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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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

RIN 3245–AF77

Surety Bond Guarantee Program; Disaster and Miscellaneous Amendments

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA) is issuing this final rule to implement the authority provided by the Small Business Disaster Response and Loan Improvements Act of 2008, for issuing surety bond guarantees for contracts and orders related to a major disaster. The rule also clarifies that the SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract.

DATES: This rule is effective on February 14, 2011.

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

SUPPLEMENTARY INFORMATION: SBA guarantees bonds on contracts up to $2 million for small and emerging contractors who cannot obtain surety bonds through regular commercial channels. SBA's guarantee provides sureties with the incentive to provide bonding for these contractors, strengthening their ability to obtain bonding and to access greater contracting opportunities.

This rule implements the authority granted to the Agency in Sec.12079 of subtitle B of title XII of Public Law 110–246, which establishes the bonding thresholds for any procurement related to a major disaster. It adds a new provision to SBA regulations that authorizes SBA to approve, under certain conditions, an SBA bond guarantee on an individual Contract or Order up to $5,000,000 at the time of bond execution. For products or services procured under non-Federal Contracts or Orders up to $5,000,000, SBA may issue a bond guarantee if the products will be manufactured or the services will be performed in a major disaster area identified in the Federal Emergency Management Agency (FEMA) Web site. For products or services procured under Federal Contracts or Orders up to $5,000,000, SBA may issue a bond guarantee if: (a) The products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site; or (2) the products will be manufactured or the services will be performed outside the major disaster area and the products or services will directly assist in the recovery efforts in the major disaster area. SBA may issue a bond guarantee on a Federal Contract or Order up to $10,000,000 if it meets one of the conditions above and is requested by the Head of the Agency involved in disaster reconstruction efforts.

Additionally, this final rule provides that SBA's authority to guarantee bonds in the amounts authorized by Public Law 110–246 for a specific disaster would apply only during the 12 month period following the disaster declaration unless SBA extends, in its discretion, the authority for such disaster. SBA will publish any notices of extension in the **Federal Register.**

Lastly, this final rule clarifies that SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract.

Discussion of Public Comments

On April 26, 2010, SBA published the notice of proposed rulemaking with request for comment on these changes to the surety bond program in the **Federal Register** at 75 FR 21521. The comment period ended on May 26, 2010. SBA did not receive any public comments.

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

Executive Order 12866

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

Executive Order 12988

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

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this final rule has no federalism implications warranting preparation of a federalism assessment.

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

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

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

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

List of Subjects in 13 CFR Part 115

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

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

PART 115—SURETY BOND GUARANTEE

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

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

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

§ 115.10 Definitions.

* * * * *

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

* * * * *

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

* * * * *

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

§ 115.12 General program policies and provisions.

* * * * *

(e) * * *

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

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

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

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

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

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

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

* * * * *

■ 4. Amend § 115.16 as follows:

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

■ b. Remove the punctuation "." at the end of paragraph (f)(4) and add "; and" in its place; and

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

§ 115.16 Determination of Surety's Loss.

* * * * *

(f) * * *

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

Dated: January 6, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–652 Filed 1–13–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0808; Airspace Docket No. 10–AWP–14]
RIN 2120–AA66

Amendment of Class E Airspace; Kwajalein Island, Marshall Islands, RMI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule; technical amendment published in the **Federal Register**. In that rule, errors were made in the airspace description. This action corrects those errors.

DATES: Effective date 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace Regulation and ATC Procedures Group, Office of Mission Support Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On October 7, 2010, a final rule; technical amendment was published in the **Federal Register**, FAA Docket No. FAA–2010–0808, Airspace Docket No. 10–AWP–14 that amended Title 14 Code of Federal Regulations part 71 by amending Class E airspace; Kwajalein Island, Marshall Islands, RMI (75 FR 61993). Specifically, the Kwajalein Tactical Air Navigation System reference was removed from the legal descriptions. However, the airspace descriptions contained several data points that were in error. This action corrects those errors. The correct full legal description is provided below.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace area for Kwajalein Island, Marshall Islands, RMI, as published in the **Federal**

Register on October 7, 2010, FR Doc. 2010–25220, (75 FR 61933) on page 61994, column 1, is corrected as follows:

§ 71.1 [Amended]

Paragraph 6004–Class E airspace areas designated as an extension to a class D or class E surface area

* * * * *

AWP RM E4 Kwajalein Island, Marshall Islands, RMI [Amended]

Kwajalein Island, Bucholz AAF, RMI
(Lat. 08°43′12″ N., long. 167°43′54″ E.)
Kwajalein RBN
(Lat. 08°43′15″ N., long. 167°43′40″ E.)

That airspace extending upward from the surface within 2.2 miles each side of the Bucholz AAF 249° bearing, extending from the 4.3-mile radius of Bucholz AAF to 5.2 miles west of the Bucholz AAF, and within 3 miles each side of the 077° bearing from the Kwajalein RBN, extending from the 4.3-mile radius to 9.6 miles east of the RBN. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Pacific Chart Supplement.

* * * * *

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

* * * * *

AWP RM E5 Kwajalein Island, Marshall Islands, RMI [Amended]

Kwajalein Island, Bucholz AAF, RMI
(Lat. 08°43′12″ N., long. 167°43′54″ E.)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Bucholz AAF. That airspace extending upward from 1,200 feet above the surface within a 100-mile radius of Bucholz AAF.

Issued in Washington, DC, on January 12, 2011.

Edith V. Parish,

Manager, Airspace, Regulation and ATC Procedures Group.

[FR Doc. 2011–867 Filed 1–12–11; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Parts 145, 159, 173 and 174

[CBP Dec. 11–02]

Technical Corrections: Matters Subject to Protest and Various Protest Time Limits

AGENCIES: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends title 19 of the Code of Federal Regulations (19 CFR) by making technical corrections to certain protest provisions within part 174. The technical corrections are necessary to conform 19 CFR to reflect amendments to part 174's underlying statutory authority effected by the Customs Modernization provisions of the North American Free Trade Agreement (NAFTA) Implementation Act, the Miscellaneous Trade and Technical Corrections Act of 1999, and the Miscellaneous Trade and Technical Corrections Act of 2004. This document also makes related conforming changes to other provisions within 19 CFR, as necessitated by these statutory amendments, as well as non-substantive editorial and nomenclature changes.

DATES: The final rule is effective on January 14, 2011.

FOR FURTHER INFORMATION CONTACT: Julia H. Rieper, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade, Customs and Border Protection, Tel. (202) 325–0226.

SUPPLEMENTARY INFORMATION:

Background

This document amends title 19 of the Code of Federal Regulations (19 CFR) by making technical corrections to certain protest provisions within part 174 and certain related provisions in parts 145, 159 and 173. The technical corrections are necessary to conform 19 CFR to reflect amendments to part 174's underlying statutory authority effected by the Customs Modernization (Mod Act) provisions of the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182, 107 Stat. 2057), the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36, 113 Stat. 127), and the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108–429, 118 Stat. 2434). Any amendments to the CBP regulations, including regulations amended by this notice, that require statutory interpretation will not be included in this technical corrections document and will be published in a separate proposed rulemaking.

The statutory amendments affect, in pertinent part, the types of matters subject to protest, the time required for allowing or denying an application for further review of a protest, and various other protest time limits. This document also makes non-substantive editorial and nomenclature changes to reflect the transfer of the legacy U.S. Customs Service of the Department of the Treasury to the Department of Homeland Security (DHS) and the subsequent renaming of the agency as U.S. Customs and Border Protection.

Statutory Changes

Section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514), provides that certain specified decisions made by CBP can be protested before becoming final. Section 515 of the Tariff Act of 1930, as amended (19 U.S.C. 1515), sets forth standards governing the administrative review of protests filed under section 514. Section 504 of the Tariff Act of 1930, as amended (19 U.S.C. 1504), prescribes the limitations on liquidation. Regulations implementing these statutes are contained in parts 159 and 174 of title 19 of the CFR.

The Mod Act

Section 645 of the Mod Act amended section 514(c)(1) (19 U.S.C. 1514(c)(1)) by recasting the first sentence in order to, among other things, permit the transmission of a protest to CBP "electronically pursuant to an electronic data interchange system." Section 618 of the Mod Act also repealed section 521 (19 U.S.C. 1521), which provided for the reliquidation of an entry on account of fraud.

The Miscellaneous Trade and Technical Corrections Act of 1999

Section 2408(b) of the Miscellaneous Trade and Technical Corrections Act of 1999 ("Trade Act of 1999") amended section 514(a)(7) by the addition of a reference to subsection (d) of section 520 of the Tariff Act of 1930, as amended (19 U.S.C. 1520(d)), thereby including as a protestable decision a refusal to reliquidate an entry in response to a post-importation NAFTA claim.

The Miscellaneous Trade and Technical Corrections Act of 2004

The Miscellaneous Trade and Technical Corrections Act of 2004 ("Trade Act of 2004") amended several statutes that impact the manner by which CBP administers protests. In this regard, the following is noted:

1. Section 2105 of the Trade Act of 2004 repealed section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)), thereby removing CBP's authority, in situations where a valid protest has not been filed, to reliquidate an entry to correct clerical errors, mistakes of fact, and other inadvertences for entries made on or after December 18, 2004;

2. Section 2103 of the Trade Act of 2004 amended 19 U.S.C. 1514 and 1515:

i. To clarify that filing a protest is necessary to challenge clerical errors,

mistakes of fact and other inadvertences for entries made on or after December 18, 2004.

ii. To extend the time to file and amend a protest from 90 days to 180 days after the date of liquidation or reliquidation, or date of the decision, order, or finding being protested for entries made on or after December 18, 2004;

iii. To extend the time for a surety to file a protest from 90 days to 180 days from the date of mailing of the notice of demand for payment against its bond for entries made on or after December 18, 2004; and

iv. To change the time to file a request for accelerated disposition of a protest from after 90 days of the filing of the protest to any time concurrent with or following the filing of a protest for entries made on or after December 18, 2004;

3. Section 1563(e) of the Trade Act of 2004 amended 19 U.S.C. 1504(a) to more specifically describe "entries" as "entries for consumption" and identify "entries or claims for drawback" as subject to liquidation by operation of law.

Explanation of Amendments

CBP has determined that the amendments to 19 U.S.C. 1504, 1514, and 1515, and repeal of 19 U.S.C. 1520(c) and 1521, as discussed above, require conforming technical corrections to the regulations. These changes are discussed in more detail below.

I. Part 174—Protests

Section 174.11

Section 174.11 (19 CFR 174.11) identifies matters that are subject to protest. Existing paragraphs (a) through (g) set forth protestable decisions that are administrative in nature.

This document revises the overall structure of this provision to reflect the amendments to 19 U.S.C. 1514 effected by section 2103 of the Trade Act of 2004. Specifically, § 174.11 is restructured to clarify that clerical errors, mistakes of fact, and other inadvertences are protestable under section 1514 in addition to the existing administrative matters that are currently identified as being subject to protest pursuant to the statute. The changes are described below:

1. This document adds a new paragraph (a) entitled, "[C]lerical errors, mistakes of fact, and other inadvertences," to accurately reflect the scope of matters subject to protest under this section. While the amendments to 19 U.S.C. 1514 effected by section 2103 of the Trade Act of 2004 only apply to merchandise entered, or withdrawn from warehouse for consumption, on or after December 18, 2004, protests filed under paragraph (a) are applicable to any entries, liquidations, or reliquidations made before or after this date. However, any entries, liquidations, or other customs transactions made prior to December 18, 2004, also remain subject to reliquidation under § 173.4 which implemented section 520(c) of the Tariff Act of 1930.

2. This document creates a new heading text for paragraph (b) entitled "[A]dministrative Decisions" and existing paragraphs (a) through (g) are redesignated as paragraphs (b)(1) through (b)(7) and a new paragraph (b)(8) is added to reflect the amendment of 19 U.S.C. 1514(a)(7) made by section 2408(b) of the Trade Act of 1999 regarding post-importation NAFTA claims. The following additional amendments to these redesignated paragraphs are noted:

i. In newly redesignated paragraph (b)(3), a reference to the "Secretary of Homeland Security" is added to reflect the delegation of authority over certain revenue functions from the Secretary of the Treasury to the Secretary of Homeland Security, effected by Treasury Department Order 100–16, dated May 15, 2003; and

ii. In paragraph (b)(4), the words "or a demand for redelivery to CBP custody" and the words "except a determination that may be appealed under 19 U.S.C. 1337" are added to the text to reflect the full terms of 19 U.S.C. 1514(a)(4).

Section 174.12

Section 174.12 (19 CFR 174.12), which sets forth the standards for the filing of protests, is amended as follows:

1. Paragraph (b) is amended to conform the text to the Mod Act section 645 amendment of 19 U.S.C. 1514 which authorizes the electronic transmission of protests. As a consequence of this change, this paragraph is amended to state that electronic submissions are not required to be filed in quadruplicate; and

2. Pursuant to section 2103 of the Trade Act of 2004, the introductory text to paragraph (e) is amended by changing the time for filing a protest from 90 days to 180 days for all merchandise entered, or withdrawn from warehouse for consumption, on or after December 18, 2004. This document also amends paragraph (e)(1) to reflect the statutory changes to 19 U.S.C. 1514 effected by section 2103(2)(B)(ii) of the Trade Act of 2004, which state that the aforementioned 180-day protest period runs from the date of liquidation or reliquidation, and not from the date of notice. Paragraph (e)(2) is amended by adding the words "or demanding redelivery to CBP custody" to conform to the change in newly redesignated § 174.11(b)(4), and by clarifying that protest of a denial of a petition filed pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), must be made within 90 days of the denial and only for those denials that pertain to entries made before December 18, 2004.

Section 174.14

Section 174.14, which prescribes standards for the amendment of protests, is amended as follows:

1. Paragraph (a), which prescribes the time for filing an amendment to a protest, is amended by changing the time to any time prior to the expiration of the 180-day period within which the protest may be filed pursuant to § 174.12(e), but only for amendments to protests involving entries or other customs transactions made on or after December 18, 2004; and

2. Paragraph (b) is amended to provide for the electronic amendment of protests (similar to the approach taken for the electronic filing of protests in § 174.12(b), discussed above).

Section 174.22

Section 174.22, which concerns the accelerated disposition of protests, is amended to reflect the statutory amendment to 19 U.S.C. 1515(b) effected by section 2103 of the Trade Act of 2004. The amendment removes the 90-day time limit for filing a request for accelerated disposition (which applies to protests of decisions relating to entries made before December 18, 2004) and replaces it with the opportunity to file concurrent with or any time following the filing of a protest of a decision relating to an entry made on or after December 18, 2004.

Section 174.32

This section, which sets forth the time frame in which CBP must publish or otherwise make available protest review decisions, is amended to conform to the 90-day deadline for publication/availability set forth in 19 U.S.C. 1625 as amended by section 623 of the Mod Act. We also are updating the reference to the rules that CBP follows on Freedom of Information Act requests in § 174.32 since CBP has been organizationally aligned under the Department of Homeland Security since March 1, 2003. We are removing the reference to the Treasury Department's disclosure regulations in title 31 of the CFR and adding in its place the DHS's

disclosure regulations of title 6 of the CFR. We note, however, that the publishing requirements of 5 U.S.C. 552(a) referenced in § 174.32 are found in part 103 of title 19 CFR (*see* 19 CFR 103.4) rather than in title 6 CFR part 5.

II. Part 173—Administrative Review in General

Part 173 of title 19 of the Code of Federal Regulations (19 CFR part 173) provides for, in pertinent part, the authority to correct a clerical error, mistake of fact, or other inadvertence in any entry, liquidation, or other CBP transaction under section 520(c)(1), Tariff Act of 1930, as amended.

As noted above, section 2105 of the Trade Act of 2004 repealed section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)), effective as of December 18, 2004, for merchandise entered or withdrawn from warehouse for consumption. Accordingly, this document amends §§ 173.0 and 173.4 to reflect this fact and to state that authority exercised under 19 U.S.C. 1520(c) only applies to any entry, liquidation, or other CBP transaction made before December 18, 2004. This document also amends § 173.0 by removing the language "and the power to reliquidate an entry on account of fraud" to reflect the repeal of 19 U.S.C. 1521 effected by section 618 of the Mod Act.

