participant Statement on PRC Form 61 or file a brief with the Commission by no later than December 13, 2010.

Categories of issues apparently raised. The categories of issues raised include: Failure to consider effect on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is November 23, 2010. 39 CFR 3001.113.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone

at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov*.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. 39 CFR 3001.9(a) and 10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Intervention. Those, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111. Notices of intervention in this case are to be filed on or before December 10, 2010. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the administrative record in this appeal, or otherwise file a responsive pleading to the appeal, by November 23, 2010.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this notice and order and procedural schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

November 8, 2010	Filing of Appeal.
November 23, 2010	Deadline for Postal Service to file administrative record in this appeal or responsive pleading.
December 10, 2010	Deadline for petitions to intervene (*see* 39 CFR 3001.111(b)).
December 13, 2010	Deadline for Petitioner's Form 61 or initial brief in support of petition (see 39 CFR 3001.115(a), (b) and (e)).
January 3, 2011	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
January 18, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 25, 2011	Deadline for motions requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
March 4, 2011	Expiration of the Commission 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–29204 Filed 11–18–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63314; File No. SR–CBOE–2010–084]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Regarding Registration and Qualification Requirements for Associated Persons

November 12, 2010.

I. Introduction

On September 10, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 apply its registration and qualification requirements to all of its members. The proposed rule change was published for comment in the **Federal Register** on September 28, 2010.[3] The Commission received two comment letters on the proposal.[4] This order approves the proposed rule change.

II. Background

Currently, registration, examination, and continuing education requirements for associated persons of trading permit holder[5] organizations ("TPH organizations") that conduct a public customer business are in Chapter IX, Doing Business with the Public, of CBOE's rules.[6] The associated persons of TPH organizations register with the Exchange via the Uniform Application for Securities Industry Registration or Transfer ("Form U4") through the Financial Industry Regulatory Authority's ("FINRA") Central Registration Depository System ("WebCRD"), and must pass the General Securities Representative examination ("Series 7") to function as representatives; if acting as options principals engaged in the supervision of options sales practices, they must also pass the Registered Options Principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62977 (September 22, 2010), 75 FR 59773 ("Notice").

[4] *See* letter from Frank Vivirito, Chief Compliance Officer, XR Securities LLC, to Elizabeth M. Murphy, Secretary, Commission, dated October 14, 2010 ("XR Securities Letter") and letter from J. Micah Glick, Chief Compliance Officer, Cutler Group LP, to Elizabeth M. Murphy, Secretary, Commission, dated October 22, 2010 ("Cutler Letter").

[5] Section 1.1 of CBOE's By-Laws provides: "The term 'Trading Permit Holder' means any individual, corporation, partnership, limited liability company or other entity authorized by the rules that holds a Trading Permit. If a Trading Permit Holder is an individual, the Trading Permit Holder may also be referred to as an 'individual Trading Permit Holder.' If a Trading Permit Holder is not an individual, the Trading Permit Holder may also be referred to as a 'TPH organization.' A Trading Permit Holder is a 'member' solely for purposes of the Act; however, one's status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange." *See* Section 3(a)(3)(A) of the Act which defines member of an exchange.

[6] Before CBOE demutualized, Rule 3.1(a) required every individual member or member organization to have as the principal purpose of its membership the conduct of a public securities business.

examination ("Series 4") or the General Securities Sales Supervisor examination ("Series 9/10").

Rule 3.6A, Qualification and Registration of Certain Associated Persons, sets forth the requirement for each individual TPH or TPH organization subject to Rule 15c3–1 under the Act to have a FINOP (Limited Principal—Financial and Operations).[7] Rule 3.6A also references the registration requirements set forth in Chapter IX of CBOE's Rulebook for associated persons of TPH organizations that conduct a public customer business.[8]

Rule 9.3A, Continuing Education for Registered Persons, applies to registered persons of TPHs and TPH organizations that conduct business with the public and sets out CBOE's continuing education requirements.

III. Description of the Proposal

CBOE proposes to amend its rules and the rules of the CBSX regarding registration, qualification, and continuing education requirements for individual TPHs and associated persons[9] of TPHs. CBOE is amending its rules to make them substantially similar to the registration, examination and continuing education requirements of FINRA. Specifically, CBOE proposes to require all individual TPHs and TPH associated persons, regardless of whether they conduct a public customer or proprietary securities business, to register, qualify and comply with continuing education requirements.[10]

CBOE and CBSX will require all individual TPHs and individual associated persons[11] not already registered in WebCRD to register under Rule 3.6A within 60 days of the date of this Order (January 11, 2011) and to pass a qualification examination. CBOE is developing an alternative to the Series 7 examination that is specifically tailored toward individual TPHs and associated persons of TPHs that are engaged in proprietary trading. CBOE has represented that within six months of the date of this Order it will have completed the development of this qualification examination[12] and will file the examination with the Commission. All individual TPHs and individual associated persons must take and pass the new examination, as applicable, no later than August 12, 2011.

Rule 3.6A(c) will require that each TPH and TPH organization designate on Schedule A of Form BD a Chief Compliance Officer ("CCO")[13] who must register with CBOE using Form U4 and pass the Compliance Official examination ("Series 14").[14] CBOE has represented to the Commission that it has asked FINRA to enable this category of registration for CBOE and to make the Series 14 examination available to CCOs of CBOE and CBSX TPHs. CBOE is also proposing to allow a limited exemption from the requirement to pass the Series 14.[15]

Furthermore, the Exchange is proposing to add Interpretations and Policies .07 to Rule 3.6A requiring the registration and the successful completion of a heightened qualification examination by every individual acting in any of the following capacities: (i) Officer; (ii) partner; (iii) director; (iv) supervisor of proprietary trading, market-making or brokerage activities; and/or (v) supervisor of those engaged in proprietary trading, market-making or brokerage activities with respect to those activities. Thus, all individuals who engage in supervisory functions at the TPH organization's securities business, or who oversee associated persons of TPHs, must register and pass the relevant principal examination.[16] The rule also requires each TPH organization to have at least two of the above listed individuals registered as principals and subject to the relevant principal examination requirement. The Exchange may waive the requirement to have two principals registered if a TPH organization conclusively demonstrates that only one principal should be required to register (such as a single member liability company).[17]

A TPH organization that is involved solely in proprietary trading[18] and has 25 or fewer associated persons would only be required to have one principal registered and subject to a heightened qualification examination under this section.[19]

Rule 3.6A(a)(1) provides that a TPH or TPH organization shall not maintain a registration with the Exchange for any person: (1) Who is no longer active in the TPH or TPH organization's securities business; (2) who is no longer functioning in the registered capacity; or (3) where the sole purpose is to avoid an examination requirement. A TPH or TPH organization cannot register any person where there is no intent to employ that person in the TPH or TPH organization's securities business. However, a TPH or TPH organization may maintain or make application for

[7] The Exchange is proposing to apply the existing FINOP requirement in Rule 3.6A to all TPH organizations.

[8] CBOE has represented that CBOE Stock Exchange ("CBSX") firms solely engage in proprietary trading. Chapter IX of CBOE's Rulebook pertains toTPHs that conduct a public customer business and is not included in Appendix A, Applicability of Rules of the Exchange, to the CBSX rules, which lists the CBOE rules that apply to CBSX TPHs. However, it is the Commission's understanding that it is CBOE's intent to apply the rules of Chapter IX that are referenced in Rule 3.6A to CBSX TPHs.

[9] Section 3(a)(18) of the Act defines an associated person of a broker or dealer as "any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b)." 15 U.S.C. 78c(a)(18).

[10] It is the Commission's understanding that, with these changes to CBOE's rules, all associated persons involved in the securities business of a firm that does business on the CBOE will have to register, pass a qualification examination and comply with continuing education requirements.

[11] Associated persons of CBOE TPHs include both individuals and non-natural persons.

[12] CBOE has represented that it is developing a principal examination tailored to sole proprietors, officers, partners, and directors, individual TPHs or individual associated persons who are engaged in the supervision or monitoring of proprietary trading, market-making, or brokerage activities, and/or anyone who is engaged in the supervision or training of those engaged in proprietary trading, market-making or brokerage activities. Until this examination is complete and filed with the Commission, these associated persons must pass the General Securities Principal examination ("Series 24").

[13] CBOE indicated that it did not want to use the term "principal" in Rule 3.6A to denote associated persons of a member who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions.

Under CBOE's proposed rules anyone functioning as a principal must register as such with the Exchange via a Form U4 through FINRA's WebCRD. CBOE did not want to use the term principal in Rule 3.6A to refer to these associated persons because it wanted to avoid creating confusion for its TPHs that have Registered Options Principals. Through this filing, CBOE is essentially extending the Registered Options Principal category and requirements (though not the same examinations) to those associated persons in a supervisory function whose firms do not conduct business with the public. Ultimately, the Commission expects CBOE to eliminate the distinction in its rules relating to doing business with the public. Hereinafter, the Commission will refer to such persons as principals.

[14] *See* NASD Rule 1022(a)(1)(c).

[15] *See* proposed Rule 3.6A(c).

[16] The Commission understands that this will be either an appropriate examination developed by CBOE and filed with the Commission or the Series 24.

[17] The Commission expects this waiver to be used in very limited circumstances.

[18] Interpretations and Policies .07 to Rule 3.6A defines proprietary trading.

[19] *See* proposed Interpretations and Policies .07 to Rule 3.6A. The Commission understands that this examination will be the Series 24 until CBOE has completed and filed with the Commission its own examination for principals of proprietary trading firms. This requirement is substantially similar to NASDAQ Rule 1021(e)(1).

the registration of an individual who performs legal, compliance, internal audit, back-office-operations, or similar responsibilities for the TPH or TPH organization, or a person who performs administrative support functions for registered personnel, or a person engaged in the securities business of a foreign securities affiliate or subsidiary of the TPH or TPH organization.[20]

The Exchange is also proposing to add Rule 3.6A(a)(2) to identify several categories of individual TPHs and individual associated persons who are exempt from the new registration requirements. The categories are: (i) Individual associated persons functioning solely and exclusively in a clerical or ministerial capacity; (ii) individual TPHs and individual associated persons who are not actively engaged in the securities business, (iii) individual TPHs and individual associated persons functioning solely and exclusively to meet a TPH or TPH organization's need for nominal corporate officers or for capital participation; and (iv) individual associated persons whose functions are solely and exclusively related to transactions in commodities, transactions in security futures and/or effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange. [21]

Rule 3.6A(e) addresses lapses in registration [22] and Interpretation and Policies .05 thereto would permit CBOE to waive the examination requirement in limited circumstances.[23] In addition, the Exchange is making certain technical and non-substantive changes to its rules.[24]

The Exchange states that individual associated persons, including Registered Options Principals and Registered Representatives, continue to be subject to the registration, examination and continuing education requirements of Chapter IX of CBOE's rules, which apply to firms conducting a public customer business.[25] Additionally, any TPH or TPH organization that ends the employment of an individual required to register under Rule 3.6A must comply with the requirements in Chapter IX of CBOE's rules.

The Exchange proposes to require individual TPHs and individual associated persons whose activities are limited solely to the transaction of business on the floor with TPHs or registered broker-dealers to fulfill continuing education requirements.[26]

IV. Comment Letters

The Commission received two comment letters on the proposed rule change.[27] One commenter, XR Securities, stated that the examination proposed to be developed by CBOE for associated persons was redundant for associated persons currently registered with another exchange who have passed the Series 7. The commenter stated that the new examination would impose an unfair burden on firms registered at CBOE and elsewhere, and argued that it would be better to allow associated persons registered at more than one exchange to take the Series 7 instead of the proposed CBOE examination. The commenter also stated that the Series 24 is generally accepted by all exchanges as the CCO examination, whereas the Series 14 is available for FINRA/NYSE members to elect to take instead of the Series 24. The commenter believes that requiring a CCO who currently is Series 24 registered to pass the Series 14 would be unreasonable.

The second commenter, Cutler, is supportive of the proposed rule change requiring all traders to register with CBOE and pass a relevant trading examination; however, it also expressed concern over the proposed examination requirements and timeframe for completing a required examination. In short, Cutler believes no new examination requirement should be imposed on traders currently properly registered with CBOE. It suggested creating a new continuing education module for CBOE traders, to the extent the existing examinations do not cover relevant material that would be included in the new examination. For persons to be qualified on CBOE in the near future, Cutler supports CBOE's plan to create an examination specific and relevant to professional traders in lieu of the Series 7, which it considers too broad. Cutler echoed XR Securities' concerns regarding the Series 14 examination for CCOs, stating that the Series 24 is the accepted examination for CCOs and should be adopted by CBOE instead, and, similarly, encouraged CBOE to create an exam to succeed the Series 24 for supervisors whose functions are limited to the supervision of traders.

V. Discussion

The Commission is sympathetic to the concerns raised by the two commenters regarding associated persons who are currently Series 7 qualified who do not want to have to take the proposed CBOE proprietary trading exam, as well as associated persons who have already qualified as CCOs. The Commission expects that such persons may be eligible for a waiver of the exam requirement if they are able to demonstrate to the CBOE's satisfaction that they are appropriately qualified to do business on the CBOE. However, the Commission believes that this proposed rule change is an important step towards harmonizing the registration, qualification and continuing education requirements across the SROs. In order to meet its obligations under Section 6(b)(1) of the Act to enforce compliance by member firms [28] and their associated persons with the Act, the rules thereunder, and the exchange's own rules,[29] an exchange must have baseline registration and qualification requirements for all persons conducting business on an exchange, as well as for those supervising such activity. Further to those provisions, the Commission believes an exchange should require continuing education for registered persons to help ensure that members and persons associated with members are up to date on changes to exchange rules and the securities laws, rules, and regulations that govern their activities. In addition, an exchange must know if an associated person of a member firm is subject to a statutory disqualification. This information is elicited by the Form U4, which is used by most exchanges and FINRA to register associated persons. The Commission believes that it is important to ensure that information, such as whether an associated person is subject to a statutory disqualification, is available to exchanges and other regulators, including the Commission and the state securities regulators, through WebCRD, as well as members of the public

[20] This rule is substantially similar to NASD Rule 1021(a).

[21] This rule is substantially similar to NASD Rule 1060.

[22] This rule is substantially similar to NASD rules 1021(c) and 1031(c) regarding lapses.

[23] This rule is substantially similar to NASD Rule 1070 regarding waivers.

[24] *See* Notice at pp. 8–9.

[25] *See supra* note 8.

[26] Interpretations and Policies .01 to Rule 9.3A currently excludes these persons from the continuing education requirements set forth in Rule 9.3A. Proposed Interpretations and Policies .04 to Rule 3.6A states that all persons required to register are subject to CBOE's continuing education requirements.

[27] *See supra* note 4.

[28] Brokers and dealers are required to supervise the activities of their associated persons. *See* 15 U.S.C. 78*o*(b)(4)(E).

[29] Section 6(b)(1) requires exchanges to have the ability to enforce compliance by their members and associated persons with the federal securities laws and with their own rules. 15 U.S.C. 78f(b)(1).

through BrokerCheck, which derives its information from WebCRD.[30]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[31] and, in particular with Section 6(b)(5) of the Act,[32] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is also consistent with Section 6(c)(3)(B) of the Act,[33] which authorizes exchanges to prescribe standards of training, experience and competence for persons associated with exchange members, and gives exchanges the authority to bar a natural person from becoming a member or a person associated with a member, if the person does not meet the standards of training, experience and competence prescribed in the rules of the exchange.

CBOE's proposed rule change requires all associated persons of TPHs engaged in a securities business on CBOE or on CBSX, as well as those who supervise, train or otherwise oversee those who do, to register with the Exchange via the Form U4, qualify by passing an appropriate examination, and be subject to continuing education requirements.[34] The Commission believes the restrictions on registration that bar a TPH from maintaining a registration with CBOE for (1) persons no longer active in the TPH's securities business, (2) persons no longer functioning in the registered capacity, or (3) for avoidance of an examination requirement, are appropriate. These limitations should help ensure that only persons qualified for their category of registration who are engaged in a securities business are able to transact business on CBOE and CBSX.

The Commission notes that CBOE has exempted several categories of associated persons from the new registration requirements. These persons fall outside of CBOE's proposed definition of "engaged in a securities business." CBOE explained that the people excluded would not be considered to be actively engaged in a securities business unless they are registered on the floor of another exchange, in which case they would not have to register with CBOE.[35] The Commission understands that CBOE's proposed rule change applies to all associated persons conducting a securities business, on a proprietary or agency basis, on CBOE and CBSX.

The Commission expects that CBOE, consistent with its representation, will have developed and filed with the Commission the appropriate examination for its representatives engaged in a proprietary securities business no later than May 12, 2011. If CBOE fails to do so, the Commission expects CBOE to require all associated persons engaged in the securities business of a TPH to promptly take and pass an appropriate existing examination.

The Commission believes that the requirement that all persons functioning in certain supervisory capacities be registered through WebCRD and be subject to higher qualification standards appropriately reflects the enhanced responsibility of their roles and is consistent with the Act. The general requirement that TPHs must have a minimum of two principals responsible for oversight of member organization activity on CBOE, who must be registered as such and pass a principal exam, should help CBOE strengthen the regulation of its member firms, and prepare those individuals for their responsibilities. The nature of the firm, however, may dictate that more than two principals are needed to provide appropriate supervision.

The requirement for each TPH organization to have a CCO who must register and pass the Series 14 and a FINOP who must register and pass the Series 27 is appropriate based on the heightened level of accountability inherent in the duty of overseeing compliance by an Exchange member, and in the oversight and preparation of financial reports, and the oversight of those employed in financial and operational capacities at each firm.

The Commission believes CBOE's proposed provision requiring any person whose registration has been revoked by the Exchange as a disciplinary sanction, or whose most recent registration as a principal or representative has been terminated for a period of two or more years immediately preceding the date of receipt by the Exchange of a new application, to pass the qualification examination appropriate to such person's category of registration is appropriate. This requirement should help to ensure that an associated person's qualifications are current.

The Commission also believes CBOE's proposed exceptions from the above-discussed general requirements are appropriate. Any TPH seeking an exception from the two principal minimum must provide evidence that conclusively indicates to the Exchange that only one principal is necessary. The Commission expects this authority to be used sparingly, because such persons oversee the operations of member firms and provide the first line of defense in ensuring that member firms are complying with the rules of an exchange as well as the federal securities laws. In addition, CBOE may waive the qualification examination requirement in exceptional cases where the applicant has demonstrated that good cause exists. The Commission expects this authority to be used sparingly. Finally, the Commission notes that these exceptions are substantively the same as exceptions provided in similar rules at other SROs.[36]

The Commission believes that the proposal will enhance CBOE's ability to ensure an effective supervisory structure for those conducting business on CBOE. The requirements apply broadly and are intended to help close a regulatory gap which has resulted in varying registration, qualification, and supervision requirements across markets. The Commission believes that the changes proposed by CBOE to its rules will strengthen the regulatory structure of the Exchange and should enhance the ability of its individual TPHs and TPH organizations to comply with the Exchange's rules as well as with the federal securities laws.

Additionally, the Commission believes that the proposed rule change is consistent with the principles of Section 11A(a)(1)(22) of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Commission believes that the proposed rule will promote uniformity of regulation across markets, thus reducing opportunities for regulatory arbitrage. CBOE's proposed rule change helps ensure that all persons conducting a securities business through CBOE are appropriately

[30] *See* Section 6(c)(2) of the Act, 15 U.S.C. 78f(c)(2); and Rule 19h–1 under the Act, 17 CFR 240.19h–1.

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78f(c)(3)(B).

[34] CBOE's proposed rule change expands its continuing education requirements to associated persons whose activities are limited to the transaction of business on CBOE's floor.

[35] *See* Notice, p. 6; 75 FR 59775. Such persons must comply with Section 15(b)(8) of the Act.

[36] *See, e.g.,* FINRA Rule 1070(d) and NASDAQ Rule 1070(d) regarding the examination waiver.

supervised, as the Commission expects of all SROs.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–CBOE–2010–084), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29160 Filed 11–18–10; 8:45 am]

BILLING CODE 8011–01–P

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7232]

30-Day Notice of Proposed Information Collection: Voluntary Disclosures

ACTION: Notice of request for public comment and submission to OMB of proposed information collection.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Voluntary Disclosures.
- *OMB Control Number:* 1405–0179.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 750.
- *Estimated Number of Responses:* 1,000.
- *Average Hours Per Response:* 10 hours.
- *Total Estimated Burden:* 10,000 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 30 days from November 19, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the information collection and supporting documents, to Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2804, or via e-mail at *memosni@state.gov*.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls (DDTC) in accordance with the International Traffic in Arms Regulations ("ITAR," 22 CFR parts 120–130) and Section 38 of the Arms Export Control Act (AECA). Those who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in export, temporary import, and brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporters must maintain records of defense trade activities for five years. Section 127.12 of the ITAR encourages the disclosure of information to DDTC by persons who believe they may have violated any provision of the AECA, ITAR, or any order, license, or other authorization issued under the AECA. The violation is analyzed by DDTC to determine whether to take administrative action under part 128 of the ITAR and whether to refer the matter to the Department of Justice to consider criminal prosecution.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: electronically, mail, personal delivery, and/or fax.

Dated: November 10, 2010.

Robert S. Kovac,

Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2010–29230 Filed 11–18–10; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice: 7233]

Notice of Meeting of the Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place on Thursday, December 9, 2010, from 9:30 a.m. to approximately 5:30 p.m., at the George Washington University Law School (Michael K. Young Faculty Conference Center, 5th Floor), 2000 H St., NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, Harold Hongju Koh, and will be open to the public up to the capacity of the meeting room. It is anticipated that the agenda of the meeting will cover a range of current international legal topics, including international piracy; sovereign immunity of foreign government officials; U.N. resolutions and fundamental rights under European Union law; contemporary issues in the law of armed conflict; transnational environmental issues; and corporate social responsibility. Members of the public will have an opportunity to participate in the discussion.

Members of the public who wish to attend the session should, by Friday, December 3, 2010, notify the Office of the Legal Adviser (telephone: 202–776–8451) of their name, professional affiliation, address, and telephone number. A valid photo ID is required for admittance. A member of the public who needs reasonable accommodation should make his or her request by December 2, 2010; requests made after that time will be considered but might not be possible to accommodate.

Dated: November 15, 2010.

Danielle Morris,

Office of Claims and Investment Disputes, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, Department of State.

[FR Doc. 2010–29229 Filed 11–18–10; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2010–0103]

California Green Trade Corridor Transportation Investment Generating Economic Recovery (TIGER)

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Notice of availability of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Maritime Administration, of the Department of Transportation (DOT), has made available to interested parties the Finding of No Significant Impact (FONSI) for the California Green Trade Corridor Transportation Investment Generating Economic Recovery (TIGER) grant. An environmental assessment (EA) and FONSI have been prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4231 *et seq.*) in accordance with the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

The purpose of the EA is to evaluate the potential environmental impacts from two separate marine highway projects running from the Ports of West Sacramento and Stockton to the Port of Oakland. The marine highway services consist of a tug and barge configuration and are scheduled to operate once a week.

FOR FURTHER INFORMATION CONTACT: Daniel E. Yuska Jr., 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–0714; or e-mail: *Daniel.yuska@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

A copy of the Final EA and Finding of No Significant Impact can be obtained or viewed online at *http://www.regulations.gov*. The files are in a portable document format (pdf); in order to review or print the document, users need to obtain a free copy of Acrobat Reader. The Acrobat Reader can be obtained from *http://www.adobe.com/prodindex/acrobat/readstep.html*.

By order of the Maritime Administrator.