III. Part 145—Mail Importations

The provisions of part 145 pertain to the importation of merchandise through the mails. Sections 145.22 and 145.23 (19 CFR 145.22 and 145.23), which respectively set forth the procedures for obtaining administrative review of the duty assessed on mail importations and the applicable time limits for such review, are amended to reflect the new time periods within which to file a protest for mail entries made on or after December 18, 2004, as well as prior to that date.

IV. Part 159—Liquidation of Duties

Section 159.1 sets forth the definition of liquidation as the final computation or ascertainment of the duties (not including vessel repair duties) or drawback accruing on an entry. This provision is amended to conform to the amendments to 19 U.S.C. 1504 effected by section 1563(e) of the Trade Act of 2004, which more specifically describe "entries" as "entries for consumption" and identify "entries or claims for drawback" as subject to liquidation by operation of law.

Section 159.6 sets forth the regulations applicable to situations where there is a difference between liquidated duties and estimated duties. Paragraph (b)(1) prescribes the terms applicable to reliquidation at the importer's request. Due to the repeal of section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)) effected by section 2105 of the Trade Act of 2004, paragraph (b)(1) is amended to reflect that reliquidation at the importer's request for correction under 19 U.S.C. 1520(c)) is only permitted for entries made before December 18, 2004.

Section 159.9 prescribes the manner by which notice of liquidation of formal entries is provided to importers. Paragraph (c)(2) sets forth notice requirements applicable to entries that are liquidated by operation of law, as prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504). The existing text of paragraph (c)(2)(iii) provides that a protest under 19 U.S.C. 1514 and part 174 of this chapter must be filed within 90 days from the date the bulletin notice of liquidation of an entry by operation of law is posted or lodged in the customhouse. As noted above, the amendments to 19 U.S.C. 1514 made by the Miscellaneous Trade Act of 2004 extend the protest period for an entry made on or after December 18, 2004, from 90 to 180 days commencing from the date of liquidation of an entry, and not from the date of notice of liquidation. For an entry made before December 18, 2004, the protest period remains at 90 days commencing from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof is posted or lodged in the customhouse. This document makes conforming changes to paragraph (c)(2)(iii) to reflect the scope of section 1514, as amended.

Inapplicability of Notice and Delayed Effective Date

Because the technical corrections set forth in this document are necessary to conform parts 145, 159, 173 and 174 of title 19 of the CFR to reflect amendments to 19 U.S.C. 1514 and 1515 effected by the Customs Modernization (Mod Act) provisions of the North American Free Trade Agreement (NAFTA) Implementation Act, the Miscellaneous Trade and Technical Corrections Act of 1999, and the Miscellaneous Trade and Technical Corrections Act of 2004, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary. For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

As these amendments are technical corrections to the regulations to reflect statutory changes, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Signing Authority

This document is limited to technical corrections of the CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b)(1).

List of Subjects

19 CFR Part 145

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 159

Customs duties and inspection, Entry procedures, Imports, Liquidation of entries for merchandise.

19 CFR Part 173

Administrative practice and procedure, Customs duties and inspection.

19 CFR Part 174

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Protests, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, parts 145, 159, 173 and 174 (19 CFR parts 145, 159, 173 and 174) are amended as set forth below.

PART 145—MAIL IMPORTATIONS

■ 1. The general authority citation for part 145 and the sectional authority citations for §§ 145.22 through 145.23 are revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States, 1624.

* * * * *

Sections 145.22 through 145.23 also issued under 19 U.S.C. 1501, 1514;

* * * * *

■ 2. In § 145.22:

■ a. The introductory text is amended by adding, after the word "entry", the

following language, "made before December 18, 2004";

■ b. Paragraphs (a) and (b) are amended by removing the word "Customs" each place it appears and adding in its place the term "CBP"; and

■ c. Paragraph (c) is amended by adding, after the first sentence, two sentences to read as follows:

§ 145.22 Procedures for obtaining administrative review.

* * * * *

(c) * * * For mail entries made before December 18, 2004, a protest must be filed no later than 90 days after payment of the duties by the addressee. All other mail entries must be protested within 180 days after payment of the duties by the addressee.

■ 3. In § 145.23:

■ a. The first sentence is amended by adding, after the word "entry" the following language, "made before December 18, 2004";

■ b. The second sentence is amended by removing the word "shall" and adding in its place the word "must"; and

■ c. The third sentence is removed and two sentences are added in its place to read as follows:

§ 145.23 Time limits.

* * * For a mail entry made before December 18, 2004, protests under § 145.22(c) of this chapter must be filed no later than 90 days after payment of the duties by the addressee, but may be acted upon by CBP after expiration of that 90-day period. For a mail entry made on or after December 18, 2004, protests under § 145.22(c) of this chapter must be filed no later than 180 days after payment of the duties by the addressee, but may be acted upon by CBP after expiration of that 180-day period.

PART 159—LIQUIDATION OF DUTIES

■ 4. The general authority citation for part 159 and the sectional authority citation for § 159.6 continue to read as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624.

* * * * *

Section 159.6 also issued under 19 U.S.C. 1321, 1505;

* * * * *

§ 159.1 [Amended]

■ 5. Section 159.1 is amended by removing the text following the word "of" and adding in its place the language, "duties on entries for consumption or drawback entries".

§ 159.6 [Amended]

■ 6. In § 159.6:

■ a. Paragraph (a) is amended by removing the word "shall" each place it appears and adding in its place the word "will"; and by removing the word "Customs" and adding in its place the term "CBP".

■ b. The introductory text to paragraph (b) is amended by removing the word "shall" and adding in its place the word "will";

■ c. Paragraph (b)(1) is amended by adding, after the word "or", the following language, ", for entries made before December 18, 2004,"; and by removing the word "shall" and adding in its place the word "will";

■ d. Paragraph (b)(2) is amended by removing the word "shall" and adding in its place the word "will";

■ e. Paragraph (c) is amended by removing the word "shall" each place it appears and adding in its place the word "will"; and

■ f. Paragraph (d) is amended by removing the word "shall" each place it appears and adding in its place the word "will"; and by removing the word "Customs" and adding in its place the word "customs".

§ 159.7 [Amended]

■ 6. In § 159.7:

■ a. Paragraphs (a) and (c) are amended by removing the word "shall" each place it appears and adding the word "will"; and

■ b. Paragraph (b) is amended by removing the word "shall" and adding in its place the word "will", and by removing the words "Customs duty" each place it appears and adding in their place the words "customs duty", and by removing the term "Customs custody" and adding in its place the words "CBP custody".

§ 159.8 [Amended]

■ 7. Section 159.8 is amended by removing the word "shall" and adding in its place the word "will".

■ 8. In § 159.9:

■ a. Paragraph (a) is amended by removing the word "shall" and adding in its place the word "will"; and by removing the word "Customs" and adding in its place the term "CBP";

■ b. Paragraph (b) is amended by removing the word "shall" each place it appears and adding in its place the word "will"; and by removing the word "Customs" each place it appears and adding in its place the word "customs";

■ c. Paragraph (c)(1) is amended by removing the word "shall" each place it appears and adding in its place the word "will"; and by removing the word "Customs" and adding in its place the term "CBP";

■ d. Paragraphs (c)(2)(i) and (ii) are amended by removing the word "shall" each place it appears and adding in its place the word "will";

■ e. Paragraph (c)(2)(iii) is revised; and

■ f. Paragraph (d) is amended by removing the word "Customs" each place it appears and adding in its place the term "CBP"; and by removing the word "shall" and adding in its place the word "will".

The revisions to § 159.9(c)(2)(iii) read as follows:

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

* * * * *

(c) * * *

(2) * * *

(iii) Pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof is posted or lodged in the customhouse, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

* * * * *

§ 159.10 [Amended]

■ 9. Section 159.10 is amended by removing the word "shall" each place it appears and adding in its place the word "will"; and by removing the word "Customs" each place it appears and adding in its place the term "CBP".

§ 159.11 [Amended]

■ 10. Section 159.11 is amended by removing the word "shall" each place it appears and adding in its place the word "will"; and by removing the word "Customs" each place it appears and adding in its place the term "CBP".

§ 159.12 [Amended]

■ 11. Section 159.12 is amended by removing the word "shall" each place it appears and adding in its place the word "will"; and by removing the word "Customs" each place it appears and adding in its place the term "CBP".

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

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

Authority: 19 U.S.C. 66, 1501, 1520, 1624.

§ 173.0 [Amended]

■ 13. Section 173.0 is amended by adding after the word "amended," the language, "for entries made before December 18, 2004, and"; and by removing the language ", and the power to reliquidate an entry on account of fraud".

§ 173.3(b) [Amended]

■ 14. Section 173.3(b) is amended by removing the word "shall" and adding in its place the word "will".

■ 15. Section 173.4 is revised to read as follows:

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) *Authority to review and correct entries of merchandise made, or withdrawn from warehouse for consumption, before December 18, 2004.* Even though a valid protest was not filed, the port director, upon timely application and for entries of merchandise made, or withdrawn from warehouse for consumption, before December 18, 2004, may correct pursuant to section 520(c)(1), Tariff Act of 1930, as amended, a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (a)(1) of this section, by reliquidation or other appropriate action.

(1) *Transactions that may be corrected.* Correction may be made to any entry, liquidation, or other customs transaction made before December 18, 2004, if the clerical error, mistake of fact, or other inadvertence:

(i) Does not amount to an error in the construction of a law;

(ii) Is adverse to the importer; and

(iii) Is manifest from the record or established by documentary evidence.

(2) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (a)(1) of this section must be brought to the attention of the director of the port of entry or other appropriate CBP officer within 1 year after the date of liquidation or exaction. The party requesting reliquidation under this section must state, to the best of his or her knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (*see* §§ 181.50(b) and 191.81(b) of this chapter).

(b) *Entries of merchandise made, or withdrawn from warehouse for consumption, on or after December 18, 2004.* For merchandise entered, or withdrawn from warehouse for consumption, on or after December 18, 2004, CBP does not have the authority, in situations where a valid protest has not been filed, to reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence. For merchandise entered or withdrawn from warehouse for consumption on or after December 18, 2004, and except as provided for in sections 501 (relating to voluntary reliquidations), 516 (relating to petitions by domestic interested parties), and 520 (related to refunds) of the Tariff Act of 1930, as amended, a CBP decision involving any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic submission, that is adverse to the importer in any entry, liquidation or reliquidation, may be corrected by protest only. *See* 19 CFR 174.11.

(c) "*Liquidation*" *includes reliquidation.* "Liquidation," as used in this section, includes reliquidation of an entry.

§ 173.5 [Amended]

■ 16. In § 173.5:

■ a. The first sentence is amended by adding, after the word "if", the following language, "entry was made before December 18, 2004 and"; and

■ b. The second sentence is amended by removing the word "shall" and adding in its place the word "will"; and by removing the word "Customs" and adding in its place the term "CBP".

PART 174—PROTESTS

■ 17. The authority citation for part 174 continues to read as follows:

Authority: 19 U.S.C. 66, 1514, 1515, 1624.

■ 18. Section 174.11 is revised to read as follows:

§ 174.11 Matters subject to protest.

The following decisions of CBP, including the legality of all orders and findings entering into those decisions, may be protested under the provisions of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514):

(a) *Clerical errors, mistakes of fact, and other inadvertences.* Except as provided for in sections 501 (relating to voluntary reliquidations), 516 (relating to petitions by domestic interested parties), and 520 (related to refunds) of the Tariff Act of 1930, as amended), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic submission, that is adverse to the importer in any entry, liquidation or reliquidation is subject to protest. In addition, any entry, liquidation, or other CBP transaction that occurred prior to December 18, 2004, also may be the subject of a reliquidation request made pursuant to the terms set forth in § 173.4 (19 CFR 173.4).

(b) *Administrative decisions.* CBP administrative decisions involving the following subject matters are subject to protest:

(1) The appraised value of merchandise;

(2) The classification and rate and amount of duties chargeable;

(3) All charges or exactions of whatever character, including the accrual of interest, within the jurisdiction of the Secretary of Homeland Security or the Secretary of the Treasury;

(4) The exclusion of merchandise from entry, delivery, or a demand for redelivery to CBP custody under any provision of the customs laws except a determination that may be appealed under 19 U.S.C. 1337;

(5) The liquidation or reliquidation of an entry, or any modification of an entry;

(6) The refusal to pay a claim for drawback;

(7) The refusal to reliquidate an entry made before December 18, 2004, under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)); or

(8) The refusal to reliquidate an entry under section 520(d), Tariff Act of 1930, as amended (19 U.S.C. 1520(d)).

■ 19. Section 174.12, paragraphs (b), (e) introductory text, (e)(1), and (e)(2), are revised to read as follows:

§ 174.12 Filing of protests.

* * * * *

(b) *Form and number of copies.* A written protest against a decision of CBP must be filed in quadruplicate on CBP Form 19 or a form of the same size clearly labeled "Protest" and setting forth the same content in its entirety, in the same order, addressed to CBP. All schedules or other attachments to a protest (other than samples or similar exhibits) must also be filed in quadruplicate. A protest against a decision of CBP may also be transmitted electronically pursuant to any electronic data interchange system authorized by CBP for that purpose. Electronic submissions are not required to be filed in quadruplicate.

* * * * *

(e) *Time of filing.* Protests must be filed, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 90 days of a decision relating to an entry made before December 18, 2004, or within 180 days of a decision relating to an entry

made on or after December 18, 2004, after any of the following:

(1) The date of notice of liquidation or reliquidation, or the date of liquidation or reliquidation, as determined under §§ 159.9 or 159.10 of this chapter;

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (for example: The date of an exaction; the date of written notice excluding merchandise from entry, delivery or demanding redelivery to CBP custody under any provision of the customs laws; the date of written notice of a denial of a claim filed under section 520(d), Tariff Act of 1930, as amended (19 U.S.C. 1520(d)), or; within 90 days of the date of denial of a petition filed pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), relating to an entry made before December 18, 2004); or

* * * * *

■ 20. Section 174.14, paragraphs (a) and (b) are revised to read as follows:

§ 174.14 Amendment of protests.

(a) *Time for filing.* A protest may be amended at any time prior to the expiration of the period within which the protest may be filed under § 174.12(e). The amendment may assert additional claims pertaining to the administrative decision that is the subject of the protest, or may challenge an additional administrative decision relating to the same category of merchandise that is the subject of the protest. For the presentation of additional grounds or arguments in support of a valid protest after the applicable protest period set forth in § 174.12(e) has expired, see § 174.28.

(b) *Form and number of copies of amendment.* If the protest was not filed electronically, an amendment to the protest must be filed in quadruplicate on CBP Form 19 or on a form of the same size, clearly labeled "Amendment to Protest" at the top of the form. Schedules or other attachments (other than samples or similar exhibits) must also be filed in quadruplicate. A protest that was transmitted to CBP electronically may be amended only through an electronic data interchange system authorized by CBP for that purpose. Electronic submissions are not required to be filed in quadruplicate.

* * * * *

■ 21. Section 174.22, paragraph (a) is revised to read as follows:

§ 174.22 Accelerated disposition of protest.

(a) *Request for accelerated disposition.* Accelerated disposition of a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) may be obtained at any time after 90 days from the filing of such protest for entries made before December 18, 2004, or at any time concurrent with or following the filing of the protest for entries made on or after December 18, 2004, by filing by registered or certified mail a written request for accelerated disposition with the port director or other CBP officer with whom the protest was filed.

* * * * *

■ 22. Section 174.32 is revised to read as follows:

§ 174.32 Publication.

Within 90 calendar days after issuing a protest review decision, CBP will publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 6 CFR part 5 and 19 CFR part 103.

Dated: January 10, 2011.

Alan Bersin,

Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2011–679 Filed 1–13–11; 8:45 am]

BILLING CODE 9111–14–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in February 2011. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective February 1, 2011.

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

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

PBGC uses the interest assumptions in Appendix B to part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for February 2011.[1]

The February 2011 interest assumptions under the benefit payments regulation will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for January 2011, these interest assumptions represent an increase of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

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

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during February 2011, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

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

List of Subjects in 29 CFR Part 4022

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

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

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

■ 2. In appendix B to part 4022, Rate Set 208, as set forth below, is added to the table.

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
208	2–1–11	3–1–11	2.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 208, as set forth below, is added to the table.

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
208	2–1–11	3–1–11	2.50	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 10th day of January 2011.