Dated: November 15, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–29173 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2009–0003; Notice 2]

General Motors Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain Model Year 2009 Chevrolet Cobalt and Pontiac G5 passenger cars did not fully comply with paragraphs S4.3(c) and S4.3(d) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims, for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 pounds) or Less.* GM has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), GM has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published with a 30-day public comment period, on 2/9/2009, in the **Federal Register** (74 FR 6453). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number "NHTSA–2009–0003."

For further information on this decision, contact Mr. John Finneran, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), Telephone (202) 366–0645, Facsimile (202) 366–5930.

Affected are approximately 6,619 model year 2009 Chevrolet Cobalt and Pontiac G5 passenger cars built from April 2008 through November 12, 2008.

Paragraph S4.3 of FMVSS No. 110 requires in pertinent part:

S4.3 Placard. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3(a) through (g), and may show, at the manufacturer's option, the information specified in S4.3(h) and (i), on a placard permanently affixed to the driver's side B-pillar. In each vehicle without a driver's side B-pillar and with two doors on the driver's side of the vehicle opening in opposite directions, the placard shall be affixed on the forward edge of the rear side door. If the above locations do not permit the affixing of a placard that is legible, visible and prominent, the placard shall be permanently affixed to the rear edge of the driver's side door. If this location does not permit the affixing of a placard that is legible, visible and prominent, the placard shall be affixed to the inward facing surface of the vehicle next to the driver's seating position. This information shall be in the English language and conform in color and format, not including the border surrounding the entire placard, as shown in the example set forth in Figure 1 in this standard. At the manufacturer's option, the information specified in S4.3(c), (d), and, as appropriate, (h) and (i) may be shown, alternatively to being shown on the placard, on a tire inflation pressure label which must conform in color and format, not including the border surrounding the entire label, as shown in the example set forth in Figure 2 in this standard. The label shall be permanently affixed and proximate to the placard required by this paragraph. The information specified in S4.3(e) shall be shown on both the vehicle placard and on the tire inflation pressure label (if such a label is affixed to provide the information specified in S4.3(c), (d), and, as appropriate, (h) and (i)) may be shown in the format and color scheme set forth in Figures 1 and 2. * * *

(c) Vehicle manufacturer's recommended cold tire inflation pressure for front, rear and spare tires, subject to the limitations of S4.3.4. For full size spare tires, the statement "see above" may, at the manufacturer's option replace manufacturer's recommended cold tire inflation pressure. If no spare tire is provided, the word "none" must replace the manufacturer's recommended cold tire inflation pressure.

(d) Tire size designation, indicated by the headings "size" or "original tire size" or "original size," and "spare tire" or "spare," for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement "see above" may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word "none" must replace the tire size designation; * * *

In its petition, GM explained that the noncompliances with FMVSS No. 110 exist due to errors in the vehicle tire and loading information placards that it affixed to the vehicles. GM explains that

the subject vehicles were originally designed to be equipped with spare tires as standard equipment. The vehicle owner's manuals and tire and information placards included all required information associated with the spare tire equipped vehicles. When a production change substituted a Tire Sealant and Compressor Kit (inflator kit) for the spare tire, the vehicle tire and information placards should have been revised to comply with paragraphs S4.3(c) and S4.3(d) of FMVSS No. 110, but were not.

GM described the noncompliances as the following errors on the tire and loading information placard:

(1) The tire size designation shows a spare tire size appropriate for the subject vehicles instead of the word "none".

(2) The manufacturer's recommended cold tire inflation pressure shows inflation pressure appropriate for the subject spare tire instead of the word "none".

GM also stated that all other information (front and rear tire size designations and their respective cold tire inflation pressures as well as seating capacity and vehicle capacity weight) on the subject placards is correct and that it was not aware of any field or owner complaints associated with these noncompliances.

GM additionally stated that it believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) All information required for maintaining and/or replacing the front and rear tires, as well as the seating capacity and vehicle capacity weight are correct on the tire and loading information placard on the subject vehicles.

(2) The vehicle price label (a.k.a., the Monroney label) has the correct information, whether the vehicle is equipped with an inflator kit or a spare tire. Therefore, original purchase owners should already know if their vehicle is equipped with an inflator kit in place of a spare tire.

(3) In addition to the FMVSS No. 138 required owner's manual language of checking the inflation pressures of all tires including the spare monthly, the owner's manual also recommends the owner to check the tires including the compact spare once a month or more. The tire information placard on the subject vehicles contains spare tire size and recommended cold tire inflation pressure instead of the word "none" as required by FMVSS No. 110. The inflator kit is located in the same location where a spare tire would be for vehicles ordered with an optional spare tire. Therefore, if an owner were to look for the spare tire, he/she would find the inflator kit, and realize that the vehicle is equipped with an inflator kit instead of a spare tire.

(4) In the event of a flat tire, the inflator kit serves the purpose of getting back on the road. Since the inflator kit is located in the same location as the spare tire, the customer should have no problem finding it. The owner's manual provides the instructions for using the inflator kit as well as installing the spare tire. There is a label with instructions on the sealant canister of the inflator kit as well.

(5) The inflator kit includes a tire sealant canister, an air compressor as well as a pressure gage in one unit. The inflator kit can be used to inflate one or more tires regardless whether the vehicle has a punctured tire or not. The sealant of the GM sealant canister does not damage the TPMS pressure sensor, and the TPMS continues to function.

(6) OnStar e-mail service subscribers get monthly reminders on tire pressure maintenance, including the recommended cold tire inflation pressures and status of their tire pressures.

(7) Risk to the public is negligible because the vehicle does have an inflator kit.

(8) GM is not aware of any incidents or injuries related to the subject condition.

GM also has informed NHTSA that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, GM states that it believes that the noncompliances are inconsequential to motor vehicle safety and that no corrective action is warranted.

NHTSA Decision

The agency agrees with GM that the noncompliances are inconsequential to motor vehicle safety. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliances on the operational safety of the subject vehicles in which the vehicle tire and loading information placards erroneously indicated that a spare tire was available when, in fact, a tire inflator kit was installed in lieu of the spare tire.

In the agency's judgment, this noncompliance to FMVSS No. 110 will have an inconsequential effect on motor vehicle safety because:

In the event of a flat tire, the inflator kit serves the purpose of getting back on the road. Since the inflator kit is located in the same location as the spare tire, the customer should have no problem finding it. The owner's manual provides the instructions for using the inflator kit as well as installing a spare tire, should one become available. There is a label with use instructions on the sealant canister of the inflator kit as well.

Additionally, all information required for maintaining and/or replacing the front and rear tires (i.e., tire size designations and their respective cold tire inflation pressures), as well as the seating capacity and vehicle capacity weight are correct on the tire and loading information placard on the subject vehicles.

In consideration of the foregoing, NHTSA has decided that GM has met its burden of persuasion that the subject FMVSS No. 10 labeling noncompliances are inconsequential to motor vehicle safety. Accordingly, GM's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8).

Issued on: November 15, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–29170 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2010–0151; Notice 1]

General Motors Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM),[1] has determined that approximately 1,113 Model Year (MY) 2011 Buick Regal passenger cars do not fully comply with paragraph S4.3(d) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire Selection and Rims for Motor Vehicles With a GVWR of 4,536 Kilograms (10,000 pounds) or Less.* GM filed an appropriate report pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports* dated July 26, 2010.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), GM has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of GM's, petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are approximately 1,113 model year 2011 Buick Regal passenger cars manufactured between January 20, 2010, and May 18, 2010 at GM's Rüsselsheim assembly plant.

[1] General Motors LLC (GM) is vehicle manufacturer incorporated under the laws of the state of Michigan.

The National Highway Traffic Safety Administration (NHTSA) notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the 1,113 [2] vehicles that have already passed from the manufacturer to an owner, purchaser, or dealer.

Paragraph S4.3 of FMVSS No. 110 requires in pertinent part:

S4.3 Placard. Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3 (a) through (g), and may show, at the manufacturer's option, the information specified in S4.3 (h) and (i), on a placard permanently affixed to the driver's side B-pillar. In each vehicle without a driver's side B-pillar and with two doors on the driver's side of the vehicle opening in opposite directions, the placard shall be affixed on the forward edge of the rear side door. If the above locations do not permit the affixing of a placard that is legible, visible and prominent, the placard shall be permanently affixed to the rear edge of the driver's side door. If this location does not permit the affixing of a placard that is legible, visible and prominent, the placard shall be affixed to the inward facing surface of the vehicle next to the driver's seating position. This information shall be in the English language and conform in color and format, not including the border surrounding the entire placard, as shown in the example set forth in Figure 1 in this standard. At the manufacturer's option, the information specified in S4.3 (c), (d), and, as appropriate, (h) and (i) may be shown, alternatively to being shown on the placard, on a tire inflation pressure label which must conform in color and format, not including the border surrounding the entire label, as shown in the example set forth in Figure 2 in this standard. The label shall be permanently affixed and proximate to the placard required by this paragraph. The information specified in S4.3 (e) shall be shown on both the vehicle placard and on the tire inflation pressure label (if such a label is affixed to provide the information specified in S4.3 (c), (d), and, as appropriate, (h) and (i)) may be shown in the format and color scheme set forth in Figures 1 and 2. * * *

(d) Tire size designation, indicated by the headings "size" or "original tire size" or "original size," and "spare tire" or "spare," for the tires installed at the time of the first purchase for purposes other than resale. For full size spare tires, the statement "see above" may, at the manufacturer's option replace the tire size designation. If no spare tire is provided, the word "none" must replace the tire size designation; * * *

GM explains that the noncompliance with FMVSS No. 110 is the omission of the letter "T" in the spare tire size printed on the tire and loading information labels that it affixed to the vehicles. Currently the tire size designation shows the spare tire size as "125/80R16" instead of "T125/80R16."

GM reported that the noncompliance was brought to their attention in May of 2010 by the Global Subsystem Leadership Team during an internal audit in the Rüsselsheim Assembly Plant.

GM additionally stated that it believes that this noncompliance is inconsequential to motor vehicle safety for the following reasons:

(1) All information for maintaining and/or replacing the front and rear tires, as well as the seating capacity and vehicle capacity weight are correct on tire and loading information labels on the subject vehicles.

(2) The vehicles are equipped with spare tires that have the complete tire size (T125/80R16) molded their sidewalls.

(3) When a customer needs to replace the spare tire, he/she will take the vehicle to a tire store. The tire store will know what compact spare tire is needed based on the information in their catalog or by looking at the spare tire provided with the vehicle. In the case, they were to refer to the tire and loading information label, it will show the spare tire size 125/80R16 without the letter T. The only tire available with the size designation of 125/80R16 is the compact spare tire T125/80R16, and should not cause any confusion or error.

(4) Risk to the public is negligible because the vehicles are equipped with the correct spare tire, and the tire and loading information label does have the correct inflation pressure for the compact spare tire.

(5) GM is not aware of any incidents or injuries related to the subject condition.

GM has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will have compliant labels.

In summation, GM believes that the described noncompliance of its vehicles to meet the requirements of FMVSS No. 110 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, and should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

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.). DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

[2] GM's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt GM as a manufacturer from the notification and recall responsibilities of 49 CFR part 573 for 1,113 of the affected vehicles. However, the agency cannot relieve GM distributors of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after GM recognized that the subject noncompliance existed.

You may view documents submitted to a docket at the address and times given above. You may also view the documents on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets available at that Web site.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 20, 2010

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: November 15, 2010.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2010–29168 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–51]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 29, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1012 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4025, Tyneka Thomas (202) 267–7626 or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 15, 2010.

Dennis Pratte,

Acting Deputy Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2010–1012.

Petitioner: Seaborne Airlines.

Section of 14 CFR Affected:

14 CFR 121.305(j)

Description of Relief Sought: Seaborne Airlines is requesting relief from the requirement to install a third gyroscopic bank and pitch indicator in its DHC–6–300 aircraft.

[FR Doc. 2010–29195 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–53]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before November 29, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0947 and FAA–2010–0970 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to

http://www.regulations.gov at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones, 202–267–4025, or Tyneka L. Thomas, 202–267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on November 16, 2010.

Dennis Pratte,

Acting Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2010–0947 and FAA–2010–0970.

Petitioner: Seaborne Virgin Islands, Inc. d.b.a. Seaborne Airlines.

Section of 14 CFR Affected: Part 121, Appendix K, Paragraph 5(a)

Description of Relief Sought:

Seaborne Virgin Islands, Inc. d.b.a. Seaborne Airlines (Seaborne) petitioned for exemption from certain aircraft performance requirements in part 121, Appendix K, Paragraph 5(a) that are effective on and after December 20, 2010, that pertain to the operations of Seaborne's DHC–6–300 airplanes (float and wheel equipped).

[FR Doc. 2010–29196 Filed 11–18–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transit Asset Management (TAM) Pilot Program

AGENCY: Federal Transit Administration, United States Department of Transportation.

ACTION: Request for Proposals (RFP).

SUMMARY: The Federal Transit Administration (FTA) is soliciting proposals from public transportation providers, state Departments of Transportation (DOT), and Metropolitan Planning Organizations (MPO)—individually or in partnership—to demonstrate effective Transit Asset Management (TAM) systems and "best practices", which can be replicated to improve transportation asset management at the nation's rail and bus public transportation agencies. Public sector applicants may partner with asset management system suppliers; however the official proposer must be a public agency. The TAM pilot program is intended to address several public transportation asset management challenges identified in previous research by FTA.[1] FTA contemplates making multiple cooperative agreement awards for TAM pilot projects to varied teams.

The total available funding for the TAM pilot program is $3 million. FTA will award cooperative agreements, up to $1 million each, to successful proposers for pilot projects that will demonstrate certain aspects of TAM systems. Successful TAM pilot projects will promote the use of advanced tools and practices throughout the public transportation industry. FTA is looking for innovative approaches to asset management using proven technology that will enhance the ability of public transportation providers, MPOs, and state DOTs to maintain their assets in a state of good repair and/or make more informed resource allocation decisions. Proposed solutions must be scalable and transferable such that they can be adapted by public transportation agencies and organizations of various sizes and modes. Additionally, FTA seeks to provide technical assistance to public transportation agencies through written reports and technical knowledge to be provided under the cooperative agreements.

DATES: Proposals must be submitted electronically by January 18, 2011.

ADDRESSES: Proposals shall be submitted electronically to *http://www.grants.gov*. The Web site allows organizations to find and apply for funding opportunities electronically from all Federal grant-making agencies and is the single access point for over 1,000 cooperative agreement programs offered by the 26 Federal grant-making agencies.

Mail and fax submissions *will not be accepted* (excluding supplemental information which cannot be sent electronically).

FOR FURTHER INFORMATION CONTACT: Contact Aaron C. James, Director, Office of Engineering, (202) 493–0107, *aaron.james@dot.gov* for proposal-specific information and issues.

I. Funding Authority

The FY 2010 DOT–HUD appropriations bill provides significant resources to FTA to encourage improved management of the condition and recapitalization of the Nation's transit infrastructure. Specifically, the bill states:

> "Asset Management—The conference agreement includes $5,000,000 to develop *asset management plans, technical assistance, data collection* and a *pilot program* as proposed by the Senate. The House did not include similar language. The conferees expect the pilot program to include transit agencies that vary in size and direct FTA to report findings to the House and Senate Committees on appropriations within 18 months of enactment."

FTA is using a portion of this research funding, authorized by 49 U.S.C. 5312, to support research in asset management practices and condition assessment methodologies, as well as new data collection and analysis activities. $3 million has been reserved for the pilot projects being solicited in this RFP.

II. Background and Objectives

FTA is one of eleven agencies in the Department of Transportation (DOT) and has the primary responsibility of carrying out the Federal mandate of promoting and improving the nation's public transportation system. As part of its role, FTA provides over $10 billion annually in financial assistance to transit agencies and states for building and maintaining public transportation systems. There is growing concern that a significant portion of the nation's public transportation assets are in need of capital reinvestment due to the historically inadequate level of financial resources available for maintenance and asset replacement activities and/or an inability by agencies to set appropriate recapitalization priorities due to a lack of effective and easily adopted asset condition assessment tools and systems.

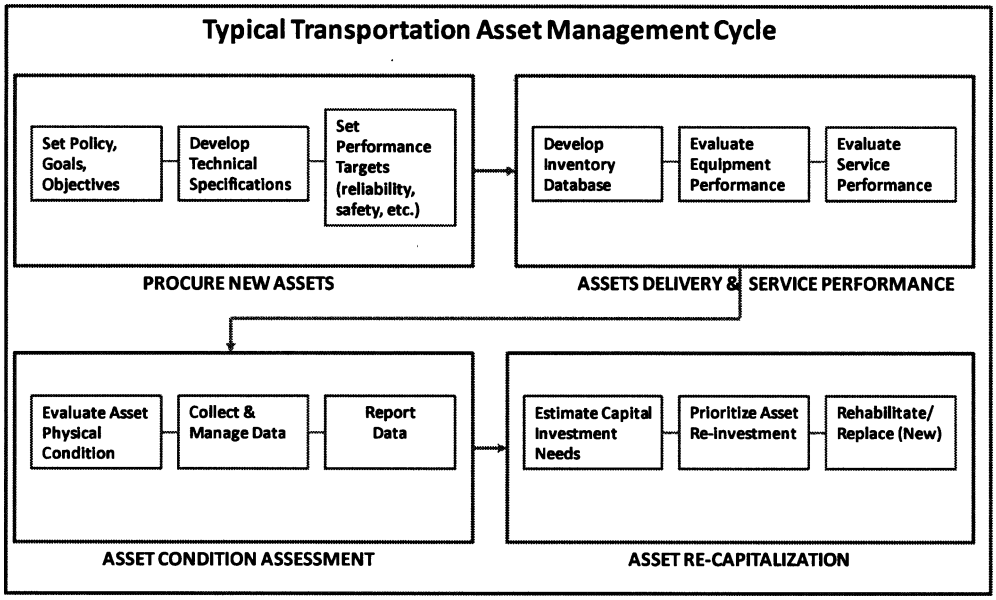
The National State of Good Repair Assessment, published by FTA in June 2010, indicated that roughly one-third of the nation's public transit assets (weighted by replacement value) are in marginal or poor condition and that almost $80 billion is needed to bring them into a "state of good repair." It has been widely acknowledged that asset management practices in the public transportation sector have not received the same level of technical advancement or attention as have those used for the nation's highways and public utilities. FTA commissioned a review of "Transit Asset Management Practices—National and International" and posted this report to its Web site in July 2010. The review found that while several transit agencies are utilizing TAM systems of one form or another, there are many transit agencies without a system in place for managing the condition of their capital assets in a holistic manner. Effective TAM systems use quality data

[1] National State of Good Repair Assessment, June 2010 and Transit Asset Management Practices—A National and International Review, July 2010.

and well-defined objectives as part of a systematic process to strategically maintain, and improve, capital assets, resulting in the optimal allocation and utilization of available funding.

To help increase the number of transit agencies with complete and up-to-date capital asset inventories and improve the level of asset management in the public transportation industry as a whole, FTA is looking to partner with transit agencies, state DOTs, MPOs, and asset management system suppliers to demonstrate innovative approaches for managing transportation assets from the initial capital asset acquisition planning phase to the asset recapitalization phase.

Referring to the diagram below, this TAM pilot program is aimed at demonstrating solutions to asset management challenges in each of the four phases of the asset management cycle, as well as improvements to the overall asset management flow and approach.



FTA intends to disseminate innovative and/or improved asset management methods developed as part of this pilot program to the industry-at-large so that public transportation agencies, state DOTs and MPOs can prioritize their transit asset repair, recapitalization and replacement needs, and develop reasonable cost/schedule estimates for achieving a "state of good repair". Asset management tools that will promote better management of safety-related public transportation capital assets will be of particular interest.

FTA will participate in TAM pilot program activities at the project level by attending review meetings, commenting on technical reports, and maintaining frequent contact with the project manager. FTA subject matter experts (staff or contractors) will also be included in the project evaluations.

Proposers will be required to assist FTA in reporting the TAM pilot program's progress to Congress, as necessary.

III. Schedule

The successful proposers will be announced in late February 2011 with an anticipated Notice to Proceed (NTP) in early March, 2011.

IV. Eligibility

All proposals must meet the following minimum requirements to be eligible for further consideration of a cooperative agreement award:

1. All proposing entities and/or teams must provide written certification that they have existing TAM systems and practices currently in use and are willing to provide a system demonstration.
2. New systems and solutions, if proposed, must be a recent evolution of an existing system in use.
3. Proposing entities and/or teams must already possess the technical capacity and capability to complete the TAM project.
4. Asset management system suppliers must have currently available commercial products to qualify as an asset management system supplier; however products proposed do not necessarily have to be commercially available at the time of the proposal submission but must be a recent evolution of a currently available commercial product if new.
5. Any proposed software system must explicitly state what data formats and communication protocols are supported "off the shelf" and whether or not they are proprietary in nature. [**Note:** A strong preference for software products that promote data interoperability between diverse types of information technology systems through use of open data formats and standard data communication protocols is desired by FTA.]
6. Transit asset management systems and solutions proposed must have a high probability of being successfully implemented in lieu of newer, high-risk or experimental proposals involving unproven systems.
7. Must be completed within 18 months or less.
8. Must result in asset management tools and practices that can be implemented at reasonable cost other agencies of varying sizes and modal composition. More expensive tools or practices can be identified but should be in addition to cost effective solutions, if proposed.
9. Must provide for data compatibility and data transfer with other transit management systems (*e.g.* maintenance management, financial management, *etc.*).

V. Proposal Requirements

A. Submission Process

Proposals shall be submitted electronically to *http://www.grants.gov*.

Mailed and faxed submissions will not be accepted (except for supplemental information that cannot be sent electronically).

Please deliver supplemental materials to Doris Lyons, Office of Program Management, *Doris.Lyons*mailto:@*dot.gov,* Federal Transit Administration, 1200 New Jersey Avenue, SE., Room E46–204, Washington, DC 20590.

B. Projects Criteria

Proposals will be evaluated on the basis of their implementation of the following major functionalities. Proposals should specifically address one or more of the following functions and clearly state the function(s) for which a solution is being proposed.

1. Demonstrate innovative approaches to public transportation systems planning at the state DOT or MPO level that incorporates the long-term costs of maintaining the systems in a state of good repair (SGR) including:

a. Ensuring agency policy goals and objectives are aligned with an approach focused on achieving and maintaining a state of good repair.

b. Setting comprehensive policy intended to minimize life-cycle costs and maximize asset serviceability.

c. Implementing an asset management system as part of a strategic plan for managing assets from cradle to grave, including initial funding and financing scenarios.

2. Provide a transit capital asset inventory database with sufficient capacity and functionality to track all categories of public transportation capital assets combined:

a. Specifying data items and protocol, for each asset,

b. Specifying data collection methods, and

c. Tracking complex assets, such as vehicles, facilities, and structures, at the system component and major subcomponents level.

3. Demonstrate proven asset inspection methods including frequency and general criteria for identifying deficiencies, taking into account other industry practices (*e.g.* use of state highway bridge inspection procedures on elevated structures) that can be effectively applied throughout the public transportation industry, for:

a. Assessing the physical condition of all asset categories, especially those providing a safety critical function,

b. Providing a comprehensive set of performance measures for rating asset condition at the system component level (*e.g.* vehicles, facilities, stations, *etc.*) and major subcomponents level (*e.g.* escalators, elevators, *etc.*).

c. Performing and tracking required maintenance for all asset inventory categories.