Vincent K. Snowbarger,

Deputy Director for Operations, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–725 Filed 1–13–11; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–1112]

RIN 1625–AA00

Safety Zone; Lake Mead Intake Construction, Lake Mead, Boulder City, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of Lake Mead in support of the construction project for Lake Mead's Intake #3 during the first 6 months of 2011. Blasting will take place at regular intervals at the location and in the manner set forth herein. This safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear of the hazardous area during blasting operations. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective in the CFR on January 14, 2011 through June 30, 2011. This rule is effective with actual notice for purposes of enforcement from January 1, 2011 until June 30, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–1112 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–1112 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail BM1 Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7267, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delay in the effective date will be contrary to the public interest. Immediate action is needed to ensure public safety in the vicinity of blasting activities.

Background and Purpose

Vegas Tunnel Construction will be conducting intermittent blasting operations for the placement of a water intake pipe in Lake Mead during the first 6 months of 2011. A safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear of the hazardous area during blasting operations.

Discussion of Rule

The Coast Guard is establishing a safety zone from January 1, 2011 through June 30, 2011. The safety zone will be enforced only during blasting operations, which will occur weekly at 8 a.m. and 11 a.m., Mondays through Thursdays, and 8 a.m. on Fridays. Operations will be preceded by a local Broadcast Notice to Mariners at least one hour prior to the commencement of each blast. In the event additional blasts are required due to the needs of the construction company, the public will be notified as soon as practicable, but in no event less than one hour prior to blasting.

The limits of the safety zone will include the navigable waters within a 1300 foot radius of construction vessels during transit and while at the blast site located at approximately 36°05′24″ N, 114°45′60″ W. This safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear of the hazardous area during blasting activities. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. The safety zone is a small zone in a wide area of Lake Mead, and it will only be enforced intermittently. Commercial and recreational vessels will not be allowed to transit through the safety zone while blasting operations are being conducted. However, these vessels will be able to travel around the safety zone.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the vicinity of Lake Mead Intake #3 (approximately 36°05′24″ N, 114°45′60″ W) during blasting operations from January 1, 2011 through June 30, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only when blasting work is actively being conducted. Vessel traffic can pass safely around the zone. Before the effective period, the construction company will issue a Broadcast Notice to Mariners (BNM) at least one hour prior to the beginning of blasting and the enforcement of this zone.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to

health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–387 to read as follows:

§ 165.T11–387 Safety Zone; Lake Mead Intake Construction; Lake Mead, Boulder City, NV

(a) *Location.* The limits of the safety zone will include the navigable waters of Lake Mead within a 1300 foot radius of the construction vessels working on Lake Mead Intake #3, located at approximately 36°05′24″ N, 114°45′60″ W.

(b) *Enforcement Period.* This section will be in effect from January 1, 2011 through June 30, 2011. The safety zone will only be enforced during blasting operations. Blasting operations will occur weekly at 8 a.m. and 11 a.m., Mondays through Thursdays, and at 8 a.m. on Fridays. The Coast Guard will publish a Local Notice to Mariners before the rule takes effect. The construction crew will notify the public via Broadcast Notice to Mariners at least one hour prior to commencement of each blasting operation. In the event additional blasts are required due to the needs of the construction company, the public will be notified as soon as practicable, but in no event less than one hour prior to blasting. If blasting concludes prior to the scheduled termination time, the COTP will cease enforcement of this safety zone and a Broadcast Notice to Mariners will be issued to notify the public that enforcement has ended.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means Commissioned, Warrant, or Petty Officers of the Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the COTP.

(2) *Unauthorized personnel and vessels,* means any civilian boats, fishermen, divers, and swimmers.

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

(2) Unauthorized personnel and vessels wishing to transit through the safety zone may request authorization to do so from the COTP San Diego or his designated representative using VHF–FM Channel 16, or telephone number (619) 278–7033.

(3) Vessels involved in construction operations are allowed within the confines of the established safety zone.

(4) All persons and vessels shall comply with the instructions of the Coast Guard COTP or his designated representative.

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

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

Dated: December 29, 2010.

P.J. Hill,

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

[FR Doc. 2011–692 Filed 1–13–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0107; FRL–9253–3]

Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan for Jefferson County, KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing a federal implementation plan (FIP) to apply in Jefferson County, Kentucky because the

Louisville Metro Air Pollution Control District (LMAPCD), through the Commonwealth of Kentucky, has not submitted by its established deadline of January 1, 2011, a state implementation plan (SIP) revision to apply their Clean Air Act (CAA or Act) Prevention of Significant Deterioration (PSD) program to sources of greenhouse gases (GHGs). This action will ensure that a permitting authority—EPA—is available in Jefferson County, Kentucky to issue preconstruction PSD permits to GHG-emitting sources. This action is related to EPA's recent final rule, the GHG PSD SIP Call, published on December 13, 2010, in which EPA made a finding of substantial inadequacy and issued a SIP call to LMAPCD because the SIP for Jefferson County does not apply the PSD program to GHG-emitting sources.

DATES: This action is effective on January 14, 2011.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0107. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Vetter, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–4391; *fax number:* (919) 541–5509; *e-mail address: vetter.cheryl@epa.gov*. For more information on the LMAPCD or Jefferson County, Kentucky, contact Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040; e-mail address: *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The entity affected by this rule is the LMAPCD, which is the local permitting authority [1] that has jurisdiction in Jefferson County, Kentucky. The LMAPCD was identified by EPA as not having submitted a SIP revision that would apply PSD requirements to GHG-emitting sources by its SIP submittal deadline of January 1, 2011. In the GHG PSD SIP call,[2] EPA determined that the Jefferson County portion of the Kentucky SIP is substantially inadequate to achieve CAA requirements because its PSD programs do not apply to GHG-emitting sources. EPA established the deadline after the LMAPCD indicated that it would not object to a deadline of January 1, 2011.

Entities potentially affected by this rule also include sources in all industry groups, which have a direct obligation under the CAA to obtain a PSD permit for GHGs for projects that meet the applicability thresholds set forth in the Tailoring Rule.[3] This independent obligation on sources is specific to PSD and derives from CAA section 165(a). Any source that is subject to a state PSD air permitting regulation not structured to apply to GHG-emitting sources will rely on this rule to obtain a permit that contains emission limitations that conform to requirements under CAA section 165(a). The majority of entities potentially affected by this action are expected to be in the following groups:

Industry group	NAICS [a]
Utilities (electric, natural gas, other systems)	2211, 2212, 2213
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316
Wood product, paper manufacturing	321, 322
Petroleum and coal products manufacturing	32411, 32412, 32419
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259
Rubber product manufacturing	3261, 3262
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3366, 3369
Furniture and related product manufacturing	3371, 3372, 3379
Miscellaneous manufacturing	3391, 3399
Waste management and remediation	5622, 5629
Hospitals/nursing and residential care facilities	6221, 6231, 6232, 6233, 6239
Personal and laundry services	8122, 8123
Residential/private households	8141
Non-residential (commercial)	Not available. Codes only exist for private households, construction and leasing/sales industries.

[a] North American Industry Classification System.

[1] For convenience, we refer to "states" in this rulemaking to collectively mean states and local permitting authorities.

[2] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final rule, 75 FR 77698 (December 13, 2010).

[3] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514 (June 3, 2010).

B. How is the preamble organized?

The information presented in this preamble is organized as follows:

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II. Overview of Rulemaking

In this rulemaking, EPA is establishing a FIP, which we call the GHG PSD FIP, or simply, the FIP, to apply in Jefferson County, Kentucky because the LMAPCD did not submit by January 1, 2011, a corrective SIP revision to apply their CAA PSD program to sources of GHGs in Jefferson County, Kentucky.[4] This is the deadline EPA established after the LMAPCD indicated that it would not object to it, to ensure that a permitting authority would be in place soon after January 2, 2011, to facilitate issuance of PSD permits for construction and modification of sources. This action does not relate to the rest of Kentucky, as the Commonwealth, through the Kentucky Energy and Environment Cabinet (KEEC), submitted a corrective SIP revision to address the remainder of Kentucky on December 13, 2010. This SIP revision was approved by EPA on December 29, 2010 (75 FR 81868).

This preamble should be read in conjunction with the preamble for the proposed rulemaking for this action, which we call the GHG PSD FIP proposal or the FIP proposal;[5] and the SIP Call rulemaking that is associated with this rulemaking, including (i) the proposed SIP Call rulemaking, which we call the GHG PSD SIP Call proposal or the SIP Call proposal, and which accompanied the FIP proposal;[6] (ii) the final SIP Call rulemaking, which we call the GHG PSD SIP Call or the SIP Call; and (iii) the GHG PSD FIP final rule which covers seven states other than Jefferson County, Kentucky.[7] Background information for this rulemaking is found in those rulemakings and in the rulemakings referenced therein and will not be reiterated here.

By notices dated September 2, 2010, EPA published as companion actions the SIP Call proposal and the FIP proposal. In the SIP Call proposal, EPA proposed to find that 13 states with EPA-approved SIP PSD programs are substantially inadequate to meet CAA requirements because they do not appear to apply PSD requirements to GHG-emitting sources. For each of these states, EPA proposed to require the state (through a SIP call) to revise its SIP as necessary to correct such inadequacies. In the FIP proposal, EPA proposed a FIP to apply in any state that is unable to submit, by its deadline, a corrective SIP revision to apply the PSD program to sources of GHGs. The FIP would provide authority to EPA to issue PSD permits for construction or modification of appropriate GHG sources in the state.

On December 1, 2010, EPA promulgated the GHG PSD SIP Call, and EPA published it by notice dated December 13, 2010.[8] In the SIP call, EPA finalized its finding that the SIPs of 13 states (comprising 15 state and local programs) are substantially inadequate to meet CAA requirements because they do not apply PSD requirements to GHG-emitting sources. In addition, EPA finalized a SIP Call for each of these states, which required the state to revise its SIP as necessary to correct such inadequacies. Further, EPA established a deadline for each state to submit its corrective SIP revision. These deadlines, which differed among the states, ranged from December 22, 2010, to December 1, 2011. The LMAPCD requested a SIP deadline of January 1, 2011.

In a separate notice, EPA is also issuing a finding under CAA section 110(c)(1)(A) that the LMAPCD "failed to make [the] required submission" of the corrective SIP call-mandated SIP revision for Jefferson County, Kentucky by its January 1, 2011 deadline. EPA notified the LMAPCD of the finding by letter. That letter is located in the docket for this rulemaking.

III. Final Action and Response to Comments

A. Authority To Promulgate a FIP

In this rulemaking, EPA is finalizing the GHG PSD FIP as proposed for Jefferson County, Kentucky. This rulemaking does not relate to the remainder of the Commonwealth as EPA has already taken final action to approve the Commonwealth's corrective SIP for all areas in Kentucky except for Jefferson County. *See* 75 FR 81868.

The CAA authority for EPA to promulgate a FIP is found in CAA section 110(c)(1), which provides—

> The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—(A) finds that a State has failed to make a required submission * * * unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before the Administrator promulgates such [FIP].

As noted earlier in this preamble, EPA is issuing a finding that the LMAPCD, through the Commonwealth of Kentucky, "failed to make [the] required submission" of the corrective SIP Call-mandated SIP revision by its January 1, 2011, deadline. Accordingly, under CAA section 110(c)(1), EPA is required to promulgate a FIP for Jefferson County, Kentucky. It should be noted that EPA specifically proposed the FIP for Jefferson County, Kentucky.

We reiterate that the LMAPCD indicated to EPA that it preferred that EPA promulgate a FIP to take effect soon after January 2, 2011—when sources in the state become subject to PSD—rather than wait to promulgate a FIP until a later time. This is because the LMAPCD wishes to assure that a permitting authority for GHG-emitting sources is in place in Jefferson County, Kentucky should a permit be sought that requires consideration of GHGs. The LMAPCD

[4] The Louisville Metro Air Pollution Control District is the local agency that has jurisdiction over sources in Jefferson County, Kentucky.

[5] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Proposed rule, 75 FR 53883 (September 2, 2010).

[6] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Proposed rule, 75 FR 53892 (September 2, 2010).

[7] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Final Rule, 75 FR 82246 (December 30, 2010).

[8] Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule, 75 FR 77698 (December 13, 2010).

made this choice by indicating that they did not object to EPA establishing a SIP submittal date of January 1, 2011, when EPA made clear in the proposed SIP Call and FIP that if the state did not submit the required SIP revision by that date, then EPA would promulgate the FIP the next day. 75 FR at 53904/2 (proposed SIP Call); *id.* at 53889/2 (proposed FIP). Although the LMAPCD requested a later SIP deadline than the earliest date (*i.e.,* December 22, 2010), they believe that this will only mean a short delay in the availability of a permitting authority for GHG-emitting sources in their state, and that delay will not adversely affect their sources.

In this rulemaking, EPA is not taking final action to promulgate a FIP for any of the other states beside Jefferson County, Kentucky which EPA included in the FIP proposal. This is because each of the other states falls into one of the following three categories: (1) EPA did not finalize the SIP call for this state; (2) EPA has already issued a FIP for this state; [9] or (3) EPA did finalize the SIP call but established a SIP submittal deadline that has not yet arrived. As EPA noted in the GHG FIP signed on December 23, 2010, it continues to be EPA's intent that if any of these other states does not submit the required SIP revision by its deadline, then EPA will immediately issue a finding of failure to submit a required SIP submission and immediately promulgate a GHG PSD FIP for that state.

In comments received, some commenters stated, "Remarkably, EPA states that it will also directly promulgate a SIP call and FIP for any states it has inadvertently omitted from its notice of proposed rulemaking." Although the commenters do not elaborate upon this statement, they seem to imply that it would be improper for EPA to finalize a FIP for such states because we did not provide adequate notice and opportunity for comment.

This comment is not relevant to Jefferson County, Kentucky, as the proposed SIP call and FIP explicitly name Jefferson County as an area that may be included in the final SIP Call and FIP. Furthermore, we disagree with the commenters, and have discussed and responded to this comment in great detail in the SIP Call, 75 FR at 77715–16, and the December 30, 2010 FIP, 75 FR 82248.

B. Timing of GHG PSD FIP

In the GHG PSD FIP proposal, we stated:

> If any of the states for which we issue the SIP Call does not meet its SIP submittal deadline, we will immediately issue a finding of failure to submit a required SIP submission, under CAA section 110(c)(1)(A), and immediately thereafter promulgate a FIP for the state. This timing for FIP promulgation is authorized under CAA section 110(c)(1), which authorizes us to promulgate a FIP "at any time within 2 years after" finding a failure to submit a required SIP submission. We intend to take these actions immediately in order to minimize any period of time during which larger-emitting sources may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits.

75 FR at 53,889/2.

In this final rulemaking, we are proceeding in the same manner that we proposed, and for the same reasons. That is, we are exercising our discretion to promulgate the FIP for Jefferson County "immediately in order to minimize any period of time during which larger-emitting sources may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits." 75 FR at 53889/2. We believe that acting immediately is in the best interests of the states and the regulated community.

EPA received comments that the process EPA has employed in this action, which was to propose the FIP as a companion rule to the proposed SIP call, and then to finalize the FIP immediately after making a finding that a state has not submitted the required SIP revision by its deadline, "is not how CAA section 110 works or how Congress intended it to work." The commenter added that—

> [O]nly after a state has * * * failed to [submit a SIP revision] after an applicable period as specified in the CAA or EPA regulations * * * *and* after EPA has made a determination that the SIP revision is deficient in one or more respects, may the Agency step in to propose a FIP rule. And only after taking *that* step could EPA then proceed * * * [to take final action on the FIP.] Notwithstanding EPA's strained and out-of-context emphasis on the isolated sentence fragment, "at any time within," the very fact that the CAA affords EPA up to two full years in which to complete the cooperative task of considering whether a FIP is needed and how such a plan should be fashioned, and the corollary fact that the Act does not mandate any federal takeover in *less* than two years, militate against EPA's approach here to FIP rulemaking. In particular, those facts undermine EPA's assumption that it need not take the time to develop a proposed plan specifically directed at remedying identified deficiencies in a given state submission, and to give states and the regulated community a meaningful opportunity to comment on a proposed FIP that has been specifically developed to address the individual needs and circumstances of such a state. (Emphasis in original.)

EPA disagrees with these comments. As we stated in the proposed rule, CAA section 110(c)(1)(A) authorizes EPA to promulgate a FIP "at any time within 2 years after" finding a failure to submit a required SIP revision. As we did in the seven-state FIP issued on December 30, 2010, here we are promulgating the FIP immediately because we wish to minimize any disruption in permitting for the larger GHG-emitting sources and we are doing so after consultation with the affected state. The LMAPCD told EPA that they would not object to the promulgation of a FIP at the earliest possible date after January 1, 2011. Without the FIP, Jefferson County, Kentucky would be without an approved program to issue PSD permits for GHG-emitting sources until the LMAPCD, through the Commonwealth of Kentucky, submits, and EPA approves, a SIP revision. The FIP provides sources in Jefferson County, Kentucky with an immediate mechanism to obtain required permits for construction and modification until the revised SIP is approved.

As for commenters' analysis of CAA section 110(c), that provision, by its terms, imposes no constraints on when EPA may propose a FIP. This stands in contrast to other CAA provisions that do impose requirements for the timing of proposals. *See* CAA sections 109(a)(1)(A), 111(b)(1)(B). In light of the lack of constraints in CAA section 110(c), EPA was free to propose the FIP at the same time that EPA proposed the SIP call. We do not agree that the overall construct of CAA section 110 imposes the implicit constraints that the commenter identifies.

Instead, what is important is that for each of the 13 states for which EPA specifically proposed the FIP, which were the same as the ones for which EPA proposed the SIP Call, the public had adequate notice of the circumstances under which EPA proposed that the state would become subject to the FIP. Those circumstances were that if EPA finalized the SIP Call, as proposed, for the state, and if the state did not submit a SIP revision

[9] On December 30, 2010, EPA published a notice to promulgate a FIP for seven states that received a SIP submittal deadline of December 22, 2010. Based on information received from each of these states during the public comment period, they indicated that they would not object to this early deadline for allowing a FIP to be put in place. These seven states are: (1) Arizona: Both Pinal County and Rest of State (excluding Maricopa County, Pima County, and Indian Country); (2) Arkansas; (3) Florida; (4) Idaho; (5) Kansas; (6) Oregon; and (7) Wyoming.

applying its PSD program to GHG-emitting sources by the deadline, EPA would establish a FIP for that state. In fact, EPA did finalize the SIP call for all but one of those 13 states and is now finalizing the FIP for Jefferson County, Kentucky. Further, EPA received comments on the proposed FIP from several states and/or industries located in states for which EPA proposed the FIP, which indicates that the FIP proposal provided adequate notice. *See, e.g.,* comments identified in the rulemaking docket as document numbers 0084.1 (Texas), 0055.1 (Arkansas), 0066.1 (Texas Industry Project), and 0109.1 (National Mining Association).

Moreover, EPA was clear that for each state subject to the SIP Call that did not submit the required SIP revision by its SIP submittal deadline, EPA would immediately make a finding of failure to submit and immediately promulgate a FIP. EPA explained that this approach was needed to assure the availability of a permitting authority for sources in the state.

Finally, each of the states and the public in general had adequate notice of the terms of the FIP as it would apply in any state. Specifically, EPA indicated that the FIP would apply PSD to GHG-emitting sources at the Tailoring Rule thresholds.

Therefore, the FIP proposal was clear as to the circumstances under which EPA proposed to promulgate a FIP, the timing for the FIP, and the terms of the FIP. Moreover, each of those three things applied to each state that would become subject to the SIP Call. Accordingly, the FIP proposal did, in fact, "give states and the regulated community a meaningful opportunity to comment on a proposed FIP that has been specifically developed to address the individual needs and circumstances of such a state," as the commenter argues the FIP proposal needed to do.

Several commenters raised an additional objection, which was that in their view, EPA failed to comply with the requirements of CAA section 307(d)(3) that (i) the proposed FIP include a summary of "the factual data on which the proposed rule is based" and "the major legal interpretations and policy considerations underlying the proposed rule"; and (ii) "[a]ll data, information, and documents * * * on which the proposed rule relies shall be included in the docket *on the date of publication of the proposed rule.*" (Emphasis added by one of these commenters.) One of these commenters explained that (a) in the SIP Call proposal, EPA had made a detailed request that states provide information as to whether their state law authorized the application of PSD to GHG-emitting sources; (b) this detailed request demonstrated that the proposal did not establish the legal basis for the SIP Call; and (c) as a result, the FIP proposal did not include "information that is essential to determining *whether* a FIP for a given state is even appropriate and justified." (Emphasis in original.) This commenter added—

> Only *after* EPA has received such information, and then taken the necessary time to evaluate the information and to make judgments as to whether or not a given state has authority under its SIP and other elements of state law to regulate GHGs under the PSD program—*i.e.,* the steps EPA would have to take under CAA section 307(d)(3) to provide to the public a meaningful "summary" of "the factual data on which the proposed rule is based" and "the major legal interpretations and policy considerations underlying the proposed rule"—may EPA propose a FIP for any state that has been determined to lack that authority. (Emphasis in original.)

We disagree with this comment. The preamble for the FIP proposal included the CAA section 307(d)(3)-required "summary" of the factual basis and legal interpretations. To reiterate, EPA identified the states for which EPA was proposing the FIP, 75 FR at 53886 and table II–1 and 53889/1, and added that EPA would subject other states to the FIP if they, too, became subject to the SIP call, *id.* 53886 and table II–2 and 53889/2; described the timing for the FIP, *id.* 53889/2–3; described the substance of the FIP, *id.* 53889/3–53890/1; and explained that CAA section 110(c)(1) provided the legal basis, *id.* 53889/2. The purpose of the CAA section 307(d)(3) requirements is to provide the public with adequate notice, and these statements did so by making clear the circumstances under which EPA was proposing to promulgate a FIP and the timing and substance of the proposed FIP.

It is true that for any state, whether and when EPA would finalize the FIP for any state depended on other factors, including whether EPA would finalize the SIP Call for that state, what deadline EPA would establish, and whether the state would submit its required corrective SIP revision by that deadline. But the FIP proposal put the public on notice, with sufficient specificity, as to EPA's plan. In any event, any FIP is necessarily dependent on other factors, including state actions, including submission of a revised SIP. Most broadly, commenters' approach—which is that EPA cannot propose a FIP in concert with a SIP call, but instead must proceed *in seriatim* by completing the SIP call first and then proposing the FIP—would result in lengthy delays in the establishment of a permitting authority to process GHG-emitting sources' PSD permit applications. As a result, commenters' approach could well cause delays in these sources' ability to undertake construction and modification projects.

We included related comments and responses in the Response to Comments document for the seven-state FIP issued on December 30, 2010,[10] which is applicable to this rule as well.

C. Substance of GHG PSD FIP

In the FIP proposal, we stated:

> The proposed FIP constitutes the EPA regulations found in 40 CFR 52.21, including the PSD applicability provisions, with a limitation to assure that, strictly for purposes of this rulemaking, the FIP applies only to GHGs. Under the PSD applicability provisions in 40 CFR 52.21(b)(50), the PSD program applies to sources that emit the requisite amounts of any "regulated NSR pollutant[s]," including any air pollutant "subject to regulation." However, in states for which EPA would promulgate a FIP to apply PSD to GHG-emitting pollutants, the approved SIP already applies PSD to other air pollutants. To appropriately limit the scope of the FIP, EPA proposes in this action to amend 40 CFR 52.21(b)(50) to limit the applicability provision to GHGs.
>
> We propose this FIP because it would, to the greatest extent possible, mirror EPA regulations (as well as those of most of the states). In addition, this FIP would readily incorporate the phase-in approach for PSD applicability to GHG sources that EPA has developed in the Tailoring Rule and expects to develop further through additional rulemaking. As explained in the Tailoring Rule, incorporating this phase-in approach—including Steps 1 and 2 of the phase-in as promulgated in the Tailoring Rule—can be most readily accomplished through interpretation of the terms in the definition "regulated NSR pollutant," including the term "subject to regulation."
>
> In accordance with the Tailoring Rule, * * * the FIP would apply in Step 1 of the phase-in approach only to "anyway sources" (that is, sources undertaking construction or modification projects that are required to apply for PSD permits anyway due to their non-GHG emissions and that emit GHGs in the amount of at least 75,000 tpy on a CO_2e basis) and would apply in Step 2 of the phase-in approach to both "anyway sources" and sources that meet the 100,000/75,000-tpy threshold (that is, (i) sources that newly construct and would not be subject to PSD on account of their non-GHG emissions, but that emit GHGs in the amount of at least 100,000 tpy CO_2e, and (ii) existing sources that emit GHGs in the amount of at least 100,000 tpy CO_2e, that undertake modifications that would not trigger PSD on

[10] The Response to Comments document for the seven-state FIP can be found in the docket for this rulemaking at EPA–HQ–OAR–2010–0107–0157.

the basis of their non-GHG emissions, but that increase GHGs by at least 75,000 tpy CO_2e).

Under the FIP, with respect to permits for "anyway sources," EPA will be responsible for acting on permit applications for only the GHG portion of the permit, and the state will retain responsibility for the rest of the permit. Likewise, with respect to permits for sources that meet the 100,000/75,000-tpy threshold, our preferred approach—for reasons of consistency—is that EPA will be responsible for acting on permit applications for only the GHG portion of the permit, that the state permitting authorities will be responsible for the non-GHG portion of the permit, and EPA will coordinate with the state permitting authority as needed in order to fully cover any non-GHG emissions that, for example, are subject to BACT because they exceed the significance levels. We recognize that questions may arise as to whether the state permitting authorities have authority to permit non-GHG emissions; as a result, we solicit comment on whether EPA should also be the permitting authority for the non-GHG portion of the permit for these latter sources.

We propose that the FIP consist of the regulatory provisions included in 40 CFR 52.21, except that the applicability provision would include a limitation so that it applies for purposes of this rulemaking only to GHGs.

75 FR 53889/3 to 53,890/1

We are finalizing the FIP as we described it in the proposal, for the same reasons that we indicated in the proposal, all as quoted earlier in this preamble.

State, industry, and environmental commenters questioned how having EPA issue the GHG portions of a permit while allowing states under a FIP to continue to be responsible for issuing the non-GHG portions of a PSD permit will work in practice. Commenters raised concerns about the potential for a source to be "faced with conflicting requirements and the need to mediate among permit engineers making BACT decisions."

We appreciate the commenters' concern. We well recognize that dividing permitting responsibilities between two authorities—EPA for GHGs and the state for all other pollutants—will require close coordination between the two authorities to avoid duplication, conflicting determinations, and delays. We note that this situation is not without precedent. In many instances in the past, EPA has been the PSD permitting authority but the state has accepted a delegation for parts of the PSD program, so that a source has had to go to both the state and EPA for its permit. In addition, all nonattainment areas in the nation are in attainment or are unclassifiable for at least one pollutant, so that every nonattainment area is also a PSD area. In some of these areas, the state is the permitting authority for nonattainment new source review (NSR) and EPA is the permitting authority for PSD. As a result, there are instances in which a new or modifying source in such an area has needed a nonattainment NSR permit from the state and a PSD permit from EPA.

EPA is working expeditiously to develop recommended approaches for EPA regions and affected states—including Jefferson County, Kentucky—to use in addressing the shared responsibility of issuing PSD permits for GHG-emitting sources. In addition, as discussed below, we intend for the GHG PSD FIP to remain in place only as long as necessary for states' SIPs to be approved. Moreover, in this interim period, we intend to delegate permitting responsibility to those states that are able to implement it and that request it. States that request and receive a delegation will be responsible for issuing both the GHG part and the non-GHG part of the permit, and that will moot commenters' concerns about split permitting.

D. Period for GHG PSD FIP To Remain in Place

In the FIP proposal, we stated our intention to leave any promulgated FIP in place for as short a period as possible, and to process any corrective SIP revision submitted by the state to fulfill the requirements of the SIP call as expeditiously as possible. Specifically, we stated:

After we have promulgated a FIP, it must remain in place until the state submits a SIP revision and we approve that SIP revision. CAA section 110(c)(1). Under the present circumstances, we will act on a SIP revision to apply the PSD program to GHG sources as quickly as possible. Upon request of the state, we will parallel-process the SIP submittal. That is, if the state submits to us the draft SIP submittal for which the state intends to hold a hearing, we will propose the draft SIP submittal for approval and open a comment period during the same time as the state hearing. If the SIP submittal that the state ultimately submits to us is substantially similar to the draft SIP submittal, we will proceed to take final action without a further proposal or comment period. If we approve such a SIP revision, we will at the same time rescind the FIP.

75 FR 53889/2–3.

We continue to have these same intentions. Thus, we reaffirm our intention to leave this GHG PSD FIP in place only as long as is necessary for the LMAPCD to submit and for EPA to approve a SIP revision that includes PSD permitting for GHG-emitting sources. As discussed in more detail later in this preamble, EPA continues to believe that the states should remain the primary permitting authority.

E. Primacy of SIP Process

In the FIP proposal we stated,

This proposal [to promulgate a FIP] is secondary to our overarching goal, which is to assure that in every instance, it will be the state that will be that permitting authority. EPA continues to recognize that the states are best suited to the task of permitting because they and their sources have experience working together in the state PSD program to process permit applications. EPA seeks to remain solely in its primary role of providing guidance and acting as a resource for the states as they make the various required permitting decisions for GHG emissions.

Accordingly, beginning immediately we intend to work closely with the states—as we have already begun to do since earlier in the year—to help them promptly develop and submit to us their corrective SIP revisions that extend their PSD program to GHG-emitting sources. Moreover, we intend to promptly act on their SIP submittals. Again, EPA's goal is to have each and every affected state have in place the necessary permitting authorities by the time businesses seeking construction permits need to have their applications processed and the permits issued—and to achieve that outcome by means of engaging with the states directly through a concerted process of consultation and support.

EPA is taking up the additional task of proposing this FIP and the companion SIP Call action only because the Agency believes it is compelled to do so by the need to assure businesses, to the maximum extent possible and as promptly as possible, that a permitting authority is available to process PSD permit applications for GHG-emitting sources once they become subject to PSD requirements on January 2, 2011.

In order to provide that assurance, we are obligated to recognize, as both states and the regulated community already do, that there may be circumstances in which states are simply unable to develop and submit those SIP revisions by January 2, 2011, or for some period of time beyond that date. As a result, absent further action by EPA, those states' affected sources confront the risk that they may have to put on hold their plans to construct or modify, a risk that may have adverse consequences for the economy.

Given these exigent circumstances, EPA proposes this plan, within the limits of our power, with the intent to make a back-up permitting authority available—and to send a signal of assurance expeditiously in order to reduce uncertainty and thus facilitate businesses' planning. Within the design of the CAA, it is EPA that must fill that role of back-up permitting authority. This FIP and the companion SIP Call action fulfill the CAA requirements to establish EPA in that role.

At the same time, we propose these actions with the intent that states retain as much discretion as possible in the hand of the states. In the SIP Call rulemaking, EPA proposes that states may choose the deadline they consider reasonable for submission of

their corrective SIP revision. If, under CAA requirements, we are compelled to promulgate a FIP, we invite the affected state to accept a delegation of authority to implement that FIP, so that it will still be the state that processes the permit applications, albeit operating under federal law. In addition, if we are compelled to issue a FIP, we intend to continue to work closely with the state to assist in developing and submitting for approval its corrective SIP revision, so as to minimize the amount of time that the FIP must remain in place.

75 FR at 53890/1–2.

In this rulemaking, we continue to have the same intentions and for the same reasons. Thus, we continue to believe that this action is necessary to ensure that sources in states with inadequate SIPs can obtain the necessary PSD permits for their GHG emissions. We have worked closely with states to establish reasonable deadlines for submitting revised SIPs and are finalizing this FIP based on the deadline agreed to by the LMAPCD. We will continue to work with states, including the LMAPCD, as we have done throughout the rulemaking process, to assist in development and expedite review of revised SIPs. In the meantime, however, this FIP is necessary for Jefferson County, Kentucky in order to provide a permitting authority until an adequate SIP is submitted and approved.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations for PSD (*see, e.g.,* 40 CFR 52.21) and title V (*see* 40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 and OMB control number 2060–0336 respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (*see* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Although this rule would lead to federal permitting requirements for certain sources, those sources are large emitters of GHGs and tend to be large sources. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1531–1538) for state, local or tribal governments or the private section. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. This action merely prescribes EPA's action for an area that did not meet its existing obligation for PSD SIP submittal. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action merely prescribes EPA's action for an area that did not meet its existing obligation for PSD SIP submittal.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely prescribes EPA's action for an area that did not meet its existing obligation for GHG PSD SIP submittal. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on the proposal for this action from state and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not impose a FIP in any tribal area. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it merely prescribes EPA's action for an area that did not meet its existing obligation for PSD SIP submittal.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action merely prescribes EPA's action for an area that did not meet its existing obligation for PSD SIP submittal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards

bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule merely prescribes EPA's action for an area that did not meet its existing obligation for PSD SIP submittal.