4. Provide methodologies to better prioritize reinvestment needs including:

a. Life-cycle planning of long-lived assets such as maintenance facilities, systems infrastructure and underground structures.

b. Innovative ways to evaluate the effects of capital reinvestment decisions on system performance in terms of capacity, safety, reliability, maintainability, and operating costs.

c. Risk-based approaches that factor in the risks associated with deteriorating asset conditions as opposed to just relying on an asset's age to set recapitalization priorities.

d. The ability to perform scenario analysis involving both constrained and unconstrained needs, as well as the ability to project the optimal distribution of work given likely funding levels along with estimated impacts associated with deferred maintenance.

5. Simplify and improve the integrity of asset condition data collection through the use of technology and process re-engineering.

For purposes of this TAM pilot program, FTA is primarily interested in pursuing the TAM projects described above however, other TAM projects may be proposed as long as they are consistent with FTA's stated objectives in Section II and they meet the eligibility requirements in Section IV.

Upon completion of FTA's proposal review, evaluation, scoring and ranking process, FTA reserves the right to negotiate cooperative agreement awards for entire proposal offerings or specific portions of proposals.

C. Proposal Content

Proposals shall be limited to 60 pages in total length and shall contain the following:

1. Cover sheet (1 page)—Includes the entity submitting the proposal, the principal investigator's name, title, and contact information (e.g. address, phone, fax, and e-mail). Name and contact information for the entity's key point(s) of contact for all cooperative activities (if different from the principle investigator).

2. Abstract (2 pages)—Abstract shall include project background, purpose, demonstration methodology, intended outcomes, and method of measuring how successful the project has been in achieving the intended outcomes.

3. Statement of Eligibility—The eligibility requirements (as listed in Section IV above) should be addressed in narrative form and include a "waiver letter" stating FTA will have unrestricted rights to use data outputs generated.

4. Project narrative (not to exceed 30 pages)—Project narrative shall include the following information:

a. Project Understanding and TAM approach—Understanding of FTA's goals and objectives the problem to be addressed, beyond the description provided by FTA in this RFP; and the proposed approach for executing the research project. Particular attention should be given to describing how the proposing entity will ensure that the proposed TAM project will result in beneficial systems and solutions that can be readily implemented at other agencies of varying sizes and modes.

b. Past Experience—Experience in asset management implementation and knowledge of public transportation management issues related to asset management.

c. Technical Capacity—Technical experience and ability of the proposing organization to address asset management issues identified in this RFP and the availability of key project resources.

5. Preliminary Project Implementation Plan that includes well defined objectives, resources, tasks to accomplish the objectives and a schedule of activities with timelines, and deliverables.

6. A Small Business (SB) Subcontracting Plan detailing how small businesses will be utilized as members of the proposing team. Joint ventures with Disadvantaged Business Enterprise (DBE) firms (i.e., Small Business owned and controlled by Minorities, Women or Disabled Veterans) with requisite experience are encouraged.

In addition to the required proposal elements, proposers have the option to submit supplemental material such as: Brochures, publications, products, letters of support etc. Such supplemental materials, when submitted in appendices, will not be considered a part of the 60-page proposal limit.

D. Deliverables

Successful proposers are not required to deliver proprietary systems information to FTA. The following are required:

1. Monthly progress reports with a narrative describing progress on key milestone activities, monthly and cumulative budget expenditures, SB and DBE utilization, problems encountered and work planned for the next month.

2. A detailed Project Implementation Plan within 15 working days of receiving a Notice to Proceed (NTP).

3. Fifteen (15) bound copies (including 5 color copies) and an electronic copy in PDF format of an Interim Report presenting objectives, approach, interim findings and recommendations along with supporting data by May 30, 2011.

4. A presentation of the Interim Report, at FTA headquarters or via webinar/conference call by June 6, 2011.

5. Fifteen (15) bound copies (including 5 color copies) and an electronic copy in PDF format of a Preliminary Report presenting objectives, approach, preliminary findings, and recommendations, supporting data, and comments from FTA on the Interim Report, no later than 4 months after completion of Interim Report.

6. A presentation of the Preliminary Report, at FTA headquarters or via webinar/conference call within two weeks of submission of Preliminary Report.

7. Fifteen (15) bound copies (including 5 color copies) and an electronic copy in PDF format of a Final Report, addressing preliminary report findings and FTA comments, no later than 16 months after NTP.

8. A presentation of the Final Report at FTA headquarters or via webinar/conference call within two weeks of submission of the Final Report.

9. Forty (40) hours of technical assistance by suitable staff to participate in information exchange forums such as webinars, meetings, teleconferences, or workshops to explain TAM solution.

10. TAM software methodology, solutions and non proprietary TAM systems information with appropriate level of documentation and recommended practice(s) in a medium compatible with FTA software system(s).

Proposers should plan on providing at least one of the three presentations required above, in person to FTA at its headquarters in Washington, DC. FTA will make every effort to accommodate webinars or conference calls for the other two presentations.

Other deliverables, if applicable, will be negotiated prior to award of the cooperative agreement(s). Electronic copies of all deliverables must be provided in PDF format and in Microsoft Office.

VI. Evaluation Criteria

Proposals will be evaluated based on the following criteria and scoring system:

1. Project understanding and approach. (25%)

2. Technical capacity. (20%)

3. Product superiority based on the degree to which all eligibility requirements are met or exceeded, including software products that promote data interoperability. (30%).

4. Preliminary Project Implementation Plan. (15%)

5. Small Business Subcontracting Plan detailing how small businesses will be utilized as members of the proposing team. (10%)

After technical proposals have been evaluated, scored and ranked according to overall value, FTA will enter into negotiations with the entities that submitted the highest ranked proposals to set the cooperative agreement project scope and cost.

VII. Award Administration

Following receipt of the FTA Administrator's notification letter, the successful entity(ies) will be required to submit its proposal through the FTA Transportation Electronic Award Management (TEAM) system. FTA will manage the cooperative agreement(s) through the TEAM system. Before FTA may award Federal financial assistance through a Federal cooperative agreement, the entity must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations. The Fiscal Year 2011 Annual List of Certifications and Assurances for FTA Cooperative Agreements and Guidelines will be published in the **Federal Register** and posted on the FTA Web site at *http://www.fta.dot.gov.*

VIII. Agency Contact

Contact Aaron C. James, Director, Office of Engineering, (202) 493–0107, *aaron.james@dot.gov* for proposal-specific information and issues.

Issued in Washington, DC this 15th day of November 2010.

Peter Rogoff,

Administrator.

[FR Doc. 2010–29176 Filed 11–18–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 12, 2010.

The Department of the Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before December 20, 2010 to be assured of consideration.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0112.

Type of Review: Extension without change of a currently approved collection.

Title: Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds.

Abstract: Information needed in order to process tender and to ensure compliance with Treasury Auction Rules.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1535–0128.

Type of Review: Extension without change of a currently approved collection.

Title: Direct Deposit Sign-Up Form.

Form: PD F 5396.

Abstract: Used to process payment data to the financial institution.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 3,060 hours.

OMB Number: 1535–0069.

Type of Review: Revision of a currently approved collection.

Title: Treasury Direct Forms.

Forms: 5261, 5181, PD F 5189, PD F 5178, PD F 5179–1, PD F 5180, PD F 5381, PD F 5179, PD F 5182, PD F 5236, PD F 5235, PD F 5188, PD F 5191.

Abstract: Used to purchase and maintain Treasury Bills, Notes and Bonds.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 25,018 hours.

Bureau Clearance Officer: Bruce Sharp, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106; (304) 480–8112.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–29151 Filed 11–18–10; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 12, 2010.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 20, 2010 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0046.

Type of Review: Extension without change to a currently approved collection.

Title: Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts.

Abstract: The Financial Crimes Enforcement Network is renewing without change this Bank Secrecy Act regulation that implements section 5318(i)(2) of title 31, United States Code, as added by section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 ("Act"), which requires U.S. financial institutions to conduct enhanced due diligence with regard to correspondent accounts established, maintained, administered, or managed for certain types of foreign banks.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 56,326 hours.

Bureau Clearance Officer: Russell Stephenson (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183; (202) 354–6012.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–29153 Filed 11–18–10; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8849

AGENCY: Internal Revenue Service, 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 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, the IRS is soliciting comments concerning Form 8849, Claim for Refund of Excise Taxes.

DATES: Written comments should be received on or before January 18, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Allan Hopkins, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ralph M. Terry, at (202) 622–8144, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Ralph.M.Terry@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund of Excise Taxes.

OMB Number: 1545–1420.

Form Number: 8849.

Abstract: IRC Sections 6402, 6404, 6511 and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit or interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Current Actions: There are no significant changes to the form previously approved by OMB. Changes were made to the estimates to more accurately capture the burden on the taxpayer.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of responses: 313,391.

Estimated Time per response: 61 hours, 50 minutes.

Estimated Total Annual Burden Hours: 3,225,195.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. 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; (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.

Approved: November 10, 2010.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2010–29155 Filed 11–18–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–12

AGENCY: Internal Revenue Service, 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 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, the IRS is soliciting comments concerning Form W–12 IRS Paid Preparer Tax Identification Number (PTIN).

DATES: Written comments should be received on or before January 18, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Gerald Shields, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Joel Goldberger, (202) 927–9368, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Joel.P.Goldberger@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: IRS Paid Preparer Tax Identification Number (PTIN).

OMB Number: 1545–2190.

Form Number: Form W–12.

Abstract: Paid tax return preparers will be required to get a preparer tax identification number (PTIN), and to pay the fee required with the application. A third party will administer the PTIN application process. Most applications will be filled out on-line. Form W–12 is being developed to replace Form W–7P. Form W–12 will be used to collect the information the new regulations require, and to collect the information the third party needs to administer the PTIN application process.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,200,000.

Estimated Total Annual Burden Hours: 1,464,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. 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; (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.

Approved: November 4, 2010.

Gerald Shields,

IRS Supervisory Tax Analyst.

[FR Doc. 2010–29156 Filed 11–18–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on December 1, 2010, in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Group is to advise the Secretary of Veterans Affairs and the Under Secretary for Health on the care and treatment of disabled Veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussions on the direction of VHA; healthcare reforms impact on VHA; enhancing the role of the Group; VA compensation and effect; and an update on the Blue Ribbon Panel on VA–Medical School Affiliations Report.

Any member of the public wishing to attend should contact Juanita Leslie, Office of Administrative Operations (10B2), Veterans Health Administration, at (202) 461–7019 or e-mail at *j.t.leslie@va.gov.* No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be submitted to Ms. Leslie before the meeting or within 10 days after the meeting.

Dated: November 15, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–29186 Filed 11–18–10; 8:45 am]

BILLING CODE P

Federal Register

Friday,
November 19, 2010

Part II

Commodity Futures Trading Corporation

17 CFR Part 48

Registration of Foreign Boards of Trade; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 48

RIN 3038–AD19

Registration of Foreign Boards of Trade

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These proposed rules establish a registration requirement that applies to foreign boards of trade (FBOT) that wish to provide their identified members or other participants located in the United States with direct access to their electronic trading and order matching systems.

DATES: Comments must be received on or before January 18, 2011. The Commission is not inclined to grant extensions of this comment period.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD19, by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Duane C. Andresen, Senior Special Counsel, (202) 418–5492, *dandresen@cftc.gov*, or David Steinberg, Special Counsel, (202) 418–5102, *dsteinberg@cftc.gov*, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act (CEA or the Act)[4] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Section 738 of the Dodd-Frank Act amends Section 4(b) of the CEA to provide that the Commission may adopt rules and regulations requiring registration with the Commission for an FBOT that provides the members of the FBOT or other participants located in the United States with direct access to the electronic trading and order matching system of the FBOT, including rules and regulations prescribing procedures and requirements applicable to the registration of such FBOTs. The Commission has determined to promulgate rules to implement these provisions by July 15, 2011.[5]

Accordingly, the Commission is proposing to adopt a new part 48[6] to its regulations to establish a registration requirement and related registration procedures and conditions that apply to FBOTs that wish to provide their members or other participants located in the United States with direct access to their electronic trading and order matching systems. The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below.

II. Relief Granted to Foreign Boards of Trade

Since 1996, FBOT requests to provide direct access to their electronic trading and order matching systems (trading systems) from within the U.S. have been addressed by Commission staff via the no-action process set forth in Commission regulation 140.99.[7] Specifically, an FBOT wishing to provide its U.S.-located participants with direct access to the FBOT's trading system traditionally has submitted a request for a no-action letter to the Division of Market Oversight (DMO). The FBOT's no-action request must be accompanied by representations and supporting documentation from the FBOT regarding, among other things, its organization, presence in the U.S., participants, the products it wishes to list for direct access, its trading system and the regulatory regime and information-sharing arrangements to which the FBOT is subject. Staff then reviews the request and related information and documentation and, where appropriate, issues a "direct access" (formerly known as a "foreign terminal") no-action relief letter. When reviewing no-action requests, staff looks for a home regulatory regime that provides oversight over the FBOT in a manner that is comparable to the CFTC's oversight of DCMs. Specifically, does the FBOT's regulatory authority

[1] 17 CFR 145.9.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] *See* Section 738 of the Dodd-Frank Act.

[6] Commission regulations referred to herein are found at 17 CFR Ch. 1.

[7] *See, e.g.,* CFTC Letter No. 96–28 (February 29, 1996). Commission regulation 140.99 defines the term "no-action letter" as a written statement issued by the staff of a Division of the Commission or of the Office of the General Counsel that it will not recommend enforcement action to the Commission for failure to comply with a specific provision of the Act or of a Commission rule, regulation or order if a proposed transaction is completed or a proposed activity is conducted by the beneficiary.

support and enforce "substantially equivalent regulatory objectives" in its oversight of the FBOT?

In the no-action letter, DMO staff represents that, provided the FBOT meets the conditions set out in the letter, DMO will not recommend that the Commission institute enforcement action against the FBOT for failure to register as a designated contract market (DCM) or derivatives transaction execution facility (DTEF) if the FBOT provides direct access to its order entry and trade matching system to FBOT members and other participants located in the U.S. The scope of the staff no-action relief has been restricted to providing relief from (1) the requirement that the FBOT obtain DCM or DTEF registration pursuant to Sections 5 and 5a of the CEA and (2) regulatory requirements related to the trading or offering of contracts on a DCM and DTEF if the contracts identified in the no-action letter (foreign futures or option contracts) are made available in the U.S. for trading in the manner set forth in the letter.

The no-action relief also has been limited historically to FBOTs that provide direct access to the FBOTs' members and other participants that: (1) Trade in the U.S. for their proprietary accounts; (2) are registered with the Commission as futures commission merchants (FCM); or (3) are registered with the Commission as commodity pool operators (CPO) or are exempt from such registration and that are submitting orders for execution on behalf of U.S. pools they operate or commodity trading advisors (CTA) or are exempt from such registration and that are submitting orders for execution on behalf of accounts for which they have discretionary authority. With respect to such CPOs or CTAs, an FCM or a firm exempt from registration as an FCM pursuant to Commission Rule 30.10 (Rule 30.10 Firm) [8] must act as a clearing firm and guarantees such trades. The no-action relief typically has been subject to numerous conditions designed to keep staff informed regarding the FBOT's status and activities from within the U.S., additional contracts to be made available, and significant changes in the information provided to the Commission in support of the no-action request. Significant changes in information include changes in the membership criteria, the location of the management, personnel or operations (particularly changes that may suggest an increased nexus between the FBOT's activities and the U.S.); the basic structure, nature, or operation of the trading system or its clearing organization; the regulatory or self-regulatory regime the FBOT is subject to; and any change in the authorization, licensure or registration of the FBOT.

In 2006, following a series of market events and Commission deliberations, the Commission endorsed the continued use of the no-action process as a mechanism for facilitating direct access to an FBOT's trading system. On January 17, 2006, ICE Futures Europe, a U.K. recognized investment exchange that provided direct access to its U.S. members pursuant to a no-action letter,[9] notified the Commission that it would list a futures contract on West Texas Intermediate (WTI) light sweet crude oil whose settlement price would be linked to contracts traded on the New York Mercantile Exchange (NYMEX).[10] ICE Futures Europe's notification of the proposed contract linked to a U.S. domestic contract prompted the Commission to undertake an evaluation of the use of the no-action process to permit direct access, including a re-examination of certain issues with respect to the Commission's statutory obligations to maintain the integrity of U.S. markets and to protect U.S. customers. Accordingly, on May 3, 2006, the Commission directed its staff to initiate a formal process to define what constitutes a "board of trade, exchange, or market located outside the United States, its territories or possessions" as that phrase is used in section 4(a) of the CEA and, in furtherance of that process, scheduled a public hearing.[11] The Commission also issued a related Request for Public Comment.[12] On October 27, 2006, following extensive debate, a review of comments submitted pursuant to the Commission's request for public comment and the Commission Hearing,[13] the Commission issued a Policy Statement in which it endorsed the no-action process for FBOTs that want to provide direct access to their trading systems to U.S.-based participants.[14]

In order to address concerns raised by the listing by ICE Futures Europe of the linked WTI contract for trading by direct access, Commission staff, on June 17, 2008, amended ICE Futures Europe's no-action relief letter by adding additional conditions. The additional conditions included requirements relating to the reporting of large trader positions, the publication of daily trading information in the linked contracts, and the establishment of position limits or accountability levels that are comparable to the position limits or accountability levels for the counterpart linked contracts at NYMEX.[15]

[8] A Rule 30.10 order permits firms that are members of a self-regulatory organization and subject to regulation by the foreign regulator to conduct business from locations outside of the U.S. for U.S. persons on non-U.S. boards of trade without registering under the Act, based upon the person's substituted compliance with a foreign regulatory structure found comparable to that administered by the Commission under the CEA.

[9] On November 12, 1999, the Commission's Division of Trading and Markets (the predecessor to the CFTC's Division of Market Oversight) granted no-action relief to the International Petroleum Exchange of London (now ICE Futures Europe), permitting it to make its electronic trading and order matching system, known as Energy Trading System II, available to its members in the United States. CFTC Letter No. 99–69 (November 12, 1999).

[10] On April 12, 2006, ICE Futures Europe notified the Division of Market Oversight of its intent to launch the ICE Futures New York Harbour Heating Oil Futures Contract and the ICE Futures New York Harbour Unleaded Gasoline Blendstock (RBOB) Futures Contract each of which is cash-settled on the price of physically-settled contracts traded on the NYMEX.

[11] The hearing was conducted on June 27, 2006, at the Commission's headquarters in Washington, DC.

[12] 71 FR 34070 (June 13, 2006). The Commission requested comment on the issues related to developing an objective standard establishing a threshold that, if crossed by a foreign board of trade that permits direct access, would indicate that the board of trade is no longer outside the United States and, accordingly, may be required to become registered under the CEA.

[13] Comments submitted in response to the request for comment and at the Commission's Hearing were generally supportive of the no-action process, praising the process in general for its flexibility. Many commenters suggested that the Commission should retain in large measure the essential contours of the no-action process. A transcript of the Commission's *Hearing on what constitutes a board of trade located outside the United States under the Commodity Exchange Act section 4(a) (June 27, 2006),* ("Hearing Tr.") as well as all comment letters ("CL"), are located in comment file 06—002 to 17 FR 34070 (June 13, 2006), available at *http://www.cftc.gov/foia/comment06/foi06-002_1.htm.*

[14] *Boards of Trade Located Outside of the United States and No-Action Relief From the Requirement To Become A Designated Contract Market or Derivatives Transaction Execution Facility,* 71 FR 64843 (Nov. 2, 2006) (Policy Statement). In the Policy Statement, the Commission endorsed the no-action process for addressing FBOT direct access relief requests: "The Commission endorses the continued use of the no-action process as an appropriate and flexible mechanism that should be used prospectively to facilitate direct access to the electronic trading system of a foreign board of trade by its U.S. members or authorized participants." *Id.* at 64846.

[15] CFTC Letter No. 08–09 (June 17, 2008). The Commission subsequently announced in the **Federal Register** that these additional conditions would apply to any FBOT that made available for trading by direct access a linked contract. See *Notice of Additional Conditions on the No-Action Relief When Foreign Boards of Trade That Have Received Staff No-Action Relief To Permit Direct Access to Their Automated Trading Systems from Locations in the United States List for Trading from the U.S. Linked Futures and Option Contracts and*

Continued

Commission staff subsequently reexamined the issues raised by linked contracts and concluded that there were additional measures that should be taken to further allay concerns with respect to effective market surveillance and maintaining the integrity of the market. Accordingly, on June 20, 2009, staff again amended ICE Futures Europe's no-action relief by adding additional conditions with respect to linked contracts. These conditions included requirements that ICE Futures Europe provide CFTC staff trade execution and audit trail data for all linked contracts; copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the exchange; and copies of all disciplinary notices involving the linked contracts. They also provided for CFTC on-site visits to examine ICE Futures Europe's ongoing compliance with its no-action relief and, in the event that the CFTC directs that NYMEX take emergency action with respect to a linked contract (*e.g.,* to cease trading in the contract), ICE Futures Europe, subject to information-sharing arrangements between the CFTC and the United Kingdom's Financial Services Authority (FSA), is required to promptly take similar action (*e.g.,* cease trading in the contract) with respect to the linked contract at ICE Futures Europe.[16]

Since 1996, Commission staff has issued 23 direct access no-action relief letters to FBOTs, 20 of which remain active (one relief letter was superseded and two were revoked when the FBOTs ceased operations).[17] While the no-action process has served a useful purpose, given the clear authority provided by Congress to create a registration program for FBOTs, the Commission concludes that it is in the public interest to replace the staff-initiated no-action process with a formal Commission registration provision.

The no-action process is better suited for discrete, unique factual circumstances and where regulations do not address the issue presented. In circumstances where the same type of relief is granted on a regular and recurring basis, as it has been with respect to permitting FBOTs to provide direct access to their trading systems to specified members and other participants that are located in the U.S., the Commission concludes believes that it is no longer appropriate to handle such matters through the no-action process. Instead, the process should become more transparent and standardized through generally applicable regulations. Among other things, a rulemaking would provide for a uniform application process, enhance the visibility of the process to both applicants and the public and assure fair and consistent treatment to all applicants. Further, no-action relief letters are issued by the staff and are not binding on the Commission and do not provide the same legal certainty to the FBOT recipients that a Commission-issued order would provide. The Commission believes that a formal registration procedure would provide more legal certainty for registered FBOTs and would be more consistent with the manner in which other countries permit U.S. DCMs to provide direct access internationally. Accordingly, for the reasons noted above and pursuant to the new authority of amended CEA Section 4(b), new Part 48 of the Commission's regulations, as proposed herein, would replace the existing policy of accepting and reviewing requests for no-action relief to permit an FBOT to provide for direct access to its trading system from within the U.S. with a requirement that an FBOT seeking to provide such access must apply for and be granted registration with the Commission.[18]

As a starting point for the proposed registration requirements, the Commission considered the experience gained from the current no-action review process. The proposed application submission requirements and staff review standards for FBOT registration under the new regulations generally are consistent with the application requirements and review standards that have guided the Commission's staff in issuing the more recent FBOT no-action relief letters. Under the proposed registration requirements, for instance, the Commission would not evaluate FBOTs for compliance with the core principles and/or regulatory requirements applicable to DCMs. Rather, the Commission would look to the FBOT's regulatory authority to determine that the home regulatory regime provides oversight over the FBOT in a manner that is comparable to the CFTC's oversight of DCMs. Specifically, the Commission would review the application to determine if the FBOT's regulatory authority supports and enforces substantially equivalent regulatory objectives, such as prevention of market manipulation and customer protection, in its oversight of the FBOT.