K. Determination Under Section 307(d)

Pursuant to section 307(d)(1)(B) of the CAA, this action is subject to the provisions of section 307(d). Section 307(d)(1)(B) provides that the provisions of section 307(d) apply to "the promulgation or revision of an implementation plan by the Administrator under section 110(c) of this Act."

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action does not constitute a "major rule" as defined by 5 U.S.C. 804(2). Therefore, this action will be effective January 14, 2011.

V. Judicial Review

Section 307(b)(1) of the CAA specifies which Federal Courts of Appeal have jurisdiction to hear petitions for review of which final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule is nationally applicable under CAA section 307(b)(1). It is merely the next step in the suite of rules addressing inadequacies in SIPs related to 13 states' failure to apply PSD to GHG-emitting sources as the SIP Call, the Finding of Failure to Submit issued on December 29, 2010, and the FIP rule issued on December 30, 2010. In particular, this rule simply follows-up on the FIP rule issued on December 30, 2010, which affected seven states that chose the earliest possible deadline, and takes the identical next step for Jefferson County now that this area, too, has missed its SIP Call deadline and is subject to a Finding of Failure to Submit, and FIP. The circumstances that have led to this rulemaking are national in scope and are substantially the same for Jefferson County, Kentucky as they were for each of the seven affected states in the earlier FIP rule issued on December 30, 2010. They include EPA's promulgation of nationally applicable GHG requirements that, in conjunction with the operation of the CAA PSD provisions, have resulted in GHG-emitting sources becoming subject to PSD; as well as EPA's finding of substantial SIP inadequacy, imposition of a SIP call, and establishment of a deadline for SIP submittal. Moreover, in this rule, EPA is applying the same uniform principles for promulgating the FIP for Jefferson County, Kentucky as it did for each of the seven earlier-affected states, concerning, e.g., timing (that is, that EPA is promulgating the FIP for each affected state immediately) and scope (that is, that EPA is applying the FIP for GHG-emitting sources). The FIP for Jefferson County has substantially the same, if not identical, terms as the FIP for each affected state in the December 30, 2010 rule. This rulemaking action is supported by the same single administrative record as the earlier December 30, 2010 FIP rule, and does not involve factual questions unique to Jefferson County, Kentucky or the LMAPCD. In addition, as stated above, this rule is part of a single approach to correcting certain inadequacies in SIPs in multiple States across the country, and in several judicial circuits.

For similar reasons, this rule is based on determinations of nationwide scope or effect. For Jefferson County, Kentucky, EPA is determining that it is appropriate to promulgate the FIP immediately and to apply it to GHG-emitting sources, but not other sources, in the same way it made the same determination for the seven other states in the earlier December 30, 2010 FIP rule. These determinations are the same for each of the states. The provisions of this FIP are also substantially the same, if not identical, to those for the seven earlier affected states. Moreover, EPA is making these determinations and promulgating this action within the context of nationwide rulemakings and interpretation of the applicable CAA provisions, as noted above.

Thus, under section 307(b)(1) of the Act, judicial review of this final action is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 15, 2011. Any such judicial review is limited to only those objections that were raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

VI. Statutory Authority

The statutory authority for this action is provided by sections 110, 165, 301, and 307(d)(1)(B) of the CAA as amended (42 U.S.C. 7410, 7475, 7601, and 7407(d)(1)(B)). This action is subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Environmental protection, Greenhouse gases, Hydrofluorocarbons, Incorporation by reference, Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur

hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: January 10, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is revised as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.37 is amended by revising paragraph (b)(6) and adding paragraph (b)(7) to read as follows:

§ 52.37 What are the requirements of the Federal Implementation plans (FIPs) to issue permits under the Prevention of Significant Deterioration requirements to sources that emit greenhouse gases?

* * * * *

(b) * * *

(6) Wyoming;

(7) Jefferson County, Kentucky.

* * * * *

[FR Doc. 2011–768 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0041–201058(c); FRL–9250–4]

Approval and Promulgation of Implementation Plans; Mississippi: Prevention of Significant Deterioration; Nitrogen Oxides as a Precursor to Ozone; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction and clarification.

SUMMARY: EPA is publishing today's notice to correct the regulatory table in the Code of Federal Regulations for Mississippi's state implementation plan (SIP) to clarify that the version of Mississippi's Prevention of Significant Deterioration (PSD) regulations incorporated into Mississippi's SIP on and after the January 19, 2011, effective date of the SIP revision approved by EPA on December 20, 2010, will be the version promulgated by the State on October 28, 2010 (state-effective date December 1, 2010), and approved by EPA on December 29, 2010. This version of Mississippi's PSD regulations includes both a SIP revision approved by EPA on December 20, 2010, and a SIP revision approved by EPA on December 29, 2010. No new SIP revisions are approved by today's notice. Today's notice clarifies that the revision identified in EPA's December 20, 2010, final action (adding nitrogen oxides (NO_X) as a precursor to ozone for PSD purposes) was included in the PSD rules that were incorporated into the SIP by EPA's December 29, 2010, final action regarding greenhouse gases (GHGs).

DATES: This action is effective January 19, 2011.

ADDRESSES: Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin can be reached at 404–562–9040, or via electronic mail at *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION: On November 28, 2007, Mississippi submitted a SIP revision to EPA to revise its SIP-approved PSD permitting regulations to address the requirements of the Ozone Implementation New Source Review Update to include the consideration of NO_X as an ozone precursor. Specifically, Mississippi's November 28, 2007, SIP revision made changes to Mississippi's air quality regulations, APC–S–5—*Regulations for Prevention of Significant Deterioration,* to incorporate by reference the provisions at 40 CFR 52.21 as amended and promulgated as of June 15, 2007. On December 20, 2010, EPA published a final rule approving Mississippi's November 28, 2007, SIP revision (following a proposal and receiving no comments). *See* 75 FR 78300. According to the December 20, 2010, action, the effective date of EPA's December 20, 2010, final rule approving Mississippi's November 28, 2007, SIP revision is January 19, 2011. The January 19, 2011, effective date is now being corrected and clarified in today's action. This is necessary due to EPA taking final action on two SIP revisions so closely in time and to avoid any confusion regarding which SIP rules are in effect in Mississippi.

On December 9, 2010, Mississippi submitted another SIP revision to EPA to revise its SIP-approved PSD permitting regulations to establish appropriate thresholds for determining which new stationary sources and modification projects become subject to Mississippi's PSD permitting requirements for their GHG emissions. Specifically, Mississippi's December 9, 2010, SIP revision made further changes to Mississippi's air quality regulations, APC–S–5—*Regulations for Prevention of Significant Deterioration,* to incorporate by reference the provisions at 40 CFR 52.21 as amended and promulgated as of September 13, 2010. EPA published a final rule approving Mississippi's December 9, 2010, SIP revision on December 29, 2010, and used the "good cause" clause to make the effective date of that final EPA action January 2, 2011. *See* 75 FR 81858. The Mississippi rules at issue in EPA's December 29, 2010, final action and EPA's December 20, 2010, final action were different versions of the same rules—thus resulting in potentially conflicting effective dates. In today's action, EPA is clarifying that both actions are final and that the rules in effect per the December 29, 2010, action are the rules that are approved into Mississippi's SIP and that are in effect in Mississippi.

To clarify the rules in the SIP, as part of today's action, EPA is correcting the regulatory table that identifies Mississippi's SIP to clarify which version of Mississippi's air quality regulations related to PSD permitting requirements will be in the SIP on and after January 19, 2011. Specifically, EPA is clarifying that it is not EPA's intent to supersede EPA's approval of Mississippi's December 9, 2010, SIP revision, with EPA's approval of Mississippi's November 28, 2007, SIP revision. Rather, the version of Mississippi's PSD regulations incorporated into Mississippi's SIP on and after the January 19, 2011, effective date of the SIP revisions approved by EPA on December 20, 2010, will be the version promulgated by the State on October 28, 2010 (state-effective date December 1, 2010), with the exception of certain language identified in EPA's December 29, 2010, notice. This version of Mississippi's PSD regulations includes both the SIP revision approved by EPA on December 20, 2010, and the SIP revision approved by EPA on December 29, 2010. No new SIP revisions are approved by today's action—this is simply a correction and clarification due to potentially

conflicting effective dates of EPA's previous final actions. This clarification is necessary solely as a result of the inadvertent timing of EPA's approval of Mississippi's two SIP revisions relating to different versions of the same rule, APC–S–5—*Regulations for Prevention of Significant Deterioration,* and the effective dates of those SIP revisions. The version of APC–S–5 that was approved into the SIP on December 29, 2010, with an effective date of January 2, 2011, is the version that is approved into the Mississippi SIP and in effect in Mississippi.

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action clarifying the version of APC–S–5—*Regulations for Prevention of Significant Deterioration* that is approved in Mississippi's SIP as of January 19, 2011, has no substantive impact on EPA's December 20, 2010, approval, as the provisions related to NO_X as a precursor for ozone incorporated by reference into Mississippi's November 28, 2007, SIP revision are the same as those provisions incorporated by reference into Mississippi's December 9, 2010, SIP revision. EPA can identify no reason why the public would benefit from having an opportunity to comment on this correction prior to this action being finalized, since this correction action does not approve any new revisions to Mississippi's SIP or alter EPA's rationale for its prior action approving Mississippi's adoption of NO_X as a precursor for ozone for PSD permitting purposes.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on January 19, 2011. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's action merely clarifies which version of Mississippi's air quality regulations at APC–S–5—*Regulations for Prevention of Significant Deterioration* are in effect on and after January 19, 2011. For these reasons, EPA finds good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this 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 action merely makes a correction to the regulatory table in Mississippi's SIP to clarify which version of APC–S–5—*Regulations for Prevention of Significant Deterioration* will be in effect on and after January 19, 2011, relating to a SIP revision EPA approved on December 20, 2010, and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely makes a correction to the regulatory table in Mississippi's SIP to clarify which version of APC–S–5—*Regulations for Prevention of Significant Deterioration* will be effect on and after January 19, 2011, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have Tribal implications because it will 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 rule also does not have Federalism implications because it does 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). This rule merely makes a correction to the regulatory table to clarify which version of APC–S–5—*Regulations for Prevention of Significant Deterioration* will be in effect on and after January 19, 2011, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, 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 rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 15, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxide, Volatile organic

compounds, and Reporting and recordkeeping requirements.

Dated: January 3, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart Z—Mississippi

■ 2. In § 52.1270 (c) the table is amended by revising the following entry for "APC–S–5" to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
APC–S–5–Regulations for Prevention of Significant Deterioration for Air Quality				
All		12/1/2010	12/29/2010 75 FR 81858	APC–S–5 incorporates by reference the regulations found at 40 CFR 52.21 as of September 13, 2010. This EPA action is approving the incorporation by reference with the exception of the phrase "except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140," APC–S–5 incorporated by reference from 40 CFR 52.21(b)(1)(i)(a) and (b)(1(iii)(t) APC–S–5. In addition, this EPA action is not incorporating by reference, into the Mississippi SIP, the administrative regulations that were amended in the Fugitive Emissions Rule (73 FR 77882) and are stayed through October 3, 2011.

* * * * *

[FR Doc. 2011–377 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0107; FRL–9253–2]

Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revision Required of Louisville Metro Air Pollution Control District for Jefferson County, KY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is making a finding that the Louisville Metro Air Pollution Control District (LMAPCD) has failed to submit a revision to its EPA-approved state implementation plan (SIP) for Jefferson County, Kentucky, to satisfy requirements of the Clean Air Act (CAA) to apply Prevention of Significant Deterioration (PSD) requirements to greenhouse gas (GHG)-emitting sources. By notice dated December 13, 2010, EPA issued a "SIP call" for 13 states (comprising 15 state and local programs, including Kentucky's LMAPCD), requiring each state to revise its SIP as necessary to correct the SIP's failure to apply PSD to such sources and establishing a SIP submittal deadline for each state. By this action, EPA is making a finding that the LMAPCD has failed to submit the required SIP revision by January 1, 2011, which is the SIP submittal deadline that EPA established in the SIP call for LMAPCD. This finding requires EPA to promulgate a federal implementation plan (FIP) for Jefferson County, Kentucky, applying PSD to GHG-emitting sources, and EPA is taking a separate action to promulgate the FIP immediately.

DATES: This action is effective on January 14, 2011.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0107. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–3450; *fax number:* (919) 541–5509; *e-mail address: sutton.lisa@epa.gov.* For information regarding the Louisville Metro Air Pollution Control District permitting authority, contact Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning

Branch, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040; e-mail address: *benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Jefferson County, Kentucky, is the only entity affected by this rule.[1] By this action, EPA is making a finding of failure to submit the required SIP for the LMAPCD because its EPA-approved SIP PSD program does not apply to GHG-emitting sources in Jefferson County, Kentucky. This action only applies to Jefferson County, Kentucky, and does not apply to the remainder of the Commonwealth of Kentucky. On December 13, 2010, the Kentucky Division of Air Quality provided EPA with the required corrective SIP revision to address PSD requirements related to GHG-emitting sources for all other areas in Kentucky. On December 29, 2010, EPA took final action to approve the Commonwealth's December 13, 2010, SIP revision. *See* 75 FR 81868.

B. How is the preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. How is the preamble organized?

II. Background
- A. CAA and Regulatory Context
  - 1. SIP PSD Requirements
  - 2. SIP Inadequacy and Corrective Action
- B. Recent EPA Regulatory Action Concerning PSD Requirements for GHG-Emitting Sources

III. Final Action: Finding of Failure of Kentucky's Louisville Metro Air Pollution Control District To Submit a Corrective SIP Revision

IV. Statutory and Executive Order Reviews
- A. Notice and Comment Under the Administrative Procedure Act (APA)
- B. Executive Order 12866—Regulatory Planning and Review
- C. Paperwork Reduction Act
- D. Regulatory Flexibility Act
- E. Unfunded Mandates Reform
- F. Executive Order 13132—Federalism
- G. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
- H. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
- I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- J. National Technology Transfer and Advancement Act
- K. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- L. Congressional Review Act

V. Judicial Review

VI. Statutory Authority

II. Background

A. CAA and Regulatory Context

EPA described the relevant background information in the proposed and final rulemaking for what we call the GHG PSD SIP call or, simply, the SIP call,[2] as well as in what we call the Tailoring Rule.[3] 75 FR at 31518–21. Knowledge of this background information is presumed and will be only briefly summarized here.

1. SIP PSD Requirements

In general, under the CAA PSD program, a stationary source must obtain a permit prior to undertaking construction or modification projects that would result in specified amounts of new or increased emissions of air pollutants that are subject to regulation under other provisions of the CAA. CAA sections 165(a)(1), 169(1). As we described in the SIP call and elsewhere, several CAA provisions, taken together, mandate that SIPs include PSD programs that are applicable to any air pollutant that is subject to regulation under the CAA, including, as discussed later in this preamble, GHGs on and after January 2, 2011. CAA sections 110(a)(2)(C), 110(a)(2)(J), 161.

2. SIP Inadequacy and Corrective Action

The CAA provides a mechanism for the correction of SIPs with certain types of inadequacies. CAA section 110(k)(5) authorizes the Administrator to "find [ ] that [a SIP] * * * is substantially inadequate to * * * comply with any requirement of this Act," and, based on that finding, to "require the State to revise the [SIP] * * * to correct such inadequacies." This latter action is commonly referred to as a "SIP call." In addition, this provision provides that EPA must notify the state of the substantial inadequacy and authorizes EPA to establish a "reasonable deadline[ ] (not to exceed 18 months after the date of such notice)" for the submission of the corrective SIP revision.

If EPA does not receive the corrective SIP revision by the deadline, CAA section 110(c)(1)(A) authorizes EPA to "find [ ] that [the] State has failed to make a required submission." Once EPA makes that finding, CAA section 110(c)(1) requires EPA to "promulgate a Federal implementation plan at any time within 2 years after the [finding] * * * unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before [EPA] promulgates such [FIP]."