The Commission notes that the staff's no-action process has not remained static since the first no-action relief letter was issued in 1996. Instead, staff has generally been expanding the scope and level of its review of FBOTs to address activities not originally foreseen when the first no-action letter was issued. Likewise, the number and types of conditions imposed upon FBOTs seeking no-action relief have gradually expanded over time.[19] Those conditions have generally been included in the proposed regulations, along with proposed conditions intended to address increasing technological innovation, new types of products, the impact on the market of different trading entities listing substantially similar or even connected products, and the requirements of the Dodd-Frank Act.

III. The Proposed Rules

The proposed regulation is divided into 10 sections and an appendix (Appendix), each proposed as described below.

A. Scope

The first section, 48.1, provides that part 48 applies to any FBOT that is registered or is applying to become registered with the Commission in order to provide its identified members or other participants located in the U.S.[20] with direct access to its electronic trading and order matching system.

a Revision of Commission Policy Regarding the Listing of Certain New Option Contracts. 74 FR 3570 (January 21, 2009).

[16] CFTC Letter No. 09–37 (August 20, 2009).

[17] Currently, 14 of the FBOTs with active no-action relief report volume originating from the U.S. via direct access.

[18] The proposed rules would provide for a "limited" application process for FBOTs currently operating under existing no-action relief. The limited application would have to be submitted within 120 days of the effective date of the registration rules and the FBOT could continue to operate pursuant to the no-action relief during the 120 day period and until the Commission notifies the FBOT that the application has been approved or denied. In the event that the Commission denies an FBOT's application, it would expect staff to simultaneously withdraw the FBOT's no-action relief.

[19] The first no-action relief letter required that Deutsche Terminborse comply with eight terms and conditions. CFTC Letter No. 96–28 (February 29, 1996). Subsequent letters generally have required compliance with approximately 16 conditions, although the number varies based on the manner in which the FBOT operates. More recent additions to the conditions address, among other things, restriction to certain types of members, the inclusion of CTAs and CPOs as entities eligible for no-action relief, and a requirement that the FBOT provide an annual certification from its regulatory authority that the FBOT retains its authorization in good standing as an FBOT in its home country. As previously discussed, the staff has also added several conditions to the ICE Futures Europe no-action letter in order to address the listing of linked contracts.

[20] For purposes of FBOT registration, the term "United States" or "U.S." includes the United States, its territories and possessions.

B. Definitions

Section 48.2 includes definitions applicable to FBOT registration. For instance, section 48.2 defines an "FBOT" as any board of trade, exchange or market located outside the U.S., its territories or possessions, whether incorporated or unincorporated, where foreign agreements, contracts or transactions are entered into. Section 48.2 also identifies certain criteria an FBOT would have to meet in order to register to provide direct access, such as possessing the attributes of an established, organized exchange; adhering to appropriate rules prohibiting abusive trading practices; and enforcing appropriate rules to maintain market and financial integrity. Another defined term, further addressed below, is "direct access," which is defined in the Dodd-Frank Act to refer to "an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade." Section 48.2 also includes definitions, for purposes of this part, of "linked contract," "communications," "material change," "clearing organization," "existing no-action relief," "swaps," "affiliate" and "member or other participant."

C. Registration Required

Section 48.3 provides that, except as otherwise specified in proposed new Part 48, it shall be unlawful for an FBOT to permit direct access to its electronic trading and order matching system from within the U.S. unless and until the Commission has issued an Order of Registration to the FBOT pursuant to the provisions of Part 48. The proposal also would provide that it would be unlawful for a board of trade to make false or misleading statements in any application for registration or in connection with any application for registration.

D. Registration Eligibility

Section 48.4 describes registration eligibility. Generally, FBOTs that meet the requirements of the definition in section 48.2(b) would be eligible to be registered. Section 48.4 also identifies the persons to whom the registered FBOT could grant authority to trade by direct access. The Commission proposes that the persons that would be permitted by the FBOT to trade by direct access from the U.S. pursuant to the registration rules would be the types of persons that are currently able to trade by direct access pursuant to staff issued no-action relief letters. Specifically, an FBOT could request registration in order to permit direct access from within the U.S. by identified members and other participants [21] that: (1) Trade in the U.S. for their proprietary accounts; (2) are registered with the Commission as FCMs and submit orders to the trading system for execution on behalf of U.S. customers; or (3) are, subject to a specific clearing and guarantee requirement, registered with the Commission as CPOs or CTAs, or are exempt from such registration pursuant to Commission Rules 4.13 or 4.14. The CPOs would be permitted to submit orders for execution on behalf of U.S. pools they operate, and CTAs would be permitted to do so for accounts of U.S. customers for which they have discretionary authority. The Commission requests comment concerning additional entities that should be eligible for direct access to the trading and order matching systems of the FBOT from the U.S.

E. Registration Procedures

Section 48.5 describes procedures to be followed to request and receive registration.[22] The registration application must be submitted electronically, must be signed by the FBOT's chief executive officer (or functional equivalent), and must include the information and documentation set forth in the Appendix to Part 48 and any information and documentation necessary, in the discretion of the Commission, to effectively demonstrate that the FBOT and its clearing organization satisfy the registration requirements set forth in section 48.7.

Section 48.5 also provides that the Commission will review the application for FBOT registration and may approve or deny the application. At this time, the proposed rule does not contain a timeline for Commission action.[23] If the application is approved, the Commission will so notify the FBOT and will issue an Order of Registration. The Commission could, after appropriate notice and an opportunity for a hearing, amend, suspend, terminate or otherwise restrict the terms of the Order of Registration. If the application is denied, the Commission will issue a Notice of Action specifying that the application was not approved and the FBOT will not be registered and may not provide direct access to its trade matching engine from within the U.S. Following a denial, the FBOT may reapply for registration 360 days after the date of denial.

The Commission is also proposing that, in determining whether to grant or deny an application for FBOT registration, the Commission will thoroughly review the information and documentation submitted in the application and, as necessary, conduct an on-site due diligence visit at the FBOT to determine, as mandated by the Dodd-Frank Act, whether the FBOT and its clearing organization are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home country that is comparable to the comprehensive supervision and regulation to which DCMs and derivatives clearing organizations (DCO) are subject in the U.S.[24] In this context, as previously noted, comparable does not necessarily mean identical. The comparability determination for registration purposes will be similar to that followed when reviewing direct access no-action requests. The Commission will evaluate whether the FBOT's home regulatory authority supports and enforces regulatory objectives in its oversight of the FBOT that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of DCMs.

The Commission notes that it uses a similar "comparability" analysis when evaluating foreign entities in the context of issuing Rule 30.10 exemptions to

[21] For purposes of FBOT registration, identified member or other participant of the FBOT shall include any affiliate of any registered FBOT's member or other participant that has been granted direct access by the registered FBOT to the trading system. An affiliate of a registered FBOT member or other participant shall mean any person, as that term is defined in section 1a(38) of the CEA, that: (i) Owns 50% or more of the member or other participant; (ii) is owned 50% or more by the member or other participant; or (iii) is owned 50% or more by a third person that also owns 50% or more of the member or other participant.

[22] Draft submissions and a request for a preliminary review by Commission staff would be encouraged under the proposed rule. The Commission proposes that the final copy of an application for registration would be published on its Web site.

[23] The Commission expects a surge of activity shortly after the registration rule goes into effect. Once this period has ended, the Commission anticipates that a timeline would be established. Such a timeline might require a Commission response to a completed application for registration within 120 days after the Commission, in its sole discretion, determines that the application is complete.

[24] The Dodd-Frank Act also mandated that the Commission consider any previous Commission findings that the FBOT and its clearing organization are subject to such comprehensive supervision and regulation by the appropriate government authorities in their home country. Such previous Commission findings would include staff conclusions drawn previously during the course of reviewing an application for direct access no-action relief.

intermediaries.[25] When determining whether to issue a Rule 30.10 exemption, staff evaluates whether the applicant is subject to a comparable regulatory scheme in the country in which it is located. In this evaluation, comparable does not necessarily mean identical: as set forth in Appendix A to Rule 30.10 with respect to the comparability determination, "the Commission would have broad discretion to determine that the policies of any program element generally are met, notwithstanding the fact that the offshore program does not contain an element identical to that of the Commission's regulatory program." In the case of FBOT registration, a determination that the foreign regulatory authority enforces substantially equivalent regulatory objectives is a determination of comparability: The regulatory regime is comparable, although not necessarily identical, to that of the CFTC.

In its review, the Commission would also consider whether the FBOT is eligible to be registered as defined in section 48.2(b) of this part and whether the FBOT has adequately demonstrated that it meets the requirements for registration specified in section 48.7 and any other requirements that the Commission, in its discretion, believes are necessary or appropriate to impose under the facts and circumstances presented.

F. FBOTs Providing Direct Access Pursuant to No-action Relief

In Section 48.6, the Commission proposes to provide for a "limited" application process for FBOTs currently operating pursuant to existing no-action relief. Such FBOTs would apply for registration by (1) identifying the specific requirements for registration set forth in section 48.7 or information and documentation required by the Appendix to Part 48 that are satisfied by information previously submitted in the request for no-action relief that remain current and true and resubmitting such information and documentation,[26] and (2) submitting any information and documentation required in a complete application for registration that was not previously provided or is no longer current. The limited application for registration would have to be submitted within 120 days of the effective date of the registration rules, during which time the FBOT could continue to operate pursuant to the no-action relief. The no-action relief would, upon notice to the FBOT, be revoked after 120 days if a complete limited application is not received by the Commission by that time. If the FBOT files an application for registration within 120 days, the FBOT could continue to operate pursuant to the no-action relief until notified by the Commission that the application has been approved or denied. If the Commission revokes the no-action relief or denies the application, it will provide for a transition period for phasing out direct access.

G. Requirements for Registration

Section 48.7 describes the requirements that the Commission proposes that an FBOT would be required to demonstrate in order to be registered. The requirements are divided into the same seven general categories currently evaluated during the course of a review of an application for no-action relief and they would be reviewed in a similar manner. Whether they are successfully met would be determined by a review of the information and documentation submitted by the applicant pursuant to the Appendix to proposed Part 48, any additional information or documentation requested by the Commission in connection with the application review, and, as necessary, a Commission staff due diligence on-site visit to the FBOT and clearing organization.

First, with respect to FBOT and clearing membership, the FBOT would be required to demonstrate that FBOT and clearing organization members and other participants are fit and proper and meet appropriate financial and professional standards; that the FBOT and clearing organization have adequate conflict of interest provisions; and that the FBOT and clearing organization have and enforce rules prohibiting the disclosure of material, non-public information obtained as a result of a member's/other participant's performance of official duties.

Second, the FBOT's automated trading system would be required to comply with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions (IOSCO Principles) and adopted by the Commission on November 21, 1990.[27] In addition, the FBOT's trade matching algorithm would be required to match trades fairly and timely, the audit trail would be required to capture all relevant data (including changes to orders), and audit trail data would be required to be securely maintained and available for an adequate time period. Trade data would be required to be made available to users and to the public, the trading system would be required to have demonstrated reliability, and access to the trading system would be required to be secure and protected. Finally, adequate provisions for emergency operations and disaster recovery would be required, trading data would be required to be backed up to prevent its loss, and only approved contracts could be made available for trading by direct access from the U.S.

Third, the contracts to be made available by direct access in the U.S. would be required to be futures, option or swaps contracts that would be eligible to be traded on a DCM and would be subject to prior review by the Commission. With respect to swaps, Section 733 of the Dodd-Frank Act adds section 5h to the CEA, which provides that a person operating a facility for the trading or processing of swaps must be registered as a swaps execution facility (SEF) or as a DCM. Section 733 also adds section 5(g) to the CEA which provides that the "Commission may exempt, conditionally or unconditionally, a swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the [SEC], a prudential regulator, or the appropriate governmental authorities in the home country of the facility." The approach for granting a SEF exemption (namely, "subject to comparable, comprehensive supervision and regulation * * * in the home country of the facility") is similar to that which applies to FBOTs seeking registration. Moreover, there is nothing in the Dodd-Frank Act, including Section 738 of the Dodd-Frank Act amending Section 4(b) of the CEA, which expressly precludes a registered FBOT from offering swaps through direct access.[28] Accordingly, the Commission is proposing to permit a registered FBOT to offer and trade swaps though direct access, subject to the condition that the FBOT meet

[25] *See supra* note 8.

[26] The Commission is requesting resubmission of original documentation, where appropriate, because such documentation, some of which dates back as much as fourteen years, may no longer be readily available for review because of incomplete and or misplaced files.

[27] The Commission adopted the IOSCO Principles as a statement of regulatory policy for the oversight of screen-based trading systems for derivative products. *Policy Statement Concerning the Oversight of Screen-Based Trading Systems,* 55 FR 48670 (Nov. 21, 1990).

[28] Furthermore, under the Dodd-Frank Act, a DCM may trade swaps without additionally registering as a SEF.

certain standards or requirements that may apply to SEFs, as the Commission deems appropriate. The Commission requests comment with respect to whether a registered FBOT should be allowed to make available swaps through direct access and if so, under what conditions.

Contracts that are linked to a contract listed for trading on a U.S. registered entity would be required to be identified, as would contracts that share any other commonality with a contract listed for trading on a U.S. registered entity, *i.e.,* both the FBOT's and the U.S. registered entity's contract settle to the price of the same third party-constructed index. Finally, the FBOT would be required to certify that it has listing standards in place that require that contracts not be readily susceptible to manipulation.[29]

Fourth, with respect to settlement and clearing, the clearing organization, would be required to comply with the current Recommendations for Central Counterparties (RCCPs) that have been issued jointly by the Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of the International Organization of Securities Commissions (IOSCO), as updated, revised or otherwise amended, or successive standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by IOSCO and CPSS, and the clearing organization would be required to be in good regulatory standing in its home country jurisdiction. In the alternative, the clearing organization may be registered with the Commission as a DCO.[30]

Fifth, the FBOT's and the clearing organization's regulatory authorities would be required to provide comprehensive supervision and regulation of the FBOT and the clearing organization that is comparable to the comprehensive supervision and regulation to which DCMs and DCOs are subject in the U.S., would be required to have the power to intervene in the market and authority to share information with the Commission, and would be required to provide for ongoing regulatory supervision of the FBOT and its trading system, the clearing organization and its clearing system and intermediaries—with particular attention to market integrity and customer protection and the manner in which the exchange enforces its rules. In the case of FBOTs with listed swaps, the Commission proposes to take into consideration the regulation of relevant market participants (*e.g.,* swap dealers) regarding their exchange-trading activity when analyzing the comparability and comprehensiveness of the regulatory regime applicable to exchange-listed swaps in the FBOT's home country.

Sixth, the FBOT and the clearing organization would be required to have appropriate rules and would be required to enforce them. Among other things, the FBOT and the clearing organization would be required to have sufficient compliance staff and resources to fulfill their respective regulatory responsibilities, including the capacity to detect, investigate, and sanction persons who violate their respective rules. The FBOT would be required to implement and enforce rules relating to oversight of trading practices, including appropriate trade practice surveillance, real-time market monitoring and market surveillance. The FBOT's and the clearing organization's rules would be required to authorize the compliance staff to obtain, from market participants, any information and cooperation necessary to conduct effective rule enforcement and investigations, and the FBOT would be required to have and enforce rules with respect to access to the trading system and the means by which the connection is accomplished. The FBOT and the clearing organization (or their respective regulatory authorities) would be required to have implemented and enforce disciplinary procedures that empower them to recommend and prosecute disciplinary actions for suspected rule violations, impose adequate sanctions for such violations, and provide adequate protections to charged parties pursuant to fair and clear standards. The FBOT would be required to have the capacity to detect and deter market manipulation, attempted manipulation, price distortion, and other disruptions of the market and would be required to have and enforce rules designed to maintain market and financial integrity and prohibit other trading and market abuses. Finally, the FBOT would be required to have and enforce rules and procedures that ensure a competitive, open and efficient market and mechanism for executing transactions.

Finally, satisfactory information-sharing arrangements among the FBOT, the clearing organization, their respective regulatory authorities, and the Commission would be required to be in place. The regulatory authorities would be required to be signatories to the IOSCO Multilateral Memorandum of Understanding (IOSCO MOU)[31] or, if not signatories to the IOSCO MOU, would have to inform the Commission of the reasons why the document has not been signed, supply any additional information requested by the Commission, and ensure alternative information sharing arrangements that are satisfactory to the Commission are in place. The regulatory authority also would be required to be a signatory to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations (Boca Declaration),[32] or otherwise commit to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement (Exchange International MOU)[33] with the Commission. The FBOT would be required to have executed, or have committed to execute, the Exchange International MOU. In addition, pursuant to the proposed conditions of registration described in section 48.8(a)(6)(iii), the FBOT would

[29] The Commission considers that contracts that can be found to have the following are less likely to be susceptible to manipulation: (1) They rely for settlement pricing on a robust and transparent calculation, whether based on the contract's own trading or an externally calculated index; (2) they are subject to measures to reduce the ability of any party to disrupt pricing, *e.g.* position limits, intraday surveillance, and pre-trade screens; and (3) there is either ample deliverable supply or flexibility in the contract (alternate delivery mechanisms).

[30] The Commission is including the option for the clearing organization to be registered as a DCO because it is aware that some foreign clearing organizations are registered as such. These include ICE Clear Europe Limited, LCH Clearnet Ltd. and Natural Gas Exchange Inc.

[31] Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information of the International Organization of Securities Commissions, October 16, 2003. The IOSCO MOU is the first worldwide multilateral enforcement cooperation arrangement among securities and derivatives regulators. It provides for the exchange of essential information to investigate cross-border securities and derivatives violations, including the most serious offenses, such as manipulation, insider trading and customer fraud. The IOSCO MOU enables regulators to share critical information, including bank, brokerage, and client identification records and to use that information in civil and criminal prosecutions.

[32] The Boca Declaration was developed through discussions at the CFTC's international regulators conference, and was motivated by work recommendations issued from the Windsor Conference and Tokyo Conference, which were convened by the CFTC, the U.K. FSA and Japanese regulators to respond to the cross-border issues raised by the failure of Barings Plc. The Declaration was developed to address instances in which an exchange would not be able to share information directly with another exchange under the Exchange International MOU, described below.

[33] The development of the Exchange International MOU was one of the achievements that resulted from the Futures Industry Association-sponsored Global Task Force on Financial Integrity, which was convened to address the cross-border issues that were identified in connection with the failure of Barings Plc.

be required to provide certain information directly to the Commission.

H. Conditions Upon FBOT Registration

As previously noted, Section 738 of the Dodd-Frank Act amends Section 4(b) of the CEA to provide that the Commission may adopt rules and regulations requiring registration with the Commission of an FBOT that provides identified members of the FBOT or other participants located in the United States with direct access to the electronic trading and order matching system of the FBOT, including rules and regulations prescribing procedures and requirements applicable to the registration of such FBOTs. Proposed Section 48.8 provides for certain procedures and requirements applicable to maintaining the registration of such FBOTs and describes the specified conditions upon FBOT registration that the Commission believes are essential in assuring effective market integrity and customer protection. As previously noted, the conditions applicable to existing no-action relief have expanded over time to address activities not foreseen when the earliest no-action letters were issued. In the proposed regulations, the Commission has added further conditions to address increasing technological innovation, new types of products, the impact on the market of different trading entities listing substantially similar or even connected products, and the requirements of the Dodd-Frank Act. The specified conditions are divided into three categories: Specified conditions for maintaining registration, other continuing obligations, and additional specified conditions for FBOTs with linked contracts. A registered FBOT would have an ongoing obligation to monitor and enforce compliance with the specified conditions of its registration and with any additional conditions that the Commission, in its discretion and upon notice to the FBOT and subsequent to an opportunity to be heard, may impose.

(1) Specified Conditions

With respect to the regulatory regimes under which they operate, the FBOT and the clearing organization, respectively, would be required to continue to satisfy the criteria for a regulated market and clearing organization pursuant to their home regulatory regimes identified in the application for registration and would be required to continue to be subject to oversight by their home regulatory authorities. In addition, the laws, systems, rules, and compliance mechanisms of the applicable regulatory regimes would be required to continue to require the FBOT to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation; and provide that such requirements are subject to the oversight of appropriate regulatory authorities. With respect to international standards, the FBOT would be required to continue to adhere to the IOSCO Principles, to the extent such principles do not contravene U.S. law. The clearing organization would be required to continue to satisfy, as applicable, the rules, regulations and core principles applicable to its registration as a DCO or the RCCPs or successive standards, principles or guidance that may be adopted jointly by IOSCO and CPSS, to the extent such recommendations, standards, principles or guidance do not contravene U.S. law.

The FBOT would be required to restrict direct access to the trading system from the U.S. to identified members or other participants and take reasonable steps to prevent third parties from providing such access to the FBOT's trading system to persons other than the identified members or other participants.[34] All orders transmitted through the FBOT's trading system by an FBOT-identified member or other participant by direct access would be required to be for the member's or other participant's own account unless: (a) The member or other participant is an FCM or (b) subject to certain clearing requirements, the member or other participant is a CPO or CTA, or is exempt from such registration pursuant to Commission regulation 4.13 or 4.14.

The specified conditions also include several documentation requirements to assist the Commission in monitoring the activities of a registered FBOT and the clearing organization. Each current and prospective member or other participant that is granted direct access to the FBOT's trading system from the U.S. and that is not registered as an FCM, a CTA or a CPO would be required to file with the FBOT (a) A written representation stating that the member or other participant agrees to and submits to the jurisdiction of the CFTC with respect to activities conducted pursuant to the registration; (b) a valid and binding appointment of a U.S. agent for service of process in the U.S.; and (c) a written representation that the member or other participant granted direct access pursuant to this regulation will provide, upon the request of the Commission, the U.S. Department of Justice and, if appropriate, the National Futures Association (NFA) (collectively, the U.S. Agencies), prompt access to the entity's, member's or other participant's original books and records or, at the election of the requesting U.S. Agency, a copy of specified information containing such books and records, as well as access to the premises where the trading system is available in the U.S. The FBOT and the clearing organization also would be required to file with the Commission a valid and binding appointment of an agent for service of process in the U.S. and maintain with the FBOT written representations concerning U.S. Agencies' access to original books and records or, at the election of the requesting U.S. Agency, a copy of specified information containing such books and records, as well as access to the premises where the trading system is available in the U.S. The FBOT would be required to maintain all the representations required pursuant to this regulation as part of its books and records and make them available upon the request of a Commission representative.

With respect to information sharing, the specified conditions mandate that information-sharing arrangements satisfactory to the Commission are in effect among the Commission and the regulatory authorities that oversee both the FBOT and the clearing organization and that the Commission is able to obtain sufficient information regarding the FBOT, the clearing organization and their respective members and other participants operating pursuant to the FBOT's registration. The FBOT would be required to provide information directly to the Commission in response to a Commission request. In the event that the FBOT and the clearing organization are separate entities, the proposed rule would require the clearing organization to enter into a written agreement with the FBOT in which the clearing organization is contractually obligated to promptly provide any and all information and documentation that may be required of the clearing organization under the regulation.

With respect to swaps contracts, if the FBOT makes swaps contracts available by direct access, the FBOT would be required to report to the public, on a real-time basis, data relating to each

[34] The Commission believes that such steps would include specific prohibitions on sharing access in the FBOT's rules and membership agreements and a review of how access is granted by and to the identified member's or other participant's infrastructure during audits of those entities.