B. Recent EPA Regulatory Action Concerning PSD Requirements for GHG-Emitting Sources

In recent months, EPA has taken several distinct actions related to GHGs under the CAA. Some of these, in conjunction with the operation of the CAA, trigger PSD applicability for GHG-emitting sources on and after January 2, 2011, but focus the scope of PSD on the largest GHG-emitting sources. These actions include what we call the Endangerment Finding,[4] the Light-Duty Vehicle Rule,[5] the Johnson Memo Reconsideration,[6] and the Tailoring Rule.

Closely related to this action, EPA promulgated the PSD GHG SIP call, under authority of CAA section 110(k)(5). In that action, applicable to 13 states, the Administrator issued a finding of substantial inadequacy as well as a SIP call and established a deadline for submission of the corrective SIP revision. The deadline

[1] In a final action published on December 29, 2010, EPA announced that the Agency made a separate finding of failure to submit for seven other states (comprising eight state and local programs) because those states failed to provide required SIP revisions to correct their EPA-approved SIP PSD programs for applicability to GHG-emitting sources by the established deadlines for those states. *See* 75 FR 81874. For convenience, we refer to "states" in this rulemaking to collectively mean state and local permitting authorities. The seven states addressed in EPA's December 29, 2010, rulemaking are Arizona, Arkansas, Florida, Idaho, Kansas, Oregon, and Wyoming. In Arizona, the finding applies to two EPA PSD permit programs—"Pinal County" and "Rest of State (Excludes Maricopa County, Pima County, and Indian County)."

[2] "Action To Ensure Authority To Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule," 75 FR at 77698, 77700–04 (December 13, 2010) (final SIP call); "Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Proposed Rule," 75 FR 53892, 53896–98 (September 2, 2010) (proposed SIP call).

[3] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31514, 31518–21 (June 3, 2010).

[4] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66496 (December 15, 2009).

[5] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25324 (May 7, 2010).

[6] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17004 (April 2, 2010).

was 12 months after the date of the SIP call, unless the state indicated to EPA that it did not object to an earlier deadline, as early as 3 weeks after the date of the SIP call. Twelve of the states so indicated and therefore received an earlier deadline. The LMAPCD requested a SIP submittal deadline of January 1, 2011. 75 FR at 77705.

All 13 states and their deadlines are listed in table II–1, "SIP Call States and SIP Submittal Deadlines":

TABLE II–1—SIP CALL STATES AND SIP SUBMITTAL DEADLINES

State (or area)	SIP submittal deadline
Arizona: Pinal County	12/22/10
Arizona: Rest of State (Excludes Maricopa County, Pima County, and Indian Country)	12/22/10
Arkansas	12/22/10
California: Sacramento Metropolitan AQMD	01/31/11
Connecticut	03/01/11
Florida	12/22/10
Idaho	12/22/10
Kansas	12/22/10
Kentucky (Jefferson County): Louisville Metro Air Pollution Control District	01/01/11
Kentucky: Rest of State (Excludes Louisville Metro Air Pollution Control District (Jefferson County))	03/31/11
Nebraska	03/01/11
Nevada: Clark County	07/01/11
Oregon	12/22/10
Texas	12/01/11
Wyoming	12/22/10

The SIP submittal deadlines that the final SIP call rule established for the states reflect, in almost all instances, a recognition by EPA and the states of the need to move expeditiously to assure the availability of a permitting authority. In the SIP call, EPA made clear that the purpose of establishing the shorter period as the deadline—for any state that advised us that it did not object to that shorter period—is to accommodate states that wish to ensure that a FIP is in effect as a backstop to avoid any gap in PSD permitting. 75 FR at 77710.

Seven of the 13 SIP-called states (including 8 of the 15 affected PSD programs) stated that they did not object to a SIP submittal deadline of December 22, 2010 (the earliest possible deadline), 75 FR at 77705, and those states are the subject of a final rule that EPA issued on December 29, 2010. *See* 75 FR 81874. The LMAPCD requested a SIP submittal deadline of January 1, 2011, has since missed that SIP submittal deadline, and thus is the subject of this final rule.[7]

Also closely related to this action, EPA proposed a FIP[8] action related to GHGs. We stated in the proposed FIP that if any of the states for which we issued the SIP call did not meet its SIP submittal deadline, we would immediately issue a finding of failure to submit a required SIP revision, under CAA section 110(c)(1)(A), and immediately thereafter promulgate a FIP for the state. We explained that we would take these actions immediately in order to minimize any period of time during which larger-emitting sources may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits. 75 FR at 53889. Seven of the 13 SIP-called states (including 8 of the 15 affected PSD programs) stated that they did not object to a SIP submittal deadline of December 22, 2010 (the earliest possible deadline). Subsequently, for those seven states, EPA made a finding of failure to submit a corrective SIP revision (75 FR at 77705; December 29, 2010) and by separate action promulgated a FIP.[9]

III. Final Action: Finding of Failure of Kentucky's Louisville Metro Air Pollution Control District To Submit a Corrective SIP Revision

By this final rule, EPA is making a finding under CAA section 110(c) that Kentucky's LMAPCD has failed to submit, through the Kentucky Energy and Environment Cabinet (KEEC), a corrective SIP for Jefferson County by January 1, 2011, which was its SIP submittal deadline, as established under our SIP call. The LMAPCD is the air permitting authority that administers the Jefferson County portion of Kentucky's SIP. Although two EPA-approved PSD programs in Kentucky—"Jefferson County" and "Rest of State"—were included in EPA's recent SIP call, this finding of failure to submit applies only to Jefferson County, Kentucky. Subsequent to EPA's SIP call, the Commonwealth of Kentucky submitted a corrective SIP revision to apply its PSD program to GHG-emitting sources in the remainder of the Commonwealth of Kentucky. On December 29, 2010, EPA took final action to approve the Commonwealth's December 13, 2010, SIP revision. *See* 75 FR 81868.

As we stated in our proposed FIP rulemaking (*see* 75 FR at 53889), if a state for which we issue the SIP call does not meet its SIP submittal deadline, we would immediately issue a finding of failure to submit a required SIP revision under CAA section 110(c)(1)(A). Once we make that finding, we are required under CAA section 110(c) to promulgate a FIP (unless first the state corrects the deficiency and EPA approves the plan or plan revision). By a separate action today, we are promulgating the FIP immediately.

The making of a finding of failure in this final rule is important because it is the prerequisite for the FIP, and the FIP, in turn, establishes EPA as the permitting authority for GHG-emitting sources. Without our acting as that authority, large GHG-emitting sources in Jefferson County, Kentucky, may be unable to obtain a PSD permit for their GHG emissions and therefore may face delays in undertaking construction or modification projects. Sources that emit or plan to emit large amounts of GHGs are, starting January 2, 2011, required to obtain PSD permits before undertaking new construction or modification projects, but neither the LMAPCD nor, absent the FIP, EPA would be authorized to issue the permits. With the FIP, EPA will have the authority to issue PSD permits for Jefferson County, Kentucky.

This rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. 553(d), generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d)(3) provides an exception when the agency finds good cause exists for a rule to take effect in less than 30 days.

We find good cause exists here to make this rule effective upon publication because implementing a 30-day delayed effective date would interfere with the Agency's ability to ensure that there is a permitting authority authorized to issue the

[7] More detailed discussion about the 13 states is included in the Supplemental Information Document prepared by EPA in support of the final SIP call. The Supplemental Information Document can be found in the docket for this rulemaking, at Document ID No. EPA–HQ–OAR–2010–0107–0129.

[8] Proposed rule, "Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan." 75 FR 53883 (September 2, 2010). The notice can be found in the docket for this rulemaking, at Document ID No. EPA–HQ–OAR–2010–0107–0045.

[9] In a final action published on December 30, 2010, EPA promulgated a FIP to apply to seven states (comprising eight state and local programs) because those states failed to provide required SIP revisions to correct their EPA-approved SIP PSD programs for applicability to GHG-emitting sources. Final rule, "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan." 75 FR 82246.

required PSD permits for GHG emissions to certain major stationary sources in Jefferson County, Kentucky. A 30-day delay in the effective date of this rule will impede implementation of this rule and create regulatory confusion. This rule, establishing that the LMAPCD has failed to submit a corrective SIP revision by its January 1, 2011 deadline, is necessary so that EPA can promulgate a FIP for Jefferson County, Kentucky, soon afterward. This timing will allow the FIP to be published and become effective as soon as possible after the January 2, 2011 date that PSD began to apply to GHG-emitting sources under the CAA. As of January 2, 2011, certain major stationary sources in Jefferson County, Kentucky, if seeking PSD permits for other pollutants, are already required to obtain PSD permits for GHG emissions where no permitting authority is authorized to issue such a permit. However, it is impractical to wait 30 days for this rule to take effect, during which time no permitting authority would be authorized to issue permits to any major stationary sources that apply to obtain PSD permits for GHG emissions. Moreover, EPA finds that it is necessary to make this rule effective upon publication to avoid any economic harm that the public and the regulated industry might incur if there is no permitting authority able to issue PSD permits for GHG emissions when such permits are requested in Jefferson County, Kentucky.

The purpose of the APA's 30-day effective date provision is to give affected parties time to adjust their behavior before the final rule takes effect. The LMAPCD, to which this rulemaking applies, indicated in a comment letter to EPA that it did not object to a SIP submittal deadline of January 1, 2011. Both the LMAPCD and the public have been aware that we would take this approach to this rule for some time, that is, that we would establish a SIP submittal deadline on a date to which the state does not object, potentially as early as December 22, 2010, so that we could make a finding of failure to submit and promulgate a FIP immediately thereafter, and potentially as early as December 23, 2010, in order that the FIP could be in effect on or as soon as possible after the January 2, 2011, date that PSD begins to apply to GHG-emitting sources. We described this approach in the proposed SIP call that was signed and made available to the public on August 12, 2010, even before its September 2, 2010 publication date in the **Federal Register**. Moreover, the public was afforded the opportunity to comment on this approach in the SIP call proposal. *See* 75 FR 53892, 53896.

In addition, this rule is not a major rule under the Congressional Review Act (CRA). Thus, the 60-day delay in effective date required for major rules under the CRA does not apply.

IV. Statutory and Executive Order Reviews

A. Notice and Comment Under the Administrative Procedure Act (APA)

This is a final EPA action but is not subject to notice-and-comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking.

However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(b)(3)(B), which excuses the notice-and-comment obligation "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." While the good cause exception is to be narrowly construed, *Utility Solid Waste Activities Group* v. *Environmental Protection Agency,* 236 F.3d 749, 754 (D.C. Cir. 2001), it is also "an important safety valve to be used where delay would do real harm." *U.S. Steel Corp.* v. *U.S. Environmental Protection Agency,* 595 F.2d 207, 214 (5th Cir. 1979). Notice and comment is impracticable where "an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required." *Utility Solid Waste Activities Group,* 236 F.3d at 754. Notice and comment is contrary to the public interest where "the interest of the public would be defeated by any requirement of advance notice." *Id.* at 755.

Here, notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit elements of SIP submissions required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert agency resources from the critical substantive review of complete SIPs. *See* 58 FR 51270, 51272, n.17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994). In addition, in this case, notice and comment would be impracticable and contrary to the public interest for the same reasons, discussed earlier in this preamble, why a 30-day effective date would be impracticable and contrary to the public interest.

B. Executive Order 12866—Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993). This action issues a finding that the LMAPCD has failed to submit a corrective SIP by the deadline established in EPA's recently promulgated SIP call for Jefferson County, Kentucky. This type of action is exempt from review under EO 12866.

C. Paperwork Reduction Act

This action does not impose any new information collection burden. However, OMB has previously approved the information collection requirements contained in the existing regulations for PSD (*see, e.g.,* 40 CFR 52.21) and title V (*see* 40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 and OMB control number 2060–0336 respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to the notice-and-comment requirement of the APA, because the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b). Thus, this rule is not subject to the RFA.

E. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory

requirements that might significantly or uniquely affect small governments. This action does not impose any new obligations or enforceable duties on any small governments.

F. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicited comment on this action, as part of the FIP proposal, from state and local officials.

G. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). In this action, EPA is not addressing any tribal implementation plans. This action is limited to states that do not meet their existing obligation for PSD SIP submittal. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this final rule, EPA specifically solicited additional comment on the proposal for this action from tribal officials and we received one comment from a tribal agency. Additionally, EPA participated in a conference call on July 29, 2010, with the National Tribal Air Association (NTAA).

H. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

I. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This action merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

K. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rule merely prescribes EPA's action for states that do not meet their existing obligation for PSD SIP submittal.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

V. Judicial Review

Section 307(b)(1) of the CAA specifies which Federal Courts of Appeal have jurisdiction to hear petitions for review of which final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the Agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule is nationally applicable under CAA section 307(b)(1). It is merely the next step in the suite of rules addressing inadequacies in SIPs related to 13 states' failure to apply PSD to GHG-emitting sources such as the SIP call, the finding of failure to submit issued on December 29, 2010, and the FIP issued on December 30, 2010. In particular, this rule simply follows up on the finding of failure to submit issued on December 29, 2010, which affected seven states that chose the earliest possible deadline, and takes the next step to make an identical finding for Jefferson County, Kentucky, now that this area, too, has missed its SIP submittal deadline. The circumstances that have led to this rulemaking are national in scope and are substantially the same for the LMAPCD as they were for each of the seven affected states in the earlier finding of failure to submit

issued on December 29, 2010. They include EPA's promulgation of nationally applicable GHG requirements that, in conjunction with the operation of the CAA PSD provisions, have resulted in GHG-emitting sources' becoming subject to PSD; as well as EPA's finding of substantial SIP inadequacy, imposition of a SIP call, and establishment of deadlines for SIP submittal. Moreover, in this rule, EPA is applying the same uniform principles for promulgating the finding of failure to submit in Jefferson County, Kentucky, as it did for each of the seven earlier-affected states. The FIP for Jefferson County, Kentucky, accompanying this rule has substantially the same, if not identical, terms as the FIP for each earlier-affected state in the December 30, 2010, rule. This rulemaking action is supported by the same single administrative record as the earlier December 29, 2010, finding of failure to submit rule and does not involve factual questions unique to the LMAPCD. In addition, as stated earlier in this preamble, this rule is part of a single approach to correcting certain inadequacies in SIPs in multiple states across the country and in several judicial circuits.

For similar reasons, this rule is based on determinations of nationwide scope or effect. For the LMAPCD, EPA is determining that it is appropriate to make this finding of failure to submit effective immediately in order to promulgate the FIP immediately and to apply the FIP to GHG-emitting sources, but not other sources, in the same way it made the same determination for the seven other states in the December 29, 2010, finding of failure to submit. These determinations are the same for each of the states. The provisions of this finding of failure to submit are also substantially the same, if not identical, to those for the seven earlier-affected states. Moreover, EPA is making this finding and promulgating this action within the context of nationwide rulemakings and interpretation of the applicable CAA provisions, as noted earlier in this preamble.