The Commission will continue to evaluate new developments in technology and business arrangements that may be used by FBOTs to provide U.S. participants with direct access to its trade matching system in the context of these proposed rules.

swap transaction, including price and volume, as soon as technologically practicable after execution of the swap transaction. In addition, the FBOT would be required to ensure that all swap transaction data is timely reported to a swap data repository that is either registered with, or has an information-sharing arrangement with, the Commission. The FBOT also must agree to coordinate with the Commission with respect to arrangements established to address cross market oversight issues, including surveillance, emergency actions and the monitoring of trading. In addition, particularly with respect to the listing of swaps contracts, the Commission may, in its discretion and after notice and an opportunity to be heard, impose additional conditions upon the FBOT's registration. Finally, all futures, option and swaps contracts must be cleared.

(2) Other Continuing Obligations

Among the proposed specified conditions identified as other continuing obligations are quarterly, upon occurrence, and annual reporting requirements that the Commission determines are necessary to provide ongoing visibility with respect to a registered FBOT's performance as it relates to U.S. persons. First, as is the case now with the no-action relief recipients, the FBOT would be required to maintain and provide to the Commission on at least a quarterly basis, and at any time promptly upon request, volume data that reflects the percentage of trading originating in the U.S. Thus, the FBOT would be required to provide, for each contract available to be traded through its trading system, the following: (a) The total trade volume originating from electronic trading devices providing direct access to the trading system in the U.S., (b) the total trade volume for such products traded through the trading system worldwide, and (c) the total trade volume for such products traded on the FBOT generally. The FBOT would also be required to provide a listing of the names, NFA ID numbers (if applicable), and main business addresses in the U.S. of all members and other participants that have access to the trading system in the U.S.

With respect to reporting the occurrence of events that may have an impact on the FBOT's capability to meet its registration requirements, the FBOT would be required to promptly provide the Commission with written notice of the following: (a) Any material change in the information provided in the FBOT's registration application or in the FBOT's or clearing organization's rules or in the laws, rules, and regulations in the home jurisdictions of the FBOT or the clearing organization; (b) any matter known to the FBOT or the clearing organization that, in their judgment, could affect the financial or operational viability of the FBOT or the clearing organization; (c) any default, insolvency, or bankruptcy of any FBOT trading member or other participant that may have a material, adverse impact upon the condition of the FBOT or upon any U.S. customer or firm, or any default, insolvency or bankruptcy of any member of the FBOT's clearing organization; (d) any known violation by the FBOT, its clearing organization or any trading or clearing member or other participant of the specified conditions of registration or failure to satisfy the requirements for registration; and (e) any disciplinary action taken by the FBOT or its clearing organization against any FBOT trading member or other participant or a member of the clearing organization that involves any market manipulation, fraud, deceit, or conversion or that results in suspension or expulsion that involves a contract or contracts available for trading from within the U.S. pursuant to registration.

Finally, the FBOT or the clearing organization, as applicable, would be required to provide the following to the Commission on an annual basis: (a) A certification from the FBOT's regulatory authority confirming that the FBOT retains its authorization in good standing as a regulated market/exchange; (b) a certification from the clearing organization's regulatory authority confirming the clearing organization's regulatory status (*i.e.,* its authorization, licensure, or registration) and continued "good standing" in its authorized jurisdiction; (c) if the clearing organization is not a DCO, recertification of the clearing organization's compliance with the RCCPs or successive standards, principles or guidance; (d) a description of any material changes to any relevant representation regarding the FBOT or clearing organization made to the Commission that have not been previously disclosed; (e) a description of any significant disciplinary or enforcement actions that have been instituted by or against the FBOT or the clearing organization or the senior officers of either in the prior year; and (f) a written description of any material changes to the regulatory regime to which the FBOT or the clearing organization are subject that have not been previously disclosed, in writing, to the Commission (or a certification that no material changes have been made).

(3) Linked Contract Conditions

The proposed rule also would include additional specified conditions for FBOTs that make linked contracts available for direct access. These proposed additional specified conditions are divided into two categories: Statutory conditions, which are specifically required by the Dodd-Frank Act, and other conditions on linked contracts, which are additional conditions that the Commission believes are necessary because such linkages create a single market for the subject contracts and, in the absence of certain preventive measures at the FBOT, could compromise the Commission's ability to carry out its market surveillance responsibilities. Because of the linkage, the trading of the linked contracts on an FBOT affects the pricing of contracts traded on U.S.-registered entities.

(a) Statutory Conditions

The statutory conditions mandated by Section 738 of the Dodd-Frank Act are substantially similar to the previously discussed additional conditions the Commission imposed on the no-action relief issued to ICE Futures Europe when that exchange made available a WTI futures contract that cash-settled on the price of a physically-settled Light Sweet Crude Oil futures contract traded on the NYMEX,[35] include the following: (i) The FBOT must make public certain daily trading information regarding the linked contract; (ii) the FBOT (or its regulatory authority) must (A) Adopt position limits for the linked contract that are comparable to the position limits adopted by the registered entity for the contract to which it is linked; (B) have the authority to require or direct market participants to limit, reduce, or liquidate any position the FBOT (or its regulatory authority) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a of the Act, price distortion, or disruption of delivery or the cash settlement process; (C) agree to promptly notify the Commission, with regard to the linked contract, of any changes with respect to (i) and (ii) above and any other area of interest expressed by the Commission to the FBOT or its regulatory authority; (D) provide information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked; and (E) provide the Commission such information as is necessary to publish

[35] *See* CFTC Letter No. 08–09 (June 17, 2008).

reports on aggregate trader positions for the linked contract that are comparable to such reports on aggregate trader positions for the contract to which it is linked.

One statutory condition is mandated by Section 737 of the Dodd-Frank Act, and would require that if the Commission establishes speculative position limits (including related hedge exemption provisions) on the aggregate number or amount of positions in a contract traded on a U.S. registered entity and the registered FBOT lists a linked contract, the FBOT (or its regulatory authority) must adopt position limits (including related hedge exemption provisions) for the linked contract as determined by the Commission.

(b) Other Conditions on Linked Contracts

The other conditions on linked contracts, also imposed pursuant to the Commission's new Section 4(b)(1)(A) authority to adopt rules and regulations prescribing procedures and requirements applicable to the registration of FBOTs, represent the second set of additional conditions the Commission imposed on the no-action relief issued to ICE Futures Europe when that exchange made available for trading by direct access contracts linked to the prices of contracts traded on NYMEX.[36] The conditions as proposed would require that the FBOT, among other things, (i) Inform the Commission in a quarterly report of any member that had positions in a linked contract above the applicable FBOT position limit, (ii) provide trade execution and audit trail data for input to the CFTC's Trade Surveillance System on a trade-date plus one basis, (iii) provide for CFTC on-site visits for the purpose of overseeing the FBOT's and the clearing organization's ongoing compliance with registration requirements and the conditions of registration, (iv) provide, at least one day prior to the effective date, copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the FBOT with respect to all linked contracts, (v) provide copies of all Disciplinary Notices involving the FBOT's linked contracts upon closure of the action, and (vi) promptly take similar action with respect to its linked contract in the event that the CFTC, pursuant to its emergency powers authority, directs that the U.S. registered entity which lists the contract to which the FBOT's contract is linked to take emergency action with respect to a linked contract (*e.g.,* to cease trading in the contract).

The Commission questions whether there are additional conditions that it could impose on registered FBOTs that list linked contracts to promote orderly markets and customer protection, such as automatic safety features to protect against errors in the entry of orders, price-banding mechanisms, maximum order size limitations, or trading pauses to prevent cascading stop-loss orders.[37]

I. Revocation of Registration

Section 48.9 addresses certain events which could lead the Commission to revoke an FBOT's registration. With respect to failure to satisfy any of the registration requirements or conditions of registration, the proposed rule provides that if the Commission believes that a registration requirement or condition is not being met, the Commission may request that the registered FBOT file a written demonstration showing it is in compliance with the requirement or condition. If the Commission determines that an FBOT (or its clearing organization) has failed to satisfy any of the registration requirements or conditions, the FBOT would be given an opportunity to bring itself into compliance with the requirement or condition. If the FBOT fails to make changes necessary to comply with the requirement or condition within 30 days after receiving a notification that it was not satisfying one or more requirements or conditions, the Commission may revoke the FBOT's registration, after appropriate notice and an opportunity for a hearing. If the Commission revokes the registration, it will provide for a transition period for phasing out direct access. Finally, an FBOT whose registration has been revoked for failure to satisfy a registration requirement or condition could apply for re-registration after 360 days if the deficiency causing the revocation has been cured or relevant facts and circumstances have changed.

Section 48.9 of the proposed rule also identifies four other events that, without limitation, could result in revocation, generally after appropriate notice and an opportunity for a hearing. The Commission may revoke an FBOT's registration (1) If the Commission determines that a representation made in the application for registration relevant to the Commission's decision to register the entity is found to have been untrue or materially misleading; (2) if there is a material change in the regulatory regime applicable to the FBOT or clearing organization; (3) in the event of an emergency or in a circumstance where the Commission determines that revocation would be necessary or appropriate in the public interest; or (4) the FBOT or the clearing organization is no longer authorized, licensed or registered, as applicable, as a regulated market and/or exchange or clearing organization or ceases to operate as an FBOT or clearing organization. Revocation under these circumstances would not necessarily follow the procedures delineated for revocation for failure to continue to satisfy registration requirements or conditions, but would be handled by the Commission as relevant facts or circumstances warrant.

The Commission acknowledges that there are other actions that, if undertaken by a registered FBOT, could lead the Commission to exercise its discretion and consider a full range of corrective actions, including revocation of the FBOT's registration, requiring enhanced information sharing arrangements and surveillance procedures, imposing trading restrictions on U.S. persons trading on the FBOT, imposing additional conditions on the registration, or taking other appropriate action. For instance, the Commission believes that the listing of certain products on an FBOT could potentially have an adverse impact on the market and the public interest. Thus, the Commission would take corrective action as necessary if it become aware that a registered FBOT permits the trading of products that potentially could: (1) Affect adversely the pricing of contracts traded on any registered entity as defined in section 1a(40) of the Act, or of contracts traded on any cash market for commodities subject to the CEA; (2) create unacceptable systemic risks or disruptions in those markets or the U.S. financial system, including capital markets; or (3) facilitate abusive trading practices on U.S. markets or otherwise interfere with the ability of the Commission to carry out its regulatory responsibilities. The Commission retains plenary authority to address manipulative or abusive trading practices that affect U.S. futures and cash markets and market users, and would use that enforcement authority when necessary and appropriate.

[36] *See* CFTC Letter No. 09–37 (August 20, 2009).

[37] Many of these mechanisms are discussed in the Commission's recent joint study with the SEC of the market events of May 6, 2010. *See Preliminary Findings Regarding the Market Events of May 6, 2010—Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues* (May 18, 2010), Appendix B–11.

J. Additional Contracts

Section 48.10 would establish the procedures for a registered FBOT to make available futures, option and swaps contracts that were not included in the registration application on a trading system to which FBOT members and other participants in the U.S. have been granted direct access. These procedures are substantially similar to the procedures established for the listing of additional contracts under direct access no-action relief.[38] Generally, for other than security index futures contracts, a registered FBOT would be required to submit a written request prior to offering the additional futures and option and swaps contracts from within the U.S. Such a written request would include the terms and conditions of the additional contracts to be made available and a certification that (1) the additional contracts meet the requirements of Section 48.7(c) of this part and (2) the FBOT and the clearing organization continue to satisfy the conditions of registration. The FBOT would be permitted to make available for trading the additional contracts ten business days after the date of receipt by the Commission of the written request, unless the Commission notifies the FBOT that additional time is needed to complete its review of policy or other issues pertinent to the additional contracts.

A registered foreign board of trade would be permitted to list for trading an additional futures contract on a non-narrow-based security index pursuant to the no-action relief procedures set forth in Appendix D to Part 30 of the Commissions regulations. Such procedures would require that the registered FBOT's request to make the non-narrow-based security index futures contract available for trading by direct access be included in the FBOT's request that the Commission's Office of the General Counsel issue no-action relief providing that the non-narrow-based security index futures contract may be offered or sold to persons located within the U.S. in accordance with Section 2(a)(1)(C)(iv) of the Act.

With respect to making available for trading by direct access an option contract on a previously approved futures contract, the proposed procedures are also substantially similar to the procedures established for the listing such option contracts under direct access no-action relief.[39] The proposed procedures would provide the following, depending on the type of option contract. (1) If the option is on a futures contract that is not a linked contract, the option contract could be made available for trading by direct access by filing with the Commission no later than the business day preceding the initial listing of the contract: (i) A copy of the terms and conditions of the additional contract and (ii) a certification that the FBOT continues to satisfy the conditions of its registration. (2) If the option is on a futures contract that is a linked contract, the option contract may be made available for trading by direct access in the same manner as (1) above except that the certification must represent that the FBOT continues to satisfy the conditions of its registration, including the conditions specifically applicable to linked contracts set forth in Section 48.8(c). (3) If the option is on a non-narrow-based security index futures contract which may be offered or sold in the U.S. pursuant to a no-action letter issued by the Office of General Counsel, the option contract could be listed for direct access without further action by either the registered FBOT or the Commission.

K. Appendix to Part 48—Contents of Application

The Appendix to the proposed Part 48 includes a description of what the Commission believes should be included in the application for registration in order for the FBOT to demonstrate, and for the Commission to conclude, that the FBOT meets the requirements for registration. The Appendix reflects submission requirements in eight areas, including general information about the FBOT and seven areas that specifically address the registration requirements identified in Section 48.7. The Commission requests comments with respect to whether the application contents requirements of the Appendix are adequate to completely address the registration requirements.

IV. Request for Comments Regarding the Proposed Registration Procedures

In the proposed rule, the Commission has included swaps in the set of contracts that a registered FBOT may list on a trading system to which it has provided direct access to U.S.-located members and other participants. As previously stated, there is nothing in the Dodd-Frank Act, including Section 738 of the Dodd-Frank Act amending Section 4(b) of the CEA, which expressly precludes a registered FBOT from offering swaps through direct access. Accordingly, the Commission is proposing to permit a registered FBOT to offer and trade swaps though direct access, subject to the condition that the FBOT meet certain standards or requirements that may apply to SEFs, as the Commission deems appropriate.[40] The Commission requests comment with respect to whether a registered FBOT should be allowed to make available swaps through direct access and if so, under what conditions. FBOTs have historically, at least in the context of granting direct access no-action relief, been viewed by Commission staff as DCM-equivalent entities. The proposed FBOT registration requirements are based upon the premise that in reviewing the FBOT for being subject to comparable, comprehensive supervision and regulation by the appropriate governmental authorities in its home country, the point of reference is how DCMs operate and are regulated and overseen by the CFTC.

Finally, the Commission requests comment on whether, to the extent an FBOT is permitted to list swaps on a trading system to which the FBOT has granted direct access to members and other participants in the U.S., the Commission should examine the oversight of relevant market participants (*e.g.,* the functional equivalents of swap dealers and major swap participants, as those terms are defined by the Dodd-Frank Act) in the applicable home country jurisdictions when making a determination as to the comparability and comprehensiveness of the supervision and regulation of the relevant regulatory regime. For example, the Commission may wish to consider whether swap dealers are permitted to provide counterparties with the right to segregate collateral. In the case of swaps, certain portions of the regulatory regime applicable to market participants with respect to their exchange trading activity (*e.g.,* business conduct standards) may be imposed by the primary regulatory authority in the home jurisdiction of the participant instead of by the exchange on which such participants conduct their transactions. Accordingly, it may be necessary or appropriate to review the

[38] *See Notice of Revision of Commission Policy Regarding the Listing of New Futures and Option Contracts by Foreign Boards of Trade That Have Received Staff No-Action Relief to Provide Direct Access to Their Automated Trading Systems from Locations in the United States.* 71 FR 19877 (April 18, 2006); corrected at 71 FR 21003 (April 24, 2006).

[39] *See Notice of Additional Conditions on the No-Action Relief When Foreign Boards of Trade That Have Received Staff No-Action Relief To Permit Direct Access to Their Automated Trading Systems from Locations in the United States List for Trading from the U.S. Linked Futures and Option Contracts and a Revision of Commission Policy Regarding the Listing of Certain New Option Contracts.* 74 FR 3570 (January 21, 2009).

[40] As previously noted, under the Dodd-Frank Act, a DCM may trade swaps without additionally registering as a SEF.

regulations applicable to such participants in order to ascertain whether the foreign regulatory regime with respect to the foreign board of trade, in its totality, is both comprehensive and comparable to that in the U.S. The Commission requests comment regarding whether such a review is necessary or appropriate. The Commission invites public comment with respect to all areas described in the proposed registration rule.

V. Related Matters

A. The Paperwork Reduction Act

The purposes of the Paperwork Reduction Act ("PRA") are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across government.[41] The PRA applies with extraordinary breadth to all information, "regardless of form or format," a government agency is "obtaining, causing to be obtained [or] soliciting" and includes requiring "disclosure to third parties or the public, of facts or opinion," when the information collection calls for "answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more people."[42] This provision has been determined to include not only mandatory but also voluntary information collections, and to not only written but also oral communications.[43]

To effect the purposes of the PRA, Congress requires all agencies to quantify and justify the burden of any information collection it imposes.[44] This includes submitting each collection, whether or not it is contained in a rulemaking, to the Office of Management and Budget ("OMB") for review.[45] The OMB submission process includes completing a form 83–I and a supporting statement with the agency's burden estimate and justification for the collection. When the information collection is established within a rulemaking, the agency's burden estimate and justification should be provided in the proposed rulemaking, subjecting it to the rulemaking's public comment process.

The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, "Commission Records and Information." In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

If the proposed rules are promulgated in final form, they would require FBOT registrants to collect and submit, pursuant to part 48 of the Regulations, information to the Commission, which has never been required. For each proposed requirement, set forth below are estimates of: (i) The number of respondents; (ii) the number of annual responses by each respondent; (iii) the average hours per response; and (iv) the aggregate annual reporting burden. New OMB control numbers will be assigned to these proposed information collection requirements.

1. New Collection 3038–NEW

Regulation 48.6 requires each FBOT currently providing direct access pursuant to no-action relief to submit a "complete limited application" with the Commission to satisfy the registration requirement, which includes information and documentation set forth in the Appendix to this part that was not previously provided or is not current.

OMB Control Number 3038–NEW.

Estimated number of respondents: 20.

Annual responses by each respondent: 1.

Estimated average hours per response: 50.

Aggregate annual reporting burden: 1,000.

2. New Collection 3038–NEW

Regulation 48.7 provides the information and documentation requirements that a new FBOT must submit to become registered with the Commission, including FBOT membership information, automated trading system, terms and conditions of contracts to be made available in the U.S., settlement and clearing, the regulatory regime governing the FBOT and clearing organization, the FBOT and clearing organization rules and enforcement thereof, and information sharing agreements.

OMB Control Number 3038–NEW.

Estimated number of respondents: 7.

Annual responses by each respondent: 1.

Estimated average hours per response: 1,000.

Aggregate annual reporting burden: 7,000.

3. New Collection 3038–NEW

Regulation 48.8(a)(8)(i) requires each registered FBOT that makes swap contracts available by direct access to report to the public, on a real-time basis, data relating to each swap transaction, including price and volume, as soon as technologically practicable after execution of the swap transactions.[46]

OMB Control Number 3038–NEW.

Estimated number of respondents: 4.

Annual responses by each respondent: 250.

Estimated average hours per response: 8.32.

Aggregate annual reporting burden: 8,320.

4. New Collection 3038–NEW

Regulation 48.8(a)(8)(ii) requires each registered FBOT that makes swap contracts available by direct access to ensure that all swap transaction data is timely reported to a swap data repository.[47]

OMB Control Number 3038–NEW.

Estimated number of respondents: 4.

Annual responses by each respondent: 250.

Estimated average hours per response: 8.32.

Aggregate annual reporting burden: 8,320.

5. New Collection 3038–NEW

Regulation 48.8(b)(1)(i)(A) and (B) requires each registered FBOT to provide the Commission with certain trading volume information and certain information regarding the FBOT members and other participants in the U.S. that have direct access to the FBOT's trading system on at least a quarterly basis.

OMB Control Number 3038–NEW.

Estimated number of respondents: 27.

Annual responses by each respondent: 4.

Estimated average hours per response: 6.

Aggregate annual reporting burden: 648.

6. New Collection 3038–NEW

Regulation 48.8(b)(1)(ii)(A)–(F) requires each registered FBOT to

[41] 44 U.S.C. 3501.

[42] 44 U.S.C. 3502.

[43] 5 CFR 1320.3(c)(1).

[44] 44 U.S.C. 3506.

[45] 44 U.S.C. 3507.

[46] Because the Commission has not previously regulated the swap market, the Commission was unable to collect data relevant to these estimates. Therefore, the Commission requests comment on these estimates.

[47] Because the Commission has not previously regulated the swap market, the Commission was unable to collect data relevant to these estimates. Therefore, the Commission requests comment on these estimates.

provide the Commission on an ongoing basis with written notice of certain information, including any material changes to the registration information and documents previously submitted to the Commission; any matter known to the FBOT concerning the financial or operational viability of the FBOT or its clearing organization; and any known violation by the FBOT, its clearing organization, any member of the FBOT or its clearing organization or any other participant of the terms or conditions of registration.

OMB Control Number 3038–NEW.

Estimated number of respondents: 27.

Annual responses by each respondent: 1.

Estimated average hours per response: 2.

Aggregate annual reporting burden: 54.

7. New Collection 3038–NEW

Regulation 48.8(b)(1)(iii)(A)–(F) requires each registered FBOT to provide the Commission on an annual basis with certain information including a certification from the FBOT's regulatory authority that the FBOT retains its authorization in good standing as a regulated exchange under the licensing used in the FBOT's home country, a description of any significant disciplinary or enforcement actions that have been instituted by the FBOT in the prior year, and a written description of any material changes to the regulatory regime to which the FBOT is subject to that have not previously been disclosed to the Commission.

OMB Control Number 3038–NEW.

Estimated number of respondents: 27.

Annual responses by each respondent: 1.

Estimated average hours per response: 4.

Aggregate annual reporting burden: 108.

8. New Collection 3038–NEW

Regulation 48.8(c)(1)(ii)(C)(1)–(4) requires each registered FBOT to promptly notify the Commission, with regard to the linked contract, of any changes regarding information that the FBOT will make publicly available, enforcement of position limits, and position reductions required to prevent manipulation, excessive speculation as described in section 4a of the Act, price distortion, or disruption of delivery or the cash settlement process, and any other area of interest expressed by the Commission to the FBOT or its regulatory authority.

OMB Control Number 3038–NEW.

Estimated number of respondents: 1.

Annual responses by each respondent: 2.

Estimated average hours per response: 3.

Aggregate annual reporting burden: 6.

9. New Collection 3038–NEW

Regulation 48.8(c)(1)(ii)(D) requires each registered FBOT with a linked contract to provide the Commission with large trader position information.

OMB Control Number 3038–NEW.

Estimated number of respondents: 1.

Annual responses by each respondent: 250.

Estimated average hours per response: 2.

Aggregate annual reporting burden: 500.

10. New Collection 3038–NEW

Regulation 48.8(c)(1)(ii)(E) requires each registered FBOT with a linked contract to provide the Commission with such information as necessary to publish reports on aggregate trader positions.

OMB Control Number 3038–NEW.

Estimated number of respondents: 1.

Annual responses by each respondent: 250.

Estimated average hours per response: 2.

Aggregate annual reporting burden: 500.

11. New Collection 3038–NEW

Regulation 48.8(c)(2)(i) requires each registered FBOT with a linked contract to provide the Commission with a quarterly report of any member that had positions in a linked contract above the FBOT position limit, whether a hedge exemption was granted, and if not, whether a disciplinary action was taken.

OMB Control Number 3038–NEW.