Thus, under section 307(b)(1) of the Act, judicial review of this final action is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by March 15, 2011. Any such judicial review is limited to only those objections that were raised with reasonable specificity in timely comments. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

VI. Statutory Authority

The statutory authority for this action is provided by sections 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Environmental protection, Greenhouse gases, Hydrofluorocarbons, Incorporation by reference, Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: January 11, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–769 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8163]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for

the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map Date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Alabama:				
Cedar Bluff, Town of, Cherokee County..	015010	March 28, 1984, Emerg; January 1, 1987, Reg; January 19, 2011, Susp.	Jan. 19, 2011 ...	Jan. 19, 2011.
Centre, City of, Cherokee County	010233	December 27, 1976, Emerg; March 14, 1980, Reg; January 19, 2011, Susp.	.....do	Do.
Cherokee County, Unincorporated Areas.	010234	June 24, 1986, Emerg; June 17, 1991, Reg; January 19, 2011, Susp.	.....do	Do.
Leesburg, City of, Cherokee County	010235	August 2, 1999, Emerg; January 19, 2011, Reg; January 19, 2011, Susp.	.....do	Do.
Region V				
Illinois: Edgar County, Unincorporated Areas	170985	March 3, 2010, Emerg; January 19, 2011, Reg; January 19, 2011, Susp.	.....do	Do.
Ohio:				
Bellevue, City of, Erie, Huron, and Sandusky Counties.	390487	October 21, 1974, Emerg; October 17, 1978, Reg; January 19, 2011, Susp.	.....do	Do.
Crawford County, Unincorporated Areas	390811	September 2, 1987, Emerg; April 1, 1992, Reg; January 19, 2011, Susp.	.....do	Do.
Crestline, City of, Crawford and Richmond Counties.	390091	February 18, 1976, Emerg; October 5, 1984, Reg; January 19, 2011, Susp.	.....do	Do.
Galion, City of, Crawford County	390092	July 17, 1975, Emerg; June 19, 1985, Reg; January 19, 2011, Susp.	.....do	Do.
Greenwich, Village of, Huron County	390282	June 23, 1975, Emerg; September 30, 1988, Reg; January 19, 2011, Susp.	.....do	Do.
Huron County, Unincorporated Areas ...	390770	August 3, 1979, Emerg; August 1, 1987, Reg; January 19, 2011, Susp.	.....do	Do.
Monroeville, Village of, Huron County ...	390283	August 6, 1975, Emerg; August 1, 1987, Reg; January 19, 2011, Susp.	.....do	Do.
New London, Village of, Huron County	390284	June 12, 1975, Emerg; May 1, 1988, Reg; January 19, 2011, Susp.	.....do	Do.
Wakeman, Village of, Huron County.	390288	May 25, 1976, Emerg; September 1, 1986, Reg; January 19, 2011, Susp.	.....do	Do.
Willard, City of, Huron County	390289	June 17, 1975, Emerg; November 2, 1984, Reg; January 19, 2011, Susp.	.....do	Do.
Region VI				
Louisiana:				
Abbeville, City of, Vermilion Parish	220264	July 1, 1974, Emerg; August 3, 1981, Reg; January 19, 2011, Susp.	.....do	Do.
Delcambre, Town of, Iberia and Vermilion Parishes.	220223	July 1, 1974, Emerg; April 4, 1983, Reg; January 19, 2011, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map Date	Date certain Federal assistance no longer available in SFHAs
Erath, Town of, Vermilion Parish	220224	June 26, 1974, Emerg; April 4, 1983, Reg; January 19, 2011, Susp.	.....do	Do.
Gueydan, Town of, Vermilion Parish	220225	July 1, 1974, Emerg; December 16, 1977, Reg; January 19, 2011, Susp.	.....do	Do.
Kaplan, City of, Vermilion Parish	220226	July 1, 1974, Emerg; March 1, 1982, Reg; January 19, 2011, Susp.	.....do	Do.
Maurice, Village of, Vermilion Parish.	220227	October 16, 1974, Emerg; June 30, 1976, Reg; January 19, 2011, Susp.	.....do	Do.
Region VIII				
North Dakota:				
Enderlin, City of, Cass and Ransom Counties.	385363	October 9, 1970, Emerg; June 18, 1971, Reg; January 19, 2011, Susp.	.....do	Do.
Lisbon, City of, Ransom County	380091	March 10, 1975, Emerg; September 27, 1985, Reg; January 19, 2011, Susp.	.....do	Do.
Ransom County, Unincorporated Areas	380089	February 17, 1978, Emerg; September 27, 1985, Reg; January 19, 2011, Susp.	.....do	Do.
Region IX				
California:				
Fort Jones, City of, Siskiyou County	060365	November 1, 1974, Emerg; April 15, 1980, Reg; January 19, 2011, Susp.	.....do	Do.
Siskiyou County, Unincorporated Areas	060362	February 23, 1973, Emerg; May 17, 1982, Reg; January 19, 2011, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 4, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2011–696 Filed 1–13–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 06–229; DA 10–2342]

Requests for Waiver of Various Petitioners To Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver.

SUMMARY: In this order, on recommendation of the Emergency Response Interoperability Center (ERIC), the Public Safety and Homeland Security Bureau (Bureau) approved an initial set of technical requirements for public safety jurisdictions (Petitioners) that were granted conditional waivers by the Commission for early deployment in the 700 MHz public safety broadband spectrum. The order grants Petitioners that previously declined to file an interoperability showing a renewed opportunity to do so and to proceed with network deployment.

DATES: Effective December 10, 2010.

FOR FURTHER INFORMATION CONTACT: Jennifer Manner, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street, SW., Room 7–C761, Washington, DC 20554. *Telephone:* (202) 418–3619, *e-mail: jennifer.manner@fcc.gov.*

SUPPLEMENTARY INFORMATION: The initial set of technical interoperability requirements approved in the order creates a baseline technical interoperability framework for Petitioners' actual deployment of public safety broadband networks in advance of the Commission's adoption of final technical and operational rules for a nationwide interoperable public safety broadband network. The requirements approved in the order are essential to achieving nationwide interoperability among early-deployed public safety broadband networks. These requirements address core aspects of interoperability, such as roaming capabilities and system identifiers, that are crucial to ensuring that the users of disparate networks are capable of communicating seamlessly. Also included are requirements that early-deployed networks meet performance, coverage, and other requirements necessary to ensure that early-deployed networks achieve a baseline of operability sufficient to support interoperable communications.

Any Petitioner that previously filed an interoperability showing detailing its plans for achieving interoperability, or that in the future files, pursuant to the order, a showing that is subsequently acted on by the Bureau, may proceed with build-out and operation of its network upon submission to ERIC of a certification that its deployment will satisfy each of the requirements approved in the order.

Federal Communications Commission.

Jennifer A. Manner,

Deputy Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2011–811 Filed 1–13–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2010–0098]

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of 2008 final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 2008 passenger motor vehicles that occurred in calendar year (CY) 2008. The final 2008 theft data indicated a

decrease in the vehicle theft rate experienced in CY/MY 2008. The final theft rate for MY 2008 passenger vehicles stolen in calendar year 2008 is 1.69 thefts per thousand vehicles, a decrease of 8.65 percent from the rate of 1.85 thefts per thousand in 2007. Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment.

DATES: *Effective date:* January 14, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the section 33104(b)(4) mandate, this document reports the final theft data for CY 2008, the most recent calendar year for which data are available.

In calculating the 2008 theft rates, NHTSA followed the same procedures it used in calculating the MY 2007 theft rates. (For 2007 theft data calculations, see 75 FR 47720, August 9, 2010). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

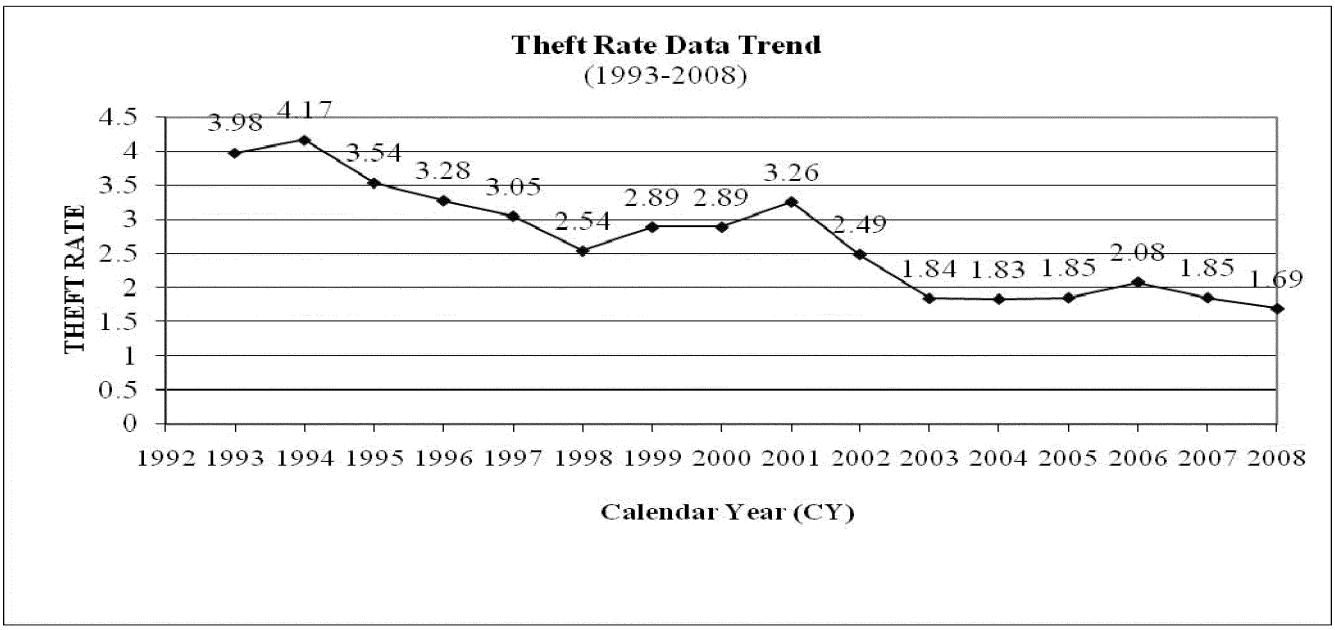
The 2008 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2008 vehicles of that line stolen during calendar year 2008 by the total number of vehicles in that line manufactured for MY 2008, as reported to the Environmental Protection Agency (EPA).

The final 2008 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2007. The final theft rate for MY 2008 passenger vehicles stolen in calendar year 2008 decreased to 1.69 thefts per thousand vehicles produced, a decrease of 8.65 percent from the rate of 1.85 thefts per thousand vehicles experienced by MY 2007 vehicles in CY 2007.

For MY 2008 vehicles, out of a total of 241 vehicle lines, 17 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (*See* 59 FR 12400, March 16, 1994). Of the 17 vehicle lines with a theft rate higher than 3.5826, 14 are passenger car lines, three are multipurpose passenger vehicle lines, and none are light-duty truck lines.

A historical review of the 5-, 10- and 15-year theft trends show a substantial decrease in the vehicle theft rate when comparing the 2008 theft rate (1.69 thefts per thousand vehicles) to MY/CY's 1993, 1998 and 2003 theft rates. The 2008 rate is 57.54 percent lower than the CY/MY 1993 rate (3.98 thefts per thousand vehicles), 33.46 percent lower than the CY/MY 1998 rate (2.54 thefts per thousand vehicles) and 8.15 percent below the CY/MY 2003 rate (1.84 thefts per thousand vehicles). Overall as indicated by Figure 1, theft rates have continued to indicate a decreasing trend since CY/MY 1993, with periods of very moderate increases from one year to the next.

Figure 1: Theft Rate Data Trend (1993-2008)



Theft rate per thousand vehicles produced

The agency believes that the theft rate reduction could be the result of several factors including the increased use of standard antitheft devices (*i.e.,* immobilizers), vehicle parts marking, increased and improved prosecution efforts by law enforcement organizations and increased public awareness measures.

On Tuesday, August 17, 2010, NHTSA published the preliminary theft rates for CY 2008 passenger motor vehicles in the **Federal Register** (75 FR 5073). The agency tentatively ranked each of the MY 2008 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency used written comments to make the necessary adjustments to its data. As a result of the adjustments, some of the final theft rates and rankings of vehicle lines changed from those published in the August 2010 notice. The agency received written comments from Volkswagen Group of America, Inc. (VW) and Nissan North America, Inc. (Nissan).

Volkswagen informed the agency that the terms "Quattro" and "Avant" should be deleted from the Volkswagen and Audi vehicle line nomenclature. The Quattro and Avant nomenclature are used in EPA data to identify the 4-wheel drive system as the Quattro or the station wagon model as the Avant. VW stated that the Quattro and Avant are not part of the vehicle line name and therefore, are not relevant to the theft data listing. As a result of this comment, Quattro and Avant have been deleted from the vehicle line nomenclature for the Volkswagen and Audi vehicle lines. Therefore, the entry for the Audi A6/A6 Quattro/S6/S6 Avant has been changed to the Audi A6 and the Audi S6. The Audi A8/A8 Quattro entry is now listed as the Audi A8, the Audi S8/S8 Quattro entry is now listed as the Audi S8, the Audi A3/A3 Quattro entry is now listed as the Audi A3, the Audi A6/A6 Quattro/S6/S6 Avant entry is now listed as the Audi A6 and the Audi S6, and the Audi A4/A5//A4/A5 Quattro//S4/S4 Avant entry is now listed as the Audi A4/A5 and the Audi S4/S5. The final theft list has been revised to reflect these changes. Additionally, Volkswagen requested that its performance-related vehicle models be listed separately from its base model vehicle lines.

In its comments, VW informed the agency that the production volumes for the Audi S8, Audi A6, Audi S6, Audi A8, Volkswagen R32, Volkswagen Jetta/GLI, the Volkswagen Passat and the Audi TT are incorrect. In response to this comment, the production volume for the Audi S8, Audi A6, Audi S6, Audi A8, Volkswagen R32, Volkswagen Jetta/GLI, the Volkswagen Passat and the Audi TT have been corrected and the final theft list has been revised accordingly. As a result of the correction, the Audi S8 previously ranked No. 40 with a theft rate of 2.5974 remains ranked No. 40 with a theft rate of 2.5907, the Audi A6 previously ranked No. 86 with a theft rate of 1.4414 is now ranked No. No. 92 with a theft rate of 1.3990, the Audi S6 previously ranked No. 86 with a theft rate of 1.4414 is now ranked No. 48 with a theft rate of 1.3990, the Audi A8 previously ranked No. 141 with a theft rate of 0.8478 is now ranked No. 92 with a theft rate of 1.3990, the Volkswagen R32 previously ranked No. 60 with a theft rate of 1.8004 is now ranked No. 61 with a theft rate of 1.7996, the Volksgwagen Jetta/GLI previously ranked No. 75 with a theft rate of 1.5822 is now ranked No. 76 with a theft rate of 1.5821, the Volkswagen Passat previously ranked No. 144 with a theft rate of 0.8198 is now ranked No. 147 with a theft rate of 0.8197, and the Audi TT previously ranked No. 186 with a theft rate of 0.5048 is now ranked No. 188 with a theft rate of 2.5907.

In its comments, Nissan requested that the agency confirm the number of thefts for the Nissan Pathfinder. Reanalysis of the preliminary theft data provided for the Nissan Pathfinder revealed an error in the production volume for the line. Therefore, the agency has corrected the production volume reported for the Nissan Pathfinder. As a result of the reanalysis, the Nissan Pathfinder previously ranked No. 13 with a theft rate of 4.5523 is now

ranked No. 30 with a theft rate of 3.0085.

Further reanalysis of the theft rate data revealed that the August 17, 2010 publication of preliminary theft data did not include the Toyota Matrix. NHTSA is correcting the final theft data to include the thefts and production volumes for the Toyota Matrix. As a result of this correction, the Toyota Matrix, previously not listed, is ranked No. 79 with a theft rate of 1.5487.

As a result of changes in the theft ranking, reanalysis of the theft rate data revealed that the number of vehicle lines reported with a theft rate higher than 3.5826 was incorrect. The publication of preliminary theft data for CY 2008 erroneously reported that there were 14 passenger cars, four multipurpose passenger vehicle lines and no light-duty truck lines with theft rates higher than 3.5826. NHTSA is correcting the final theft data to reflect that 14 passenger car lines, three multipurpose passenger vehicle lines, and no light truck lines with a theft rate higher than 3.5826.