Estimated number of respondents: 1.

Annual responses by each respondent: 4.

Estimated average hours per response: 3.

Aggregate annual reporting burden: 12.

12. New Collection 3038–NEW

Regulation 48.8(c)(2)(ii) requires each registered FBOT with a linked contract to provide the Commission with trade execution and audit trail data on a trade-date plus one basis.

OMB Control Number 3038–NEW.

Estimated number of respondents: 1.

Annual responses by each respondent: 250.

Estimated average hours per response: 3.

Aggregate annual reporting burden: 750.

13. New Collection 3038–NEW

Regulation 48.8(c)(2)(iv) requires each registered FBOT with a linked contract to provide the Commission with a copy of all rules, rule amendments, and other notices published by the FBOT with respect to all linked contracts.

OMB Control Number 3038–NEW.

Estimated number of respondents: 1.

Annual responses by each respondent: 20.

Estimated average hours per response: 2.

Aggregate annual reporting burden: 40.

14. New Collection 3038–NEW

Regulation 48.8(c)(2)(v) requires each registered FBOT with a linked contract to provide the Commission with a copy of all disciplinary notices involving the FBOT's linked contract upon closure of the action.

OMB Control Number 3038–NEW.

Estimated number of respondents: 1.

Annual responses by each respondent: 2.

Estimated average hours per response: 2.

Aggregate annual reporting burden: 4.

15. New Collection 3038–NEW

Regulation 48.9 requires each registered FBOT, upon request by the Commission, to file a written demonstration that the FBOT is in compliance with the conditions for registration.

OMB Control Number 3038–NEW.

Estimated number of respondents: 26.

Annual responses by each respondent: .25.

Estimated average hours per response: 8.

Aggregate annual reporting burden: 52.

16. New Collection 3038–NEW

Regulation 48.10 requires each registered FBOT that wishes to list additional futures and options contracts for trading by direct access to request in writing and receive approval from the Commission prior to offering the contracts from within the U.S.

OMB Control Number 3038–NEW.

Estimated number of respondents: 27.

Annual responses by each respondent: 1.

Estimated average hours per response: 4.

Aggregate annual reporting burden: 108.

The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov*. Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**. Consequently, a comment to OMB is most assured of being fully effective if received by OMB (and the Commission) within 30 days after publication of this notice of proposed rulemaking. Nothing in the foregoing affects the deadline enumerated above for public comment to the Commission on the proposed rules.

B. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing a new regulation or order under the Act.[48] By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new rule or to determine whether the benefits of the adopted rule outweigh its costs. Rather, Section 15(a) requires the Commission to "consider the costs and benefits" of a proposed rule. Section 15(a) further specifies the costs and benefits of proposed rules shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the rule.[49]

The proposed regulations implement the Dodd-Frank Act by establishing a registration requirement for all FBOTs that wish to provide their members or other participants located in the U.S. with direct access to the FBOT's electronic trading and order matching system. Pursuant to proposed Commission Regulation 48.5, FBOTs wishing to provide direct access to their trading systems to members and other participants located in the U.S. would be required to file an application for registration with the Commission that contains all of the information and documentation set forth in the Appendix to the Part 48 regulations and any additional information and documentation required to successfully demonstrate that the FBOT satisfies the registration requirements contained in Rule 48.7.

Regarding FBOTs that currently do not have no-action relief from Commission staff, the Commission understands that costs associated with the submission of an application for registration could be considerable. However, the cost of applying for no-action relief under existing procedures is substantial. FBOTs requesting no-action relief currently are required to provide much of the information that would be required under the proposed regulation. For example, FBOTs requesting no-action relief under existing procedures have been required to provide the Commission with information including the FBOT's trading system, terms and conditions of contracts made available in the U.S., and the regulatory regime governing the FBOT in its home country. This same information would be required as part of the registration process under the proposed regulations. The additional cost of applying for registration rather than applying for no-action relief is significant, but not overly large.

FBOTs that currently have no-action relief from the Commission would be required to register with the Commission and only provide a limited application pursuant to the proposed regulations. This should have the effect of limiting the costs to these FBOTs since they would be required only to provide information that was not previously provided or is not current.

The proposed regulations would authorize the Commission to impose additional conditions on FBOTs that desire to make a linked contract available by direct access to members of the FBOT or other participants located in the U.S. These conditions would be required as part of the FBOT registration process, and include among other things, the imposition of speculative position limits and the submission of audit trail data and large trader position information to the Commission for all linked contracts. Any additional costs incurred by an FBOT with existing no-action relief would be offset in part due to the substantial overlap between the conditions already promulgated by the Commission as a general policy applicable to FBOTs with linked contracts and the conditions being proposed by the Commission under regulation 48.8.[50]

The proposed FBOT registration regulations offer significant benefits over the no-action process through which requests to provide direct access to FBOT trading systems were handled in the past. While the no-action process has served a useful purpose, the no-action process is designed for discrete, unique factual circumstances where regulations do not address the issue presented. Where the same type of relief is granted on a regular and recurring basis, as it has been with respect to direct access to FBOT trading systems, the Commission believes that it is more appropriate to provide the relevant relief through a generally applicable rulemaking. The proposed regulations would provide a more standardized and efficient application process, enhance the visibility of the process to both applicants and the public, and ensure fair and consistent treatment to applicants. Moreover, the Order of Registration issued by the Commission pursuant to this proposal would provide greater legal certainty to FBOTs operating pursuant to those Orders than no-action letters, which are issued by the staff and not binding on the Commission.

In addition, there is substantial value in the information and documentation that the Commission will be able to obtain, and the obligations that may be imposed pursuant to the conditions applicable to FBOT registration. For example, an FBOT that lists for trading a contract which settles on the price of

[48] 7 U.S.C. 19(a).

[49] *E.g., Fishermen's Dock Co-op., Inc* v. *Brown,* 75 F3d 164 (4th Cir. 1996); *Center for Auto Safety* v. *Peck,* 751 F.2d 1336 (D.C. Cir. 1985) (agency has discretion to weigh factors in undertaking cost-benefit analyses).

[50] *See* CFTC Letter No. 08–09, June 17, 2008.

a contract traded on a Commission-regulated exchange raises serious concerns for the Commission. The position limit requirement and the submission of large trader position information and audit trail data to the Commission, pursuant to the conditions placed upon an FBOT that offers a linked contract for trading via direct access to its members or other participants located in the U.S., will enhance the Commission's ability to carry out its market surveillance responsibilities. The proposed regulations and related conditions also will ensure that transactions executed on an FBOT do not adversely affect U.S. cash and futures markets, market participants, and customers, as well as the consumers affected by those transactions. Finally, the proposed regulations are designed to ensure that the U.S. commodity markets operate fairly and efficiently and are free from fraud, manipulation and other market abuses.

After considering the costs and benefits, the Commission has determined to propose the regulations discussed above. The Commission invites public comment on its evaluation of the costs and benefits of the proposed regulations. Specifically, commenters are invited to submit data quantifying the costs and benefits of the proposed regulations with their comment letters.

C. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [51] requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[52] The proposed rules detailed in this release would only affect FBOTs. The rules would replace the policy of issuing staff no-action letters to permit FBOTs to provide for direct access, defined in the Dodd-Frank Act to refer to an explicit grant of authority by an FBOT to an identified member or other participant to enter trades directly into the FBOT's trade matching system.

As a threshold matter, because the proposed application requirements and standards for FBOT registration under the new rules generally are consistent with the application requirements and review standards that have guided the Commission's staff in issuing FBOT no-action relief letters, the Commission believes that these rules will not have a significant economic effect on any substantial number of FBOTs, whether they are large or small entities. Moreover, the Commission does not believe that FBOTs would be small entities. For both reasons, the Commission believes that a regulatory flexibility analysis is not required for this rulemaking.

The Commission has not previously addressed the question whether FBOTs are, in fact, small entities for purposes of the RFA since FBOTs are a new category of registrant created by the Dodd-Frank Act. However, the term "foreign board of trade" has been used in the CEA and defined in the Commission Regulations to be a "board of trade, exchange or market located outside the U.S." [53] The term "board of trade," in turn, is defined in the CEA as "any organized exchange or trading facility." [54] An organized exchange includes designated or registered exchanges, such as DCMs.[55]

The Commission has previously determined that DCMs are not "small entities" for purposes of the RFA.[56] Key to the Commission's determination was that DCMs perform a central role in the regulatory scheme for futures trading, requiring the DCM to employ significant resources, including personnel, in the performance of this statutory role. The Commission designates a contract market only when it meets specific criteria including expenditure of sufficient resources to establish and maintain adequate self-regulatory programs.

Likewise, the Commission will register an FBOT to provide direct access only after it has met similar criteria. Critically, an FBOT will only be registered by demonstrating that it possesses the attributes of an established, organized exchange; adheres to appropriate rules prohibiting abusive trading practices; and enforces appropriate rules to maintain market and financial integrity. Because FBOTs and DCMs are functionally equivalent entities in these regards, the Commission is determining that FBOTs, like DCMs, are not small entities for purposes of the RFA. In light of the foregoing, the Chairman on behalf of the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the proposed rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 48

Foreign boards of trade, Commodity futures, Options, Swaps, Direct access, Linked contract, Registration, Existing no-action relief, Conditions of registration.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 3, 4 and 8a of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations by adding a new part 48 to read as follows:

PART 48—REGISTRATION OF FOREIGN BOARDS OF TRADE

Sec.
48.1 Scope.
48.2 Definitions.
48.3 Registration required.
48.4 Registration eligibility.
48.5 Registration procedures.
48.6 Foreign boards of trade providing direct access pursuant to existing no-action relief.
48.7 Requirements for registration.
48.8 Conditions of registration.
48.9 Revocation of registration.
48.10 Additional contracts.
Appendix—Part 48—Contents of Application

Authority: 7 U.S.C. 5, 6 and 12a, unless otherwise noted.

§ 48.1 Scope.

The provisions of this part apply to any foreign board of trade that is registered or is applying to become registered with the Commission in order to provide its identified members or other participants located in the United States with direct access to its electronic trading and order matching system.

§ 48.2 Definitions.

(a) *Foreign board of trade.* For purposes of this part, foreign board of trade means any board of trade, exchange or market located outside the United States, its territories or possessions, whether incorporated or unincorporated, where foreign agreements, contracts or transactions are entered into.

(b) *Foreign board of trade eligible to be registered.* A foreign board of trade eligible to be registered means a foreign board of trade that satisfies the requirements for registration specified in section 48.7 of this part and

(1) Possesses the attributes of an established, organized exchange,

[51] 5 U.S.C. 601 *et seq.*

[52] 5 U.S.C. 601 *et seq.*

[53] See Commission Regulation 1.33(ss). Additionally, the term "board of trade, exchange or market located outside the U.S." is used interchangeably in the CEA with the term "foreign board of trade." For example, Section 4(a) carves out "board of trade, exchange or market located outside the U.S." from the requirement that futures contracts in the U.S. must be traded on a DCM or DTEF; new Section 4(b)(2)(C) provides that the Commission may not, except as provided in section 4(b)(1) and (2), directly regulate a "foreign board of trade."

[54] CEA § 1a(2).

[55] CEA § 1a(27).

[56] 47 FR 18618, 18619 (April 30, 1982).

(2) Adheres to appropriate rules prohibiting abusive trading practices,

(3) Enforces appropriate rules to maintain market and financial integrity,

(4) Has been authorized by a regulatory process that examines customer and market protections, and

(5) Is subject to continued oversight by a regulator that has power to intervene in the market and the authority to share information with the Commission.

(c) *Direct access.* For purposes of this part, direct access means an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

(d) *Linked contract.* For purposes of this part, a linked contract is a futures or option or swaps contract made available for direct access from the United States by a registered foreign board of trade that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a registered entity as defined in section 1a(40) of the Act.

(e) *Communications.* For purposes of this part, communications is defined to include any summons, complaint, order, subpoena, request for information, notice, or any other written or electronic documentation or correspondence issued by or on behalf of the Commission.

(f) *Material change.* For purposes of this part, material changes in the information provided to the Commission in support of the registration application would include, without limitation, a modification of any of the following: The membership criteria of the foreign board of trade or its clearing organization; the location of the management, personnel or operations of the foreign board of trade or its clearing organization (particularly changes that may suggest an increased nexus between the foreign board of trade's activities and the United States); the basic structure, nature, or operation of the trading system or its clearing organization; the regulatory or self-regulatory regime applicable to the foreign board of trade, its clearing organization, and their respective members and other participants (including, without limitation, the rules applicable to or oversight thereof), any change in the authorization, licensure or registration of the foreign board of trade or clearing organization, and any information that may impact the ability of the clearing organization to satisfy the current Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions as updated, revised or otherwise amended, or successive standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the International Organization of Securities Commissions and the Committee on Payment and Settlement Systems.

(g) *Clearing organization.* For purposes of this part, clearing organization means the foreign board of trade, affiliate of the foreign board of trade or any third party clearing house, clearing association, clearing corporation or similar entity, facility or organization that, with respect to any agreement, contract or transaction executed on or through the foreign board of trade, would be:

(1) Defined as a derivatives clearing organization under section 1a(9) of the Act;

(2) Defined as a central counterparty by the Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or otherwise amended, or successive standards, principles and guidance for central counterparties adopted or financial market infrastructures adopted jointly by the Committee on Payment and Settlement Systems or the International Organization of Securities Commissions; or

(3) Otherwise interposes itself between the counterparties to the agreements, contracts or transactions (or subset thereof) executed on or through the foreign board of trade, becoming the buyer to every seller and the seller to every buyer.

(h) *Existing no-action relief.* For purposes of this part, existing no-action relief means a no-action letter issued by a division of the Commission to the foreign board of trade in which the division informs the foreign board of trade that it will not recommend that the Commission institute enforcement action against the foreign board of trade if the foreign board of trade does not seek designation as either a designated contract market pursuant to section 5 of the Act or a derivatives transaction execution facility pursuant to section 5a of the Act in connection with the provision of direct access to the foreign board of trade's trade matching system by its members and other participants located in the United States.

(i) *Swaps.* For purposes of this part, swaps is defined to mean swaps as defined in section 1a(47) of the Act, and any Commission regulation adopted thereunder, and any transaction or contract that is regulated as a swap under the regulatory regime to which the FBOT is subject.

(j) *Affiliate.* For purposes of this part, an affiliate of a registered foreign board of trade member or other participant shall mean any person, as that term is defined in section 1a(38) of the CEA, that:

(1) Owns 50% or more of the member or other participant;

(2) Is owned 50% or more by the member or other participant; or

(3) Is owned 50% or more by a third person that also owns 50% or more of the member or other participant.

(k) *Member or other participant.* For purposes this part, the terms member or other participant of the registered foreign board of trade shall include any affiliate of any registered foreign board of trade's member or other participant that has been granted direct access to the trading system by the registered foreign board of trade.

§ 48.3 Registration required.

(a) Except as specified in this part, it shall be unlawful for a foreign board of trade to permit direct access to its electronic trading and order matching system from within the United States unless and until the Commission has issued a valid and current Order of Registration to the foreign board of trade pursuant to the provisions of this part.

(b) It shall be unlawful for a board of trade to make false or misleading statements in any application for registration or in connection with any application for registration under this part.

§ 48.4 Registration eligibility.

(a) Only foreign boards of trade eligible to be registered, as defined in § 48.2(b) of this part, are eligible for registration with the Commission pursuant to this part.

(b) An applicant may request foreign board of trade registration in order to permit direct access from within the United States to its members and other participants that:

(1) Trade in the United States for their proprietary accounts;

(2) Are registered with the Commission as futures commission merchants and submit orders for United States customers to the trading system for execution; or

(3) Are registered with the Commission as a commodity pool

operator or commodity trading advisor, or are exempt from such registration pursuant to section 4.13 or 4.14 of this chapter, and that submit orders for execution on behalf of United States pools they operate or accounts of United States customers for which they have discretionary authority, respectively, provided that a futures commission merchant or a firm exempt from such registration pursuant to Commission Rule 30.10 acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders to the trading system.

§ 48.5 Registration procedures.

(a) A foreign board of trade seeking registration with the Commission pursuant to this part must electronically file an application for registration, labeled as an Application for Foreign Board of Trade Registration pursuant to part 48 of the Commission's Regulations, with the Secretary of the Commission, at *FBOTRegistration@cftc.gov*.

(b) An application for registration must be signed by the foreign board of trade's chief executive officer (or functional equivalent) and must include the information and documentation set forth in the Appendix to this part 48 and any information and documentation necessary, in the discretion of the Commission, to effectively demonstrate that the foreign board of trade and its clearing organization satisfy the registration requirements set forth in this part. The application must include a certification by the chief executive officer (or functional equivalent) of the foreign board of trade and the clearing organization that representations made in connection with, or relevant to, the application and the information and documentation provided in support thereof are true, correct and complete.

(c) A foreign board of trade registration applicant must identify with particularity any information in the application that will be subject to a request for confidential treatment and must provide support for any request for confidential treatment pursuant to the procedures set forth in section 145.9 of this chapter.

(d) The Commission will review the application for foreign board of trade registration and, if the Commission finds the application to be complete, may approve or deny the application. In its review, the Commission will consider, among other things:

(1) Whether the foreign board of trade is eligible to be registered as defined in section 48.2(b) of this part;

(2) Whether the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home country that is comparable to the comprehensive supervision and regulation to which designated contract markets and derivatives clearing organizations are respectively subject in the United States;

(3) Any previous Commission findings that the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate government authorities in the foreign board of trade's home country that is comparable to the comprehensive supervision and regulation to which designated contract markets and derivatives clearing organizations are subject in the United States; and

(4) Whether the foreign board of trade and its clearing organization have adequately demonstrated that they meet the requirements for registration specified in section 48.7 of this part.

(e) If the Commission approves the application, the Commission will register the foreign board of trade by issuing an Order of Registration. If the Commission does not approve the application, the foreign board of trade will not be registered and may not provide direct access to its electronic trading and order matching systems from within the United States, and the Commission will issue a Notice of Action specifying that the application was not approved and setting forth the reasons therefor. The Commission may, after appropriate notice and an opportunity for a hearing, amend, suspend, terminate or otherwise restrict the terms of the Order of Registration.

(f) A foreign board of trade whose application is not approved may reapply for registration 360 days after the issuance of the Notice of Action if the foreign board of trade has addressed any deficiencies in its original application or facts and circumstances relevant to the Commission's review of the application have changed.

§ 48.6 Foreign boards of trade providing direct access pursuant to existing no-action relief.

(a) A foreign board of trade operating pursuant to existing no-action relief as of the effective date of this Part 48 must register with the Commission pursuant to this Part 48 in order to continue to provide direct access to its electronic trading and order matching system from the United States.

(b) Such foreign board of trade's application for registration must include all of the information and documentation set forth in the Appendix to this part 48. To the extent that the foreign board of trade intends to rely upon previously submitted information or documentation to demonstrate that it satisfies the requirements of the Appendix or the registration requirements set forth in section 48.7 of this part, the foreign board of trade must resubmit the information or documentation, identify the specific requirements for registration set forth in section 48.7 of this part that are satisfied by the resubmitted information, and certify that the information remains current and true (limited application).

(c) Foreign boards of trade operating pursuant to existing no-action relief must submit a complete limited application for registration within 120 days of the effective date of this regulation and the no-action relief will, upon notice to the foreign board of trade, be revoked if a complete limited application is not received by the Commission within that 120 days. The foreign board of trade may continue to provide direct access from the United States pursuant to the no-action relief during the 120-day period, during the period in which the complete limited application is being reviewed by the Commission, and until the Commission notifies the foreign board of trade that the application has been approved or not approved or that the existing no-action relief has otherwise been withdrawn.

§ 48.7 Requirements for registration.

An applicant for registration under this part must include all of the information and documentation set forth in the Appendix to this Part 48 and any other information and documentation necessary or appropriate to determine that the following requirements for registration are met. The Commission, in its discretion, may impose additional registration requirements and request additional information and documentation in connection with an application for registration. An applicant for registration must provide promptly any additional information or documentation requested by the Commission in connection with the application.

(a) Foreign Board of Trade and Clearing Membership. An applicant for registration must demonstrate that:

(1) The members and other participants of the foreign board of trade and its clearing organization are fit and proper and meet appropriate financial and professional standards,

(2) The foreign board of trade and its clearing organization have and enforce provisions to minimize and resolve conflicts of interest, and

(3) The foreign board of trade and its clearing organization have and enforce rules prohibiting the disclosure of material non-public information obtained as a result of a member's or other participant's performance of duties as a member of their respective governing boards and significant committees.

(b) The Automated Trading System. An applicant for registration must demonstrate that:

(1) The trading system complies with Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions,

(2) The trade matching algorithm matches trades fairly and timely,

(3) The audit trail captures all relevant data, including changes to orders, and audit trail data is securely maintained and available for an adequate time period,

(4) Trade data is made available to users and the public,

(5) The trading system has demonstrated reliability,

(6) Access to the trading system is secure and protected,

(7) There are adequate provisions for emergency operations and disaster recovery,

(8) Trading data is backed up to prevent loss of data, and

(9) Only those futures and option contracts or swaps that have been identified to the Commission as part of the application or permitted to be made available for trading by direct access pursuant to the procedures set forth in section 48.10 of this part are made available for trading on connections in the United States.

(c) Terms and Conditions of Contracts To Be Made Available in the United States.

(1) Contracts that may be made available by direct access must meet the following standards:

(i) Contracts must be futures, option or swaps contracts—only such contracts as would be eligible to be traded on a designated contract market are eligible to be traded by direct access on a registered foreign board of trade,

(ii) Contracts must be cleared,

(iii) Contracts must not be prohibited from being traded by United States persons, and

(iv) Contracts must not be readily susceptible to manipulation.

(2) Contracts that have the following characteristics must be identified:

(i) Contracts that are linked to a contract listed for trading on a United States registered entity, and

(ii) Contracts that share any other commonality with a contract listed for trading on a United States registered entity, for example, if both the foreign board of trade's and the United States registered entity's contract settle to the price of the same third party-constructed index.

(d) Settlement and Clearing. An applicant for registration must demonstrate that:

(1) The clearing organization complies with the current Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions as updated, revised or otherwise amended, or successive standards, principles and guidance for central counterparties and financial market infrastructures adopted jointly by the International Organization of Securities Commissions and the Committee on Payment and Settlement Systems or is registered with the Commission as a derivatives clearing organization, and

(2) The clearing organization is in good regulatory standing in its home country jurisdiction.

(e) The Regulatory Regime Governing the Foreign Board of Trade and the Clearing Organization. An applicant for registration must demonstrate that:

(1) The regulatory authorities governing the activities of the foreign board of trade and clearing organization provide comprehensive supervision and regulation of the foreign board of trade and the clearing organization that is comparable to the comprehensive supervision and regulation provided by the Commission to designated contract markets and derivatives clearing organizations, that is, the regulatory authorities support and enforce regulatory objectives in the oversight of the foreign board of trade and clearing organization that are substantially equivalent to the regulatory objectives supported and enforced by the Commission in its oversight of designated contract markets and derivatives clearing organizations,

(2) The regulatory authorities governing the activities of the foreign board of trade, the clearing organization and their respective members and other participants engage in ongoing regulatory supervision and oversight of the foreign board of trade and its trading system, the clearing organization and its clearing system, the members, intermediaries and other participants of the foreign board of trade and clearing organization, with respect to, among other things, market integrity, customer protection, clearing and settlement and the enforcement of exchange and clearing organization rules,

(3) The regulatory authorities governing the foreign board of trade and the clearing organization have the power to share information directly with the Commission, upon request, including information necessary to evaluate the continued eligibility of the foreign board of trade for registration and to audit for compliance with the terms and conditions of the registration.

(4) The regulatory authorities governing the foreign board of trade and the clearing organization have the power to intervene in the market.

(f) The Rules of the Foreign Board of Trade and Clearing Organization and Enforcement Thereof. An applicant for registration must demonstrate that:

(1) The foreign board of trade and its clearing organization have implemented and enforce rules to ensure compliance with the requirements of registration contained in this part,

(2) The foreign board of trade and its clearing organization have the capacity to detect, investigate, and sanction persons who violate their respective rules,

(3) The foreign board of trade and the clearing organization (or their respective regulatory authorities) have implemented and enforce disciplinary procedures that empower them to recommend and prosecute disciplinary actions for suspected rule violations, impose adequate sanctions for such violations, and provide adequate protections to charged parties pursuant to fair and clear standards,

(4) The foreign board of trade and its clearing organization are authorized by rule or by contractual agreement to obtain, from members and other participants, any information and cooperation necessary to conduct investigations, to effectively enforce their respective rules, and to ensure compliance with the conditions of registration,

(5) The foreign board of trade and its clearing organization have sufficient compliance staff and resources, including by delegation and/or outsourcing to a third party, to fulfill their respective regulatory responsibilities, including appropriate trade practice surveillance, real time market monitoring, market surveillance, financial surveillance, protection of customer funds, enforcement of clearing and settlement provisions and other compliance and regulatory responsibilities,

(6) The foreign board of trade has implemented and enforces rules with respect to access to the trading system and the means by which the connection is accomplished,

(7) The foreign board of trade's audit trail captures and retains sufficient order and trade-related data to allow its compliance staff to detect trading and market abuses and to reconstruct all transactions within a reasonable period of time,

(8) The foreign board of trade has implemented and enforces rules relating to prohibited trading practices (for example wash sales or trading ahead),

(9) The foreign board of trade has the capacity to detect and deter, and has implemented and enforces rules relating to, market manipulation, attempted manipulation, price distortion, and other disruptions of the market, and

(10) The foreign board of trade has and enforces rules and procedures that ensure a competitive, open and efficient market and mechanism for executing transactions.

(g) Information Sharing. An applicant for registration must demonstrate that:

(1) The regulatory authorities governing the activities of and providing supervision and oversight of the foreign board of trade and the clearing organization are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding; if the regulatory authorities are not signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding, they must inform the Commission of the reasons why the document has not been signed, supply any additional information requested by the Commission, and ensure alternative information sharing arrangements that are satisfactory to the Commission are in place.

(2) The regulatory authorities governing the activities of and providing supervision and oversight of the foreign board of trade and the clearing organization are signatories to the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations or otherwise commits to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission,

(3) The foreign board of trade has executed, or commits to execute, the International Information Sharing Memorandum of Understanding and Agreement, and

(4) Pursuant to the conditions described in section 48.8(a)(6) of this part, the foreign board of trade and clearing organization must provide directly to the Commission information necessary to evaluate the continued eligibility of the foreign board of trade clearing organization, or their respective members or other participants for registration, to audit for and enforce compliance with the specified conditions of the registration, or to enable the Commission to carry out its duties under the Act and Commission regulations.

§ 48.8 Conditions of registration.

Immediately upon registration, and on an ongoing basis thereafter, the foreign board of trade and the clearing organization shall comply with the conditions of registration set forth in this section and any additional conditions that the Commission may impose, in its discretion, and after appropriate notice and opportunity for a hearing. Such conditions could include, but are not limited to, the conditions set forth in section 48.8(c) of this part and, with respect to the listing of swaps contracts, any additional conditions that the Commission deems necessary. Continued registration is expressly conditioned upon satisfaction of these conditions.

(a) Specified Conditions for Maintaining Registration.

(1) Registration Requirements: The foreign board of trade and its clearing organization shall continue to satisfy all of the requirements for registration set forth in section 48.7 and the conditions for maintaining registration set forth herein.

(2) Regulatory Regime:

(i) The foreign board of trade will continue to satisfy the criteria for a regulated market pursuant to the regulatory regime described in its application and will continue to be subject to oversight by the regulatory authorities described in its application with respect to transactions effected through the foreign board of trade's trading system.

(ii) The clearing organization will continue to satisfy the criteria for a regulated clearing organization pursuant to the regulatory regime described in the application for registration; the clearing organization and its participants will continue to be subject to comprehensive supervision, regulation and oversight by the regulatory authorities as described in the application and that is comparable to the comprehensive supervision, regulation to which such entities would be subject in the United States; and the clearing organization shall continue to be in good standing with the relevant regulatory authority.

(iii) The laws, systems, rules, and compliance mechanisms of the regulatory regime applicable to the foreign board of trade will continue to require the foreign board of trade to maintain fair and orderly markets; prohibit fraud, abuse, and market manipulation; and provide that such requirements are subject to the oversight of appropriate regulatory authorities.

(3) Satisfaction of Comparable International Standards:

(i) The foreign board of trade will continue to adhere to the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions, as updated, revised, or otherwise amended, to the extent such principles do not contravene United States law.

(ii) The clearing organization will continue to: (A) Be registered as a derivatives clearing organization and be in compliance with the laws and regulations related thereto or (B) satisfy the Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or otherwise amended, or successive standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions.

(4) Restrictions on Direct Access:

(i) Only the foreign board of trade's identified members or other participants will have direct access to the foreign board of trade's trading system from the United States and the foreign board of trade will not provide, and will take reasonable steps to prevent, third parties from providing direct access to the foreign board of trade to persons other than the identified members or other participants.

(ii) All orders that are transmitted through the foreign board of trade's trading system by a foreign board of trade identified member or other participant that is operating pursuant to the foreign board of trade's registration will be solely for the member's or trading participant's own account unless such member or other participant is registered with the Commission as a futures commission merchant or such member or other participant is registered with the Commission as a commodity pool operator or commodity trading advisor, or is exempt from such

registration pursuant to section 4.13 or 4.14 of this chapter, provided that a futures commission merchant or a firm exempt from such registration pursuant to Commission Rule 30.10 acts as clearing firm and guarantees, without limitation, all such trades of the commodity pool operator or commodity trading advisor effected through submission of orders on the trading system.

(5) Submission to Commission Jurisdiction:

(i) The foreign board of trade will require that each current and prospective member or other participant that is granted direct access to the foreign board of trade's trading system pursuant to the foreign board of trade's registration and that is not registered with the Commission as a futures commission merchant, a commodity trading advisor or a commodity pool operator file with the foreign board of trade a written representation, executed by a person with the authority to bind the member or other participant, stating that as long as the member or other participant grants direct access to the foreign board of trade's trading system pursuant to the foreign board of trade registration, the member or other participant agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the registration.

(ii) The foreign board of trade and its clearing organization will file with the Commission a valid and binding appointment of an agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of communications issued by or on behalf of the Commission.

(iii) The foreign board of trade will require that each current and prospective member or other participant of the foreign board of trade that is granted direct access to the foreign board of trade's trading system pursuant to the foreign board of trade's registration with the Commission and that is not registered with the Commission as a futures commission merchant, a commodity trading advisor or a commodity pool operator file with the foreign board of trade a valid and binding appointment of a United States agent for service of process in the United States pursuant to which the agent is authorized to accept delivery and service of communications issued by or on behalf of the Commission.

(iv) The foreign board of trade, clearing organization, and each current and prospective member or other participant of either that is granted direct access to the foreign board of trade's trading system pursuant to the foreign board of trade's registration and that is not registered with the Commission as a futures commission merchant, a commodity trading advisor, or a commodity pool operator will maintain with the foreign board of trade written representations, executed by persons with the authority to bind the entity making them, stating that as long as the foreign board of trade is registered under this regulation, the foreign board of trade, the clearing organization or member of either or other participant granted direct access pursuant to this regulation will provide, upon the request of the Commission, the United States Department of Justice and, if appropriate, the National Futures Association, prompt access to the entity's, member's, or other participant's original books and records or, at the election of the requesting agency (the Commission, the United States Department of Justice, or the National Futures Association), a copy of specified information containing such books and records, as well as access to the premises where the trading system is available in the United States.

(v) The foreign board of trade will maintain all representations required pursuant to this regulation as part of its books and records and will make them available to the Commission upon request.

(6) Information Sharing:

(i) Information-sharing arrangements satisfactory to the Commission, including but not limited to those set forth in section 48.7(g) of the registration requirements, are in effect between the Commission and the regulatory authorities that supervise both the foreign board of trade and the clearing organization.

(ii) The Commission is, in fact, able to obtain sufficient information regarding the foreign board of trade, the clearing organization, their respective members and participants and the activities related to the foreign board of trade's registration.

(iii) The foreign board of trade, and its clearing organization, as applicable, will provide directly to the Commission any information necessary to evaluate the continued eligibility of the foreign board of trade or its members or other participants for registration, the capability and determination to enforce compliance with these specified conditions of the registration or, in the event that the Commission has been unable to satisfactorily obtain necessary information from the regulatory authority, to enable the Commission to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or United States registered entities.

(iv) In the event that the foreign board of trade and the clearing organization are separate entities, the foreign board of trade will require the clearing organization to enter into a written agreement in which the clearing organization is contractually obligated to promptly provide any and all information and documentation that may be required of the clearing organization under this regulation and such agreement shall be made available to the Commission, upon request.

(7) Monitoring for Compliance:

The foreign board of trade and the clearing organization will employ reasonable procedures for monitoring and enforcing compliance with the specified conditions of its registration.

(8) Conditions Applicable to Swaps Trading:

(i) If the foreign board of trade makes swaps contracts available by direct access, the foreign board of trade must report to the public, on a real-time basis, data relating to each swap transaction, including price and volume, as soon as technologically practicable after execution of the swap transaction.

(ii) If the foreign board of trade makes swaps contracts available by direct access, the foreign board of trade must ensure that all swap transaction data is timely reported to a swap data repository that is either A. registered with the Commission, or B. has an information sharing arrangement with, the Commission.

(iii) If the foreign board of trade makes swaps contracts available by direct access, the foreign board of trade must agree to coordinate with the Commission with respect to arrangements established to address cross market oversight issues, including surveillance, emergency actions and the monitoring of trading.

(b) Other Continuing Obligations.

(1) Foreign boards of trade registered under this part and their clearing organizations must also comply with the following regulatory obligations on an ongoing basis:

(i) The foreign board of trade will maintain the following updated information and submit such information to the Commission on at least a quarterly basis, not later than 30 days following the end of the quarter, and at any time promptly upon the request of a Commission representative, computed based upon separating buy sides and sell sides:

(A) For each contract available to be traded through the foreign board of trade's trading system,

(1) The total trade volume originating from electronic trading devices providing direct access to the trading system in the United States,

(2) The total trade volume for such products traded through the trading system worldwide, and

(3) The total trade volume for such products traded on the foreign board of trade generally; and

(B) A listing of the names, National Futures Association identification numbers (if applicable), and main business addresses in the United States of all members and other participants that have direct access to the trading system in the United States.

(ii) The foreign board of trade will promptly provide to the Commission written notice of the following:

(A) Any material change in the information provided in the registration application.

(B) Any material change in the foreign board of trade's or clearing organization's rules or the laws, rules, and regulations in the home country jurisdictions of the foreign board of trade or clearing organization relevant to futures, options and swaps contracts.

(C) Any matter known to the foreign board of trade, the clearing organization or its representatives that, in the judgment of the foreign board of trade or clearing organization judgment, may affect the financial or operational viability of the foreign board of trade or its clearing organization with respect to contracts traded by direct access, including, but not limited to, any significant system failure or interruption.

(D) Any default, insolvency, or bankruptcy of any foreign board of trade member or other participant that is or should be known to the foreign board of trade or its representatives or the clearing organization or its representatives that may have a material, adverse impact upon the condition of the foreign board of trade as it relates to trading by direct access, its clearing organization or upon any United States customer or firm or any default, insolvency or bankruptcy of any member of the foreign board of trade's clearing organization.

(E) Any violation of the specified conditions of the foreign board of trade's registration or failure to satisfy the requirements for registration under this part that is known or should be known by the foreign board of trade, the clearing organization or any of their respective members or participants.

(F) Any disciplinary action by the foreign board of trade or its clearing organization with respect to any contract available to be traded by direct access taken against any of their respective members or participants that involves any market manipulation, fraud, deceit, or conversion or that results in suspension or expulsion.

(iii) The foreign board of trade and the clearing organization, as applicable, must provide the following to the Commission on an annual basis.

(A) A certification from the foreign board of trade's regulatory authority confirming that the foreign board of trade retains its authorization, licensure or registration, as applicable, as a regulated market and/or exchange under the authorization, licensing or other registration methodology used by the foreign board of trade's regulatory authority and that the foreign board of trade is in continued good standing.

(B) A certification from the clearing organization's regulatory authority confirming that the clearing organization retains its authorization, licensure or registration, as applicable, as a clearing organization under the authorization, licensing or other registration methodology used by the clearing organization's regulatory authority and is in continued good standing.

(C) If the clearing organization is not a derivatives clearing organization, a recertification of the clearing organization's compliance with the Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or otherwise amended, or successive standards, principles and guidance for central counterparties and financial market infrastructures adopted jointly by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions.

(D) A certification that affiliates of members and other participants, as defined in § 48.2(j) of this part continue to be required to comply with appropriate registration requirements, conditions for registration and the rules of the foreign board of trade and that the members or other participants to which they are affiliated remain responsible to the foreign board of trade for ensuring their affiliates' compliance.

(E) A description of any material changes to any relevant representation regarding the foreign board of trade or clearing organization made to the Commission that have not been previously disclosed, in writing, or a certification that no material changes have been made.

(F) A description of any significant disciplinary or enforcement actions that have been instituted by or against the foreign board of trade or the clearing organization or the senior officers of either in the prior year.

(G) A written description of any material changes to the regulatory regime to which the foreign board of trade or the clearing organization are subject that have not been previously disclosed, in writing, to the Commission, or a certification that no material changes have occurred.

(2) The above-referenced materials must be signed by an officer of the foreign board of trade or the clearing organization who maintains the authority to bind the foreign board of trade or clearing organization, as applicable, and be based on the officer's personal knowledge.

(c) Additional Specified Conditions for Foreign Boards of Trade with Linked Contacts. If a registered foreign board of trade grants members or other participants located in the United States direct access and makes available to them a linked contract, the following additional conditions apply:

(1) Statutory Conditions.

(i) The foreign board of trade must make public daily trading information regarding the linked contract that is comparable to the daily trading information published by the registered entity for the contract to which the foreign board of trade's contract is linked, and

(ii) The foreign board of trade (or its regulatory authority) must:

(A) Adopt position limits (including related hedge exemption provisions) applicable to all market participants for the linked contract that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the contract to which it is linked;

(B) Have the authority to require or direct any market participant to limit, reduce, or liquidate any position the foreign board of trade (or its regulatory authority) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a of the Act, price distortion, or disruption of delivery on the cash settlement process;

(C) Agree to promptly notify the Commission, with regard to the linked contract, of any change regarding—

(*1*) The information that the foreign board of trade will make publicly available,

(*2*) The position limits that foreign board of trade or its regulatory authority will adopt and enforce,

(*3*) The position reductions required to prevent manipulation, excessive speculation as described in section 4a of the Act, price distortion, or disruption of delivery or the cash settlement process, and

(*4*) Any other area of interest expressed by the Commission to the foreign board of trade or its regulatory authority;

(D) Provide information to the Commission regarding large trader positions in the linked contract that is comparable to the large trader position information collected by the Commission for the contract to which it is linked; and

(E) Provide the Commission such information as is necessary to publish reports on aggregate trader positions for the linked contract that are comparable to such reports on aggregate trader positions for the contract to which it is linked, and

(iii) If the Commission establishes speculative position limits (including related hedge exemption provisions) on the aggregate number or amount of positions in a contract traded on a United States registered entity and the registered foreign board of trade lists a contract that is linked to the contract listed for trading on the registered entity, the foreign board of trade (or its regulatory authority) must adopt position limits (including related hedge exemption provisions) for the linked contract as determined by the Commission.

(2) Other Conditions on Linked Contracts:

(i) The foreign board of trade will inform the Commission in a quarterly report of any member that had positions in a linked contract above the applicable foreign board of trade position limit, whether a hedge exemption was granted, and if not, whether a disciplinary action was taken.

(ii) The foreign board of trade will provide Commission staff, either directly or through its agent, with trade execution and audit trail data for the Commission's Trade Surveillance System on a trade-date plus one basis and in a form, content and manner acceptable to the Commission for all linked contracts.

(iii) The foreign board of trade and the clearing organization will permit and cooperate with Commission on-site visits for the purpose of overseeing the foreign board of trade's ongoing compliance with registration requirements and conditions of registration. The Commission will provide notice to the foreign board of trade's regulatory authority of any requests for an on-site visit.

(iv) The foreign board of trade will provide to Commission staff, at least one day prior to the effective date thereof, except in the event of an emergency market situation, copies of, or hyperlinks to, all rules, rule amendments, circulars and other notices published by the foreign board of trade with respect to all linked contracts.

(v) The foreign board of trade will provide to Commission staff copies of all Disciplinary Notices involving the foreign board of trade's linked contracts upon closure of the action. Such Notices should include the reason the action was undertaken, the results of the investigation that led to the disciplinary action, and any sanctions imposed.

(vi) In the event that the Commission, pursuant to its emergency powers authority, directs that the United States registered entity which lists the contract to which the foreign board of trade's contract is linked take emergency action with respect to a linked contract (for example, to cease trading in the contract), the foreign board of trade, subject to information-sharing arrangements between the Commission and its regulatory authority, agrees to promptly take similar action with respect to its linked contract.

§ 48.9 Revocation of registration.

(a) Failure to Satisfy Registration Requirements or Conditions: Upon request by the Commission, a registered foreign board of trade shall file with the Commission a written demonstration, containing such supporting data, information, and documents, in such form and manner and within such timeframe as the Commission may specify, that the foreign board of trade or clearing organization is in compliance with the registration requirements or conditions for registration.

(1) If the Commission determines that a registered foreign board of trade (or the clearing organization) has failed to satisfy any of the registration requirements or conditions for registration, the Commission shall notify the foreign board of trade of such determination and afford the foreign board of trade an opportunity to make appropriate changes to bring the foreign board of trade into compliance with the registration requirements or conditions for registration.

(2) If, not later than 30 days after receiving a notification under subsection (1) of this paragraph, the foreign board of trade fails to make changes that, in the opinion of the Commission are necessary to comply with the registration requirements or conditions for registration, the Commission may revoke the foreign board of trade's registration, after appropriate notice and an opportunity for a hearing, by issuing an Order Revoking Registration which sets forth the reasons therefor.

(3) A foreign board of trade whose registration has been revoked for failure to satisfy a registration requirement or condition of registration may apply for re-registration 360 days after the issuance of the Order Revoking Registration if the deficiency causing the revocation has been cured or relevant facts and circumstances have changed.

(b) Other Events that Could Result in Revocation. Revocation under these circumstances would not necessarily follow the procedures delineated above, but will be handled by the Commission as relevant facts or circumstances warrant.

(1) The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity for a hearing, if the Commission determines that a representation made in the application for registration is found to be untrue or materially misleading.

(2) The Commission may revoke a foreign board of trade's registration, after appropriate notice and an opportunity for a hearing, if there is a material change in the regulatory regime applicable to the foreign board of trade or clearing organization.

(3) The Commission may revoke a foreign board of trade's registration in the event of an emergency or in a circumstance where the Commission determines that revocation would be necessary or appropriate in the public interest. Following revocation, the Commission will provide an opportunity for a hearing.

(4) The Commission may revoke a foreign board of trade's registration in the event the foreign board of trade or the clearing organization is no longer authorized, licensed or registered, as applicable, as a regulated market and/or exchange or clearing organization or ceases to operate as a foreign board of trade or clearing organization.

§ 48.10 Additional contracts.

(a) Generally. Registered foreign boards of trade that wish to list additional futures and option and swaps contracts for trading by direct access to the foreign board of trades' electronic trading and order matching systems from the United States must submit a written request prior to offering the contracts from within the United States. Such a written request must include the terms and conditions of the additional

futures and option and swaps contracts that the foreign board of trade wishes to make available and a certification that the additional contracts meet the requirements of section 48.7(c) of this part and the foreign board of trade and the clearing organization continue to satisfy the conditions of registration. The foreign board of trade can make available for trading the additional contracts ten business days after the date of receipt by the Commission of the written request, unless the Commission notifies the foreign board of trade that additional time is needed to complete its review of policy or other issues pertinent to the additional contracts. A registered foreign board of trade may list for trading an additional futures contract on a non-narrow-based security index pursuant to the procedures set forth in Appendix D to part 30 of this chapter.

(b) Option contracts on previously approved futures contracts.

(1) If the option is on a futures contract that is not a linked contract, the option contract may be made available for trading by direct access by filing with the Commission no later than the business day preceding the initial listing of the contract:

(i) A copy of the terms and conditions of the additional contract and

(ii) A certification that the foreign board of trade and the clearing organization continue to satisfy the conditions of its registration.

(2) If the option is on a futures contract that is a linked contract, the option contract may be made available for trading by direct access by filing with the Commission no later than the business day preceding the initial listing of the contract:

(i) A copy of the terms and conditions of the additional contract and

(ii) A certification that the foreign board of trade and the clearing organization continue to satisfy the conditions of its registration, including the conditions specifically applicable to linked contracts set forth in section 48.8(c) of this part.

(3) If the option is on a non-narrow-based security index futures contract which may be offered or sold in the United States pursuant to a no-action letter issued by the Commission's Office of the General Counsel, the option contract may be listed for trading by direct access without further action by either the registered foreign board of trade or the Commission.

Appendix—Part 48—Contents of Application

I. General Information and Documentation

(a) General Information. A description of the following for the foreign board of trade and clearing organization: Location; history, size; ownership and corporate structure; governance and committee structure; current or anticipated presence of staff in the United States; and anticipated volume of business emanating from members and other participants that will be provided direct access to the foreign board of trade's trading system and the percentage of that volume compared to the foreign board of trade's total volume.

(b) Initial Documentation. The following documents for the foreign board of trade and clearing organization:

(1) Articles of association, constitution, or other similar organizational documents;

(2) Membership and trading participant agreements;

(3) Clearing agreements;

(4) Terms and conditions of contracts to be available from within the United States pursuant to the specified conditions of registration;

(5) The national statutes, laws and regulations governing the activities of the foreign board of trade and clearing organization and their respective participants;

(6) The current rules, regulations, guidelines and bylaws of the foreign board of trade or clearing organization;

(7) Evidence of the authorization, licensure or registration of the foreign board of trade and clearing organization pursuant to the regulatory regime in their home country jurisdiction and a representation by their respective regulators that they are in good regulatory standing in the capacity in which they are authorized, licensed or registered;

(8) A summary of any disciplinary or enforcement actions or proceedings that have been brought against the foreign board of trade and clearing organization, or the senior officers thereof, in the past five years and the resolution of those actions or proceedings;

(9) An undertaking by the chief compliance officer(s) (or functional equivalent[s]) of the foreign board of trade and the clearing organization to notify Commission staff promptly if any of the representations made in connection with or related to the foreign board of trade's application for registration cease to be true or correct, or become incomplete or misleading.

II. Membership Criteria

The following for the foreign board of trade and the clearing organization:

(a) Membership or Participant Categories and Access.

A description of the categories of membership and participation in the foreign board of trade or clearing organization and the access, trading and clearing privileges provided by the board of trade or clearing organization, as applicable. The description should include any restrictions thereto for all entities to which the foreign board of trade intends to grant direct access to its trading system.

(b) Membership Criteria.

(1) A description of requirements for membership and participation on the trading or clearing system, as applicable, and the manner in which members and other participants must demonstrate their compliance with these requirements.

(2) Professional Standards. A description of the professional requirements, qualifications, and/or competencies required of members or other participants and/or their staff.

(c) Financial Integrity.

(1) A description of the manner in which the foreign board of trade and the clearing organization evaluate the financial resources holdings of its members or participants, including any financial requirements, standards, guides, or thresholds used to qualify members and other participants.

(2) Describe the process by which applicants demonstrate compliance with financial requirements for membership participation including:

(i) Working capital and collateral requirements,

(ii) Risk management mechanisms for members allowing customers to place orders.

(d) Authorization, Licensure or Registration Requirements. Describe any regulatory and self-regulatory authorization, licensure or registration requirements that the foreign board of trade and the clearing organization impose upon its members and other participants including, but not limited to any authorization, licensure or registration requirements imposed by the regulatory authorities in the home country jurisdiction(s) of the foreign board of trade and clearing organization. Describe the process by which the foreign board of trade and the clearing organization, as applicable, confirm compliance with those requirements.

(e) Fit and Proper. Describe how the foreign board of trade and clearing organization ensure that potential members/other participants meet fit and proper standards.

(f) Qualifications for Board and/or Committee Membership. Describe the requirements applicable to membership on the governing board and significant committees of the foreign board of trade and clearing organization, and describe how the foreign board of trade and clearing organization ensure that potential governing board and committee members/other participants meet these standards.

(g) Conflict of Interest Provisions. Describe the provisions to minimize and resolve conflicts of interest with respect to membership on the governing board and significant committees of the foreign board of trade and the clearing organization.

(h) Disclosure of Information. Describe the rules with respect to the disclosure of material non-public information obtained as a result of a member's or other participant's performance on the governing board or significant committee.

III. The Automated Trading System

(a) A description of the following:

(1) the order matching/execution system, including a complete description of all permitted ways in which members or other participants (or their customers) may connect

to the trade matching/execution system and the related requirements (for example, authorization agreements, technical compliance verifications, identification of order routing systems and/or users,

(2) the architecture of the systems, including hardware and distribution network, as well as any pre-trade risk-management controls that are made available to system users,

(3) the security features of the systems,

(4) the length of time such systems have been operating,

(5) any significant system failures or interruptions,

(6) the nature of any technical review of the order matching/execution system performed by the home country regulator,

(7) provide a copy of any order or certification or self-certification received and any discrepancies between the standard of review and the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions,

(8) trading hours,

(9) types and duration of orders accepted,

(10) information that must be included on orders,

(11) trade confirmation and trade error procedures,

(12) anonymity of participants,

(13) trading system connectivity with clearing system,

(14) response time,

(15) ability to determine depth of market,

(16) market continuity provisions,

(17) reporting and recordkeeping requirements, and

(18) error trade policies.

(b) A description of the manner in which the foreign board of trade assures the following with respect to the trading system:

(1) Algorithm. The trade matching algorithm matches trades fairly and timely.

(2) IOSCO Principles. The trading system's compliance with the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions.

(3) Audit Trail.

(i) The audit trail captures all relevant data, including changes to orders.

(ii) Audit trail data is securely maintained and available for an adequate time period.

(4) Public Data. Trade data is available to users and the public.

(5) Reliability. The trading system has demonstrated reliability.

(6) Secure Access. Access to the trading system is secure and protected.

(7) Emergency Provisions. There are adequate provisions for emergency operations and disaster recovery.

(8) Data Loss Prevention. Trading data is backed up to prevent loss of data.

(9) Contracts Available. Mechanisms are available to ensure that only those futures and option contracts or swaps that have been identified to the Commission as part of the application or permitted to be made available for trading by direct access pursuant to the procedures set forth in section 48.10 of this part are made available for trading on connections in the United States.

(10) Predominance of the Centralized Market. Mechanisms are available that ensure a competitive, open and efficient market and mechanism for executing transactions.

IV. The Terms and Conditions of Contracts Proposed To Be Made Available in the United States

(a) Provide the terms and conditions of futures, option and swaps contracts intended to be made available for direct access.

(b) Demonstrate that contracts are not prohibited from being traded by United States persons.

(c) Demonstrate that contracts are cleared.

(d) Identify any contracts that are linked to a contract listed for trading on a United States-registered entity, for example, a contract that settles against any price (including the daily or final settlement price) of one or more contracts listed for trading on a United States-registered entity.

(e) Identify any contracts that share any other commonality with a contract listed for trading on a United States-registered entity, for example, both the foreign board of trade's and the United States-registered entity's contract settle to the price of the same third party-constructed index.

(f) Demonstrate that the contracts are not readily susceptible to manipulation, as follows:

(1) Generally. For contracts other than broad-based stock indexes, provide the information required in Appendix A to Part 40 (Guideline No. 1) with regard to manipulation.

(i) For delivered contracts: a demonstration that the terms and conditions of the contract will result in a deliverable supply so that the contract will not be conducive to price manipulation or distortion and that the deliverable supply reasonably can be expected to be available to short traders and salable by long traders at its market value in normal cash marketing channels.

(ii) For cash-settled contracts: a demonstration that cash settlement mechanism of the contract is at a price reflecting the underlying cash market (or the level or index if there is no underlying cash market), will not be readily subject to manipulation or distortion, and is reliable, acceptable, publicly available and timely.

(iii) To deter and detect abusive or disruptive trading behavior that could result in price distortions: A demonstration that the foreign board of trade has rules and mechanisms, for example, position limits, restrictions on size and pricing of block trades, restrictions on market on close or trade at settlement orders during the daily close and settlement, and prohibitions on, and the capacity to detect, "marking" of the trading close or important economic announcements.

(2) Broad-Based Stock Indexes. For non-narrow based stock index futures contracts, provide the information required in Appendix D to Part 30 of this chapter. A no-action letter from the Commission's Office of General Counsel is required to offer futures contracts on non-narrow-based stock index futures contracts to United States citizens.

(3) Manipulation Cases. With respect to contracts to be listed for trading by direct access, describe each investigation, action, proceeding or case involving manipulation and involving a contract traded on the foreign board of trade in the three years preceding the application date, whether initiated by the foreign board of trade, a regulatory or self-regulatory authority or agency or another government or prosecutorial agency. For each such action, proceeding or case, describe the alleged manipulative activity and the current status re resolution thereof.

V. Settlement and Clearing

(a) Clearing System. A description of the clearing organization's clearing and settlement systems.

(b) Certification. A certification, signed by the chief executive officer (or functional equivalent) of the clearing organization, that the clearing system complies with the current Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or otherwise amended, or successive standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the Committee on Payment and Settlement Systems or the International Organization of Securities Commissions.

(c) RCCP Compliance. A detailed description of the manner in which the clearing organization complies with each of the Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or amended, (or successive standards, principles and guidance for central counterparties or financial infrastructures adopted jointly by the Committee on Payment and Settlement Systems or the International Organization of Securities Commissions) and documentation supporting the representations made, including any relevant rules or written policies or procedures of the clearing organization.

VI. The Regulatory Regime Governing the Foreign Board of Trade and Clearing Organization in Their Home Countries

Provide information or documentation necessary to demonstrate that the foreign board of trade and its clearing organization are subject to comprehensive supervision and regulation by the appropriate governmental authorities in their home countries that is comparable to the comprehensive supervision and regulation to which designated contract markets, derivatives clearing organizations and market participants are subject in the United States. The information and documentation provided must be sufficient to demonstrate that the foreign board of trade and clearing organization are subject to an established regulatory regime that is based upon regulatory objectives equivalent (not necessarily identical) to those applicable to designated contract markets and derivatives

clearing organizations in the United States and that provides basic protections for customers trading on markets and for the integrity of the markets themselves:

(a) Regulatory Authority.

(1) Structure, function and powers. Describe the regulatory authority's structure, resources, staff and scope of authority; the regulator's authorizing statutes, including the source of its authority to supervise the foreign board of trade and the clearing organization; the rules and policy statements issued by the regulator with respect to the authorization and continuing oversight of markets, electronic trading systems and clearing organizations and the financial protections afforded customer funds. Provide copies of recent public reports disclosing the regulator's oversight and enforcement activities which are, in the judgment of the regulator, relevant to the FBOT's status as a registered FBOT.

(2) Authorization and continuing oversight of the foreign board of trade and clearing organization. Describe and provide copies (with, as applicable, English translations) of the laws, rules, regulations and policies applicable to the authorization, licensure or registration of the foreign board of trade and clearing organization and the continuing oversight thereof; the regulatory authority's program for the ongoing supervision and oversight of the foreign board of trade and clearing organization and the enforcement of their respective trading and clearing rules; the financial resources requirements applicable to the authorization, licensure or registration of the foreign board of trade and clearing organization and the continued operations thereof; the extent to which the Principles for the Oversight of Screen-Based Trading Systems for Derivative Products developed by the Technical Committee of the International Organization of Securities Commissions and the current Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions, as updated, revised or amended, or successive standards, principles and guidance for central counterparties or financial market infrastructures adopted jointly by the Committee on Payment and Settlement Systems or the International Organization of Securities Commissions are used or applied by the regulatory authority in its supervision and oversight of the foreign board of trade or clearing organization or are incorporated into its rules and regulations and the extent to which the regulatory authorities review the applicable trading and clearing systems for compliance therewith; the extent to which the regulatory authority reviews and/or approves the trading and clearing rules of the foreign board of trade or clearing organization prior to their implementation; the extent to which the regulatory authority reviews and/or approves exchange contracts prior to their being listed for trading; and the regulatory authority's approach to the detection and deterrence of market manipulation and other unfair trading practices.

(3) Intermediary Oversight. Describe the laws, rules, regulations and policies that govern the authorization and ongoing supervision and oversight of market intermediaries who may deal with United States participants accessing the foreign board of trade, including:

(i) Recordkeeping requirements,

(ii) The protection of customer funds, and

(iii) Procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.

(4) Enforcement. Describe the regulatory authority's inspection, investigation and surveillance powers; and the program pursuant to which the regulatory authority uses those powers to inspect, investigate, and enforce rules applicable to the foreign board of trade and the clearing organization.

(b) Demonstration of Continuing Regulatory "Good Standing."

The regulatory authorities governing the activities of the foreign board of trade and clearing organization must submit a report confirming that the foreign board of trade and clearing organization are in regulatory good standing. The report should include:

(1) Confirmation of regulatory status (including proper authorization, licensure and registration) of the foreign board of trade and clearing organization;

(2) Any recent oversight reports generated by the regulatory authority which are, in the judgment of the regulatory authority, relevant to the FBOT's status as a registered FBOT;

(3) Disclosure of any significant regulatory concerns, inquiries or investigations by the regulatory authority, including any concerns, inquiries or investigations with regard to the foreign board of trade's arrangements to monitor trading by members or other participants located in the United States, the adequacy of the risk management controls of the trading or of the clearing system; and

(4) A description of any investigations (formal or informal) or disciplinary actions initiated by the regulatory authority or any other self-regulatory, regulatory or governmental entity against the foreign board of trade, the clearing organization or any of their respective senior officers during the past year.

(c) Staff Visits with Regulatory Authorities. The regulatory authorities governing the activities of the foreign board of trade and the clearing organization must agree to cooperate with a Commission staff visit subsequent to the application period on an "as needed basis," the objective of which will be to familiarize Commission staff with oversight supervisory staff of the regulatory authority; discuss any changes to the law, rules and regulations that formed the basis of the application; discuss the cooperation and coordination between the authorities, including, without limitation, information sharing arrangements; and discuss issues of concern as they may develop from time to time (for example, linked contracts, unusual trading that may be of concern to Commission surveillance staff).

VII. The Rules of the Foreign Board of Trade and Its Clearing Organization and Enforcement Thereof

With respect to the foreign board of trade and the clearing organization, as applicable:

(a) Describe the regulatory or compliance department, to include size, experience level, competencies, duties and responsibilities.

(b) Describe the foreign board of trade's trade practice rules. Include in the description the following:

(1) Capacity of the foreign board of trade. Does the foreign board of trade have the capacity to detect, investigate, and sanction persons who violate foreign board of trade rules?

(2) Abusive Trading Practices Prohibited. Does the foreign board of trade implement and enforce rules that prohibit abusive trading practices (for example, wash sales or trading ahead) and other market abuses, including the ability to detect and deter insider trading?

(3) Trade Surveillance System. Does the foreign board of trade maintain a trade practice surveillance system appropriate to the foreign board of trade capable of detecting and investigating potential trade practice violations?

(4) Trade Practice/Audit Trail. Does the foreign board of trades' audit trail capture and retain sufficient order and trade-related data to allow their compliance staffs to detect trading and market abuses and to reconstruct all transactions within a reasonable period of time?

(5) Real-time Market Monitoring. Does the foreign board of trade maintain appropriate resources to conduct real-time supervision of trading?

(6) Compliance Staff and Resources. Does the foreign board of trade have sufficient compliance staff and resources, including those outsourced or delegated to third parties, to fulfill their regulatory responsibilities?

(7) Ability to Obtain Information. Do the foreign board of trade's rules authorize compliance staff to obtain, from market participants, any information and cooperation necessary to conduct effective rule enforcement and investigations?

(8) Investigations and Investigation Reports. Does the foreign board of trade's compliance staff investigate suspected rule violations and prepare reports of their finding and recommendations?

(9) Access Requirements. Does the foreign board of trade implement and enforce rules relating to the persons that may trade on the foreign board of trade, and the means by which they connect to it?

(10) Jurisdiction. Does the foreign board of trade require market participants to submit to the foreign board of trade's jurisdiction as a condition of access to the market?

(c) Describe the foreign board of trade's and, if appropriate, the clearing organization's disciplinary rules, addressing the following:

(1) Disciplinary Authority and Procedures. Do the foreign board of trade and, the clearing organization, have and enforce disciplinary procedures that empower staff to recommend and prosecute disciplinary actions for suspected rule violations? Do the procedures include the authority to fine, suspend, or expel any market participant pursuant to fair and clear standards?

(2) Warning Letters and Summary Actions. Do the foreign board of trade and the clearing

organization authorize staff to issue warning letters and/or summary fines for specified rule violations?

(3) Review of Investigation Reports. Do the compliance staffs of the foreign board of trade and the clearing organization present their findings to a disciplinary panel or other authority for issuance of charges, instruction to investigate further, or finding that insufficient basis exists to issue charges?

(4) Disciplinary Committees. Do the foreign board of trade and the clearing organization take disciplinary action via disciplinary committees and formal disciplinary processes unless the violation is subject to foreign board of trade staff's summary fining authority?

(5) Disciplinary Decisions. Do the foreign board of trade, clearing organization or their regulatory authorities articulate the rationale for their decisions?

(6) Adequacy of Sanctions. Are the sanctions commensurate with the violations committed and do they serve as effective deterrents to future violations?

(d) Describe Market Surveillance rules, addressing the following:

Does the foreign board of trade have a dedicated market surveillance department or effective delegation or outsourcing of that function? If so, provide a general description of the staff, the data collected on traders' market activity, data collected to determine whether prices are responding to supply and demand, data on the size and ownership of deliverable supplies, a description of the manner in which the foreign board of trade detects and deters market manipulation, for cash-settled contracts, methods of monitoring the settlement price or value, and any foreign board of trade large-trader or other position reporting system.

(e) Describe the Clearing Organization rules, addressing the following:

Does the clearing organization maintain rules that require that the clearing organization comply with the Recommendations for Central Counterparties that have been issued jointly by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (or successive standards) and, if so, provide copies of the rules.

VIII. Information Sharing Agreements Among the Commission, the Foreign Board of Trade, the Clearing Organization and Relevant Regulatory Authorities

With respect to the foreign board of trade, the clearing organization, and their respective regulatory authorities:

(a) Describe the arrangements among the Commission, the foreign board of trade, the clearing organization and the relevant foreign regulatory authorities that govern the sharing of information regarding the transactions that are executed pursuant to the foreign board of trade's registration and the clearing and settlement of those transactions. This discussion should include:

(1) The foreign board of trade, clearing organization and the regulatory authorities governing the activities of the foreign board of trade and clearing organization commit, in writing to provide immediately and directly to the Commission information and documentation requested by Commission staff that Commission staff determines is needed:

(i) To evaluate the continued eligibility of the foreign board of trade for registration,

(ii) To enforce compliance with the specified conditions of the registration,

(iii) To enable the Commission to carry out its duties under the Act and Commission regulations and to provide adequate protection to the public or registered entities,

(iv) To respond to potential market abuse associated with trading by direct access on the registered foreign board of trade, and

(v) Where Commission staff, in its discretion, determines that a contract traded on a registered foreign board of trade may affect the Commission's ability to carry out surveillance with respect to a United States-registered entity.

(2) Exchange International MOU. The foreign board of trade must execute, or commit to execute, the International Information Sharing Memorandum of Understanding and Agreement.

(b) Regulatory Authority and the IOSCO MOU. The regulatory authorities governing the activities of and providing supervision and oversight of the foreign board of trade and clearing organization must be signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding. If the regulator is not a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding, the regulator must inform the Commission of the reasons why the document has not been signed (for example, in the process of applying, application is under consideration by the International Organization of Securities Commissions Multilateral Memorandum of Understanding Screening Group) and supply any additional information requested by the Commission. The Commission will determine, on a case-by-case basis, whether any interim information sharing arrangement will be acceptable.

(c) Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations (Boca Declaration). The regulatory authorities governing the activities of and providing supervision and oversight of the foreign board of trade and clearing organization must sign the Declaration on Cooperation and Supervision of International Futures Exchanges and Clearing Organizations or otherwise commit to share the types of information contemplated by the International Information Sharing Memorandum of Understanding and Agreement with the Commission pursuant to an existing memorandum of understanding or other arrangement with the Commission.

Issued in Washington, DC, November 10, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

Statement of Chairman Gary Gensler

Notice of Proposed Rulemaking—Registration of Foreign Boards of Trade

I support the proposed rulemaking to implement a registration system for Foreign Boards of Trade (FBOTs) seeking to offer market participants in the United States direct access to the FBOTs' trading systems. This registration system replaces the agency's current practice of issuing no-action letters to such FBOTs. Importantly, this will bring consistency and transparency to the Commission's oversight of such entities. Today's proposal also provides that FBOTs subject to comparable, comprehensive supervision and regulation in their home country and that meet conditions outlined in the proposal would be allowed to make available swaps contracts through direct access to U.S. market participants.

[FR Doc. 2010–29023 Filed 11–18–10; 8:45 am]

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Federal Register

Friday,
November 19, 2010

Part III

The President

Proclamation 8600—National Entrepreneurship Week, 2010

Proclamation 8601—America Recycles Day, 2010

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Title 3—

The President

Proclamation 8600 of November 15, 2010

National Entrepreneurship Week, 2010

By the President of the United States of America

A Proclamation

Entrepreneurs embody the promise that lies at the heart of America—that if you have a good idea and work hard enough, the American dream is within your reach. During National Entrepreneurship Week, we renew our commitment to supporting the entrepreneurs who power the engine of our Nation's economy. These intrepid individuals translate their vision into products and services that keep America strong and competitive on a global scale, and build opportunity and prosperity across our country.

As we emerge from a historic economic recession, my Administration has taken decisive action to accelerate growth and remove barriers for entrepreneurs and small business owners to grow, hire, and prosper. At a time when small business lending standards had tightened considerably, the American Recovery and Reinvestment Act helped the Small Business Administration (SBA) work with lenders to provide critical SBA loans. These loans assisted thousands of entrepreneurs in starting new businesses, employing workers, and jumpstarting our economy. I was also proud to sign the Small Business Jobs Act of 2010, the most important investment in small businesses in more than a decade. This legislation will make it easier for them to expand and hire, creating tax breaks and accelerating more than $55 billion in tax relief for entrepreneurs and small business owners by the end of 2011.

To harness the ingenuity of the American people, my Administration has developed a national innovation strategy, which emphasizes entrepreneurship as a catalyst for new industries, new businesses, and new jobs. This strategy focuses on key investments to foster American innovation, improving education, building a 21st-century infrastructure, and bolstering our ability to conduct cutting-edge research. It also seeks to promote and facilitate competitive markets for entrepreneurs, and to support breakthroughs in areas of national priority—including alternative energy, health care technology, and advanced vehicle technologies. In addition, the new National Advisory Council on Innovation and Entrepreneurship is collecting input from across the United States to recommend policies that will bolster our economic growth and lead to sustainable, well-paying American jobs. I encourage aspiring entrepreneurs and other Americans interested in promoting innovation to visit www.SBA.gov for resources and information.

All Americans can play a role in increasing the prevalence and success of new start-ups. Business leaders can mentor a budding entrepreneur who has an original idea and the will to execute, but could benefit from the guidance of an experienced owner or operator. Philanthropists can expand entrepreneurship education for ambitious students at underserved schools and community colleges. Universities can accelerate the transition of scientific breakthroughs from the lab to the marketplace. Together, we can help millions of entrepreneurs create the industries and jobs of the 21st century and solve some of the toughest challenges we face as a Nation.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 14 through

November 20, 2010, as National Entrepreneurship Week. I call upon all Americans to commemorate this week with appropriate programs and activities, and to celebrate November 19, 2010, as National Entrepreneurs' Day.

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

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Presidential Documents

Proclamation 8601 of November 15, 2010

America Recycles Day, 2010

By the President of the United States of America

A Proclamation

Each small act of conservation, when combined with other innumerable deeds across the country, can have an enormous impact on the health of our environment. On America Recycles Day, we celebrate the individuals, communities, local governments, and businesses that work together to recycle waste and develop innovative ways to manage our resources more sustainably.

Americans already take many steps to protect our planet, participating in curbside recycling and community composting programs, and expanding their use of recyclable and recycled materials. Recycling not only preserves our environment by conserving precious resources and reducing our carbon footprint, but it also contributes to job creation and economic development. This billion-dollar industry employs thousands of workers nationwide, and evolving our recycling practices can help create green jobs, support a vibrant American recycling and refurbishing industry, and advance our clean energy economy.

While we can celebrate the breadth of our successes on America Recycles Day, we must also recommit to building upon this progress and to drawing attention to further developments, including the recycling of electronic products. The increased use of electronics and technology in our homes and society brings the challenge of protecting human health and the environment from potentially harmful effects of the improper handling and disposal of these products. Currently, most discarded consumer electronics end up in our landfills or are exported abroad, creating potential health and environmental hazards and representing a lost opportunity to recover valuable resources such as rare earth minerals.

To address the problems caused by electronic waste, American businesses, government, and individuals must work together to manage these electronics throughout the product lifecycle—from design and manufacturing through their use and eventual recycling, recovery, and disposal. To ensure the Federal Government leads as a responsible consumer, my Administration has established an interagency task force to prepare a national strategy for responsible electronics stewardship, including improvements to Federal procedures for managing electronic products. This strategy must also include steps to ensure electronics containing hazardous materials collected for recycling and disposal are not exported to developing nations that lack the capacity to manage the recovery and disposal of these products in ways that safeguard human health and the environment.

On America Recycles Day, let us respond to our collective responsibility as a people and a Nation to be better stewards of our global environment, and to pass down a planet to future generations that is better than we found it.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 15, 2010, as America Recycles Day. I call upon the people of the United States to

observe this day with appropriate programs and activities, and I encourage all Americans to continue their recycling efforts throughout the year.

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

[FR Doc. 2010–29455
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