The following list represents NHTSA's final calculation of theft rates for all 2008 passenger motor vehicle lines. This list is intended to inform the public of calendar year 2008 motor vehicle thefts of model year 2008 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2008 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2008

	Manufacturer	Make/model (line)	Thefts 2008	Production (Mfr's) 2008	2008 Theft rate (per 1,000 vehicles produced)
1	CHRYSLER	DODGE MAGNUM	208	15,319	13.5779
2	GENERAL MOTORS	PONTIAC GRAND PRIX	436	64,268	6.7841
3	CHRYSLER	DODGE CHARGER	728	110,895	6.5648
4	MITSUBISHI	GALANT	77	11,986	6.4242
5	CHRYSLER	300	483	76,295	6.3307
6	HYUNDAI	AZERA	62	11,462	5.4092
7	CHRYSLER	SEBRING	260	51,096	5.0885
8	CHRYSLER	PACIFICA	83	16,384	5.0659
9	CHRYSLER	PT CRUISER CONVERTIBLE	9	1,830	4.9180
10	HYUNDAI	SONATA	429	87,456	4.9053
11	GENERAL MOTORS	CADILLAC STS	82	17,517	4.6812
12	CHRYSLER	DODGE AVENGER	641	137,543	4.6604
13	CHRYSLER	DODGE CALIBER	387	91,288	4.2393
14	MAZDA	6	182	44,114	4.1257
15	CHRYSLER	PT CRUISER	254	65,485	3.8788
16	CHRYSLER	SEBRING CONVERTIBLE	177	45,930	3.8537
17	HONDA	S2000	10	2,606	3.8373
18	GENERAL MOTORS	PONTIAC G6	549	154,317	3.5576
19	LAMBORGHINI	MURCIELAGO	1	288	3.4722
20	NISSAN	INFINITI FX35	52	15,179	3.4258
21	NISSAN	MAXIMA	131	38,602	3.3936
22	ISUZU	I SERIES PICKUP	10	2,977	3.3591
23	MITSUBISHI	ECLIPSE	70	21,046	3.3260
24	NISSAN	350Z	41	12,373	3.3137
25	BMW	M6	5	1,547	3.2321
26	SUZUKI	XL7	78	24,555	3.1765
27	ASTON MARTIN	DB9	1	323	3.0960
28	FORD MOTOR CO	MUSTANG	287	94,476	3.0378
29	GENERAL MOTORS	CHEVROLET COBALT	535	176,456	3.0319
30	NISSAN	PATHFINDER	76	25,262	3.0085
31	KIA	SPECTRA	181	60,253	3.0040
32	GENERAL MOTORS	CHEVROLET IMPALA	923	320,116	2.8833
33	SUZUKI	FORENZA	61	21,358	2.8561
34	ISUZU	ASCENDER	3	1,063	2.8222
35	VOLVO	S40	33	11,753	2.8078
36	BMW	7	38	13,599	2.7943
37	CHRYSLER	DODGE NITRO	135	48,377	2.7906
38	GENERAL MOTORS	CHEVROLET MALIBU	423	155,433	2.7214
39	KIA	RIO	92	35,014	2.6275
40	AUDI	AUDI S8	1	386	2.5907
41	GENERAL MOTORS	PONTIAC G5	52	20,185	2.5762
42	GENERAL MOTORS	CHEVROLET AVEO	139	56,070	2.4790
43	KIA	OPTIMA	113	47,198	2.3942
44	GENERAL MOTORS	CADILLAC DTS	97	40,809	2.3769
45	VOLVO	S60	32	13,592	2.3543
46	GENERAL MOTORS	CHEVROLET HHR	219	99,176	2.2082
47	TOYOTA	COROLLA	374	170,360	2.1954
48	AUDI	AUDI S6	2	928	2.1552
49	GENERAL MOTORS	CHEVROLET TRAILBLAZER	215	100,805	2.1328
50	TOYOTA	SCION TC	114	54,835	2.0790
51	SUZUKI	RENO	10	4,840	2.0661
52	MERCEDES–BENZ	CL–CLASS	22	10,679	2.0601
53	KIA	RONDO	47	23,441	2.0050

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2008 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2008—Continued

	Manufacturer	Make/model (line)	Thefts 2008	Production (Mfr's) 2008	2008 Theft rate (per 1,000 vehicles produced)
54	CHRYSLER	JEEP GRAND CHEROKEE	123	62,654	1.9632
55	JAGUAR LAND ROVER	XK	3	1,542	1.9455
56	NISSAN	SENTRA	230	119,932	1.9178
57	FORD MOTOR CO	FUSION	259	137,791	1.8797
58	TOYOTA	4RUNNER	110	59,563	1.8468
59	TOYOTA	SCION XB	111	60,553	1.8331
60	GENERAL MOTORS	PONTIAC G8	22	12,035	1.8280
61	VOLKSWAGEN	R32	9	5,001	1.7996
62	MITSUBISHI	ENDEAVOR	17	9,583	1.7740
63	NISSAN	XTERRA	63	36,035	1.7483
64	TOYOTA	AVALON	107	61,851	1.7300
65	FORD MOTOR CO	CROWN VICTORIA	16	9,299	1.7206
66	GENERAL MOTORS	CHEVROLET CORVETTE	56	32,882	1.7031
67	JAGUAR LAND ROVER	S–TYPE	3	1,779	1.6863
68	NISSAN	ALTIMA	506	304,132	1.6638
69	GENERAL MOTORS	PONTIAC TORRENT	47	28,370	1.6567
70	MAZDA	5	27	16,389	1.6474
71	BENTLEY MOTORS	CONTINENTAL	5	3,069	1.6292
72	CHRYSLER	JEEP PATRIOT	99	61,495	1.6099
73	MITSUBISHI	LANCER	70	43,668	1.6030
74	NISSAN	VERSA	122	76,223	1.6006
75	MAZDA	TRIBUTE	38	23,834	1.5944
76	VOLKSWAGEN	JETTA/GLI	138	87,225	1.5821
77	FORD MOTOR CO	FOCUS	284	180,249	1.5756
78	NISSAN	INFINITI M35/M45	26	16,522	1.5737
79	TOYOTA	MATRIX	37	23,891	1.5487
80	MAZDA	3	199	129,061	1.5419
81	GENERAL MOTORS	PONTIAC VIBE	31	20,317	1.5258
82	TOYOTA	CAMRY/SOLARA	390	257,638	1.5138
83	FORD MOTOR CO	MERCURY GRAND MARQUIS	66	44,071	1.4976
84	AUDI	AUDI A3	8	5,378	1.4875
85	NISSAN	FRONTIER PICKUP	70	47,215	1.4826
86	HYUNDAI	ACCENT	76	51,562	1.4740
87	HYUNDAI	ELANTRA	160	109,498	1.4612
88	KIA	SPORTAGE	58	40,669	1.4261
89	TOYOTA	LEXUS SC	4	2,807	1.4250
90	GENERAL MOTORS	PONTIAC SOLSTICE	20	14,080	1.4205
91	GENERAL MOTORS	SATURN AURA	85	60,715	1.4000
92	AUDI	AUDI A6	22	15,726	1.3990
93	HYUNDAI	SANTA FE	107	76,765	1.3939
94	CHRYSLER	JEEP COMPASS	36	26,147	1.3768
95	GENERAL MOTORS	CADILLAC XLR	2	1,468	1.3624
96	MAZDA	CX–7	45	33,134	1.3581
97	NISSAN	INFINITI G37	39	29,182	1.3364
98	FORD MOTOR CO	EDGE	170	128,607	1.3219
99	FORD MOTOR CO	TAURUS	107	81,095	1.3194
100	VOLKSWAGEN	GOLF/RABBIT/GTI	47	35,696	1.3167
101	GENERAL MOTORS	CHEVROLET UPLANDER VAN	93	73,084	1.2725
102	GENERAL MOTORS	BUICK LACROSSE/ALLURE	53	41,961	1.2631
103	FORD MOTOR CO	MERCURY MILAN	41	32,608	1.2574
104	FORD MOTOR CO	MERCURY SABLE	33	26,392	1.2504
105	MERCEDES–BENZ	S–CLASS	33	26,436	1.2483
106	TOYOTA	YARIS	147	120,841	1.2165
107	SUZUKI	SX4	51	42,522	1.1994
108	AUDI	AUDI S4/S5	3	2,514	1.1933
109	TOYOTA	SCION XD	39	32,737	1.1913
110	JAGUAR LAND ROVER	XJ8/XJ8L	3	2,556	1.1737
111	KIA	SEDONA VAN	37	31,800	1.1635
112	GENERAL MOTORS	GMC ENVOY	36	30,956	1.1629
113	GENERAL MOTORS	CADILLAC CTS	73	62,943	1.1598
114	FORD MOTOR CO	LINCOLN TOWN CAR	14	12,300	1.1382
115	MERCEDES–BENZ	CLK–CLASS	22	19,420	1.1329
116	AUDI	AUDI A4/A5	51	45,063	1.1317
117	BMW	M5	3	2,666	1.1253
118	CHRYSLER	JEEP LIBERTY	99	90,530	1.0936
119	GENERAL MOTORS	BUICK LUCERNE	72	66,117	1.0890
120	TOYOTA	TACOMA PICKUP	156	146,312	1.0662
121	KIA	SORENTO	42	39,679	1.0585

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2008 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2008—Continued

	Manufacturer	Make/model (line)	Thefts 2008	Production (Mfr's) 2008	2008 Theft rate (per 1,000 vehicles produced)
122	SUZUKI	VITARA/GRAND VITARA	19	17,996	1.0558
123	HONDA	ACCORD	401	384,257	1.0436
124	HONDA	CIVIC	368	355,443	1.0353
125	TOYOTA	HIGHLANDER	139	137,668	1.0097
126	GENERAL MOTORS	SATURN SKY	13	12,979	1.0016
127	NISSAN	QUEST VAN	21	21,348	0.9837
128	CHRYSLER	JEEP WRANGLER	118	120,710	0.9775
129	HYUNDAI	TIBURON	10	10,315	0.9695
130	FORD MOTOR CO	ESCAPE	239	249,322	0.9586
131	ASTON MARTIN	VANTAGE	1	1,047	0.9551
132	HONDA	ACURA 3.2 TL	54	56,720	0.9520
133	TOYOTA	LEXUS IS	54	57,931	0.9321
134	HONDA	ELEMENT	35	37,980	0.9215
135	TOYOTA	RAV4	150	164,331	0.9128
136	GENERAL MOTORS	CHEVROLET EQUINOX	82	90,033	0.9108
137	TOYOTA	LEXUS GS	18	20,030	0.8987
138	HONDA	ACURA RDX	19	21,271	0.8932
139	VOLKSWAGEN	NEW BEETLE	25	28,003	0.8928
140	SUBARU	FORESTER	27	30,406	0.8880
141	FORD MOTOR CO	TAURUS X	37	42,101	0.8788
142	TOYOTA	LEXUS LS	25	28,875	0.8658
143	HONDA	ACURA TSX	19	21,996	0.8638
144	AUDI	AUDI A8	2	2,360	0.8475
145	SUBARU	LEGACY	22	26,288	0.8369
146	MASERATI	QUATTROPORTE	1	1,196	0.8361
147	VOLKSWAGEN	PASSAT	29	35,380	0.8197
148	PORSCHE	CAYMAN	4	4,901	0.8162
149	MERCEDES–BENZ	C–CLASS	64	78,747	0.8127
150	TOYOTA	FJ CRUISER	34	41,931	0.8109
151	MERCEDES–BENZ	SL–CLASS	3	3,708	0.8091
152	PORSCHE	911	8	9,941	0.8047
153	JAGUAR LAND ROVER	XKR	1	1,265	0.7905
154	HONDA	ACURA 3.5 RL	4	5,132	0.7794
155	VOLVO	V70	3	3,862	0.7768
156	GENERAL MOTORS	SATURN VUE	84	108,682	0.7729
157	VOLVO	XC90	23	30,004	0.7666
158	TOYOTA	LEXUS RX	88	115,527	0.7617
159	JAGUAR LAND ROVER	LAND ROVER LR2	11	14,659	0.7504
160	BMW	3	91	121,356	0.7499
161	FORD MOTOR CO	RANGER PICKUP	63	85,052	0.7407
162	FORD MOTOR CO	MERCURY MARINER	39	52,931	0.7368
163	VOLKSWAGEN	EOS	10	13,815	0.7239
164	CHRYSLER	DODGE VIPER	1	1,382	0.7236
165	GENERAL MOTORS	GMC CANYON PICKUP	13	18,049	0.7203
166	HYUNDAI	TUCSON	16	22,488	0.7115
167	NISSAN	INFINITI G35	39	56,155	0.6945
168	VOLVO	C70	5	7,220	0.6925
169	GENERAL MOTORS	CHEVROLET COLORADO PICKUP	46	66,677	0.6899
170	BMW	Z4/M	4	5,880	0.6803
171	NISSAN	ROGUE	52	78,079	0.6660
172	BMW	6	4	6,052	0.6609
173	TOYOTA	SIENNA VAN	85	129,208	0.6579
174	BMW	5	52	79,395	0.6550
175	JAGUAR LAND ROVER	VANDEN PLAS/SUPER V8	1	1,533	0.6523
176	SUBARU	IMPREZA	38	59,340	0.6404
177	BMW	M3	5	7,854	0.6366
178	MERCEDES–BENZ	E–CLASS	27	42,951	0.6286
179	HONDA	PILOT	55	88,713	0.6200
180	CHRYSLER	CROSSFIRE	1	1,648	0.6068
181	HONDA	FIT	45	74,486	0.6041
182	HYUNDAI	VERACRUZ	8	13,264	0.6031
183	FORD MOTOR CO	LINCOLN MKX	22	36,884	0.5965
184	FORD MOTOR CO	LINCOLN MKZ	19	32,457	0.5854
185	MAZDA	CX–9	20	36,033	0.5550
186	VOLVO	V50	1	1,875	0.5333
187	VOLVO	C30	3	5,865	0.5115
188	AUDI	AUDI TT	4	7,925	0.5047
189	TOYOTA	PRIUS	84	171,762	0.4890

FINAL REPORT OF THEFT RATES FOR MODEL YEAR 2008 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2008—Continued

Manufacturer	Make/model (line)	Thefts 2008	Production (Mfr's) 2008	2008 Theft rate (per 1,000 vehicles produced)
190 HYUNDAI	ENTOURAGE VAN	4	8,217	0.4868
191 SUBARU	B9 TRIBECA	9	18,805	0.4786
192 BMW	X3	10	21,033	0.4754
193 MAZDA	RX–8	1	2,106	0.4748
194 MERCEDES–BENZ	SLK–CLASS	2	4,379	0.4567
195 HONDA	ACURA MDX	26	57,380	0.4531
196 SUBARU	OUTBACK	28	63,741	0.4393
197 VOLVO	S80	5	11,433	0.4373
198 SAAB	9–3	8	18,364	0.4356
199 MITSUBISHI	OUTLANDER	6	14,445	0.4154
200 HONDA	CR–V	82	228,315	0.3592
201 TOYOTA	LEXUS ES	27	79,585	0.3393
202 KIA	AMANTI	1	3,398	0.2943
203 BMW	MINI COOPER	11	40,950	0.2686
204 NISSAN	INFINITI EX35	4	15,202	0.2631
205 MAZDA	MX–5 MIATA	4	16,044	0.2493
206 VOLVO	XC70	3	12,793	0.2345
207 HONDA	ODYSSEY VAN	28	135,622	0.2065
208 MERCEDES–BENZ	SMART FORTWO	4	21,627	0.1850
209 GENERAL MOTORS	SATURN ASTRA	3	17,912	0.1675
210 CHRYSLER	DODGE CHALLENGER	1	6,411	0.1560
211 BMW	1	1	11,887	0.0841
212 ALFA ROMEO	8C	0	84	0.0000
213 AUDI	AUDI R8	0	572	0.0000
214 AUDI	AUDI RS4	0	1,172	0.0000
215 BENTLEY MOTORS	ARNAGE	0	63	0.0000
216 BENTLEY MOTORS	AZURE	0	127	0.0000
217 BMW	B7	0	232	0.0000
218 BUGATTI	VEYRON	0	18	0.0000
219 FERRARI	141	0	324	0.0000
220 FERRARI	430	0	1,032	0.0000
221 FERRARI	612 SCAGLIETTI	0	94	0.0000
222 FORD MOTOR CO.	SHELBY GT	0	3,244	0.0000
223 GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE	0	967	0.0000
224 GENERAL MOTORS	CADILLAC LIMOUSINE	0	664	0.0000
225 JAGUAR LAND ROVER	XJR	0	114	0.0000
226 JAGUAR LAND ROVER	X–TYPE	0	807	0.0000
227 LAMBORGHINI	GALLARDO	0	792	0.0000
228 LOTUS	ELISE	0	129	0.0000
229 LOTUS	EXIGE	0	123	0.0000
230 MASERATI	GRANTURISMO	0	1,465	0.0000
231 MAZDA	B SERIES PICKUP	0	1,884	0.0000
232 MERCEDES–BENZ	MAYBACH 57	0	76	0.0000
233 MERCEDES–BENZ	MAYBACH 62	0	67	0.0000
234 MERCEDES–BENZ	SLR–CLASS	0	105	0.0000
235 NISSAN	INFINITI FX45	0	395	0.0000
236 PORSCHE	BOXSTER	0	4,067	0.0000
237 ROLLS ROYCE	PHANTOM	0	378	0.0000
238 ROUSH PERFORMANCE	RPP MUSTANG	0	1,491	0.0000
239 SAAB	9–5	0	3,336	0.0000
240 SALEEN	S281/H302	0	370	0.0000
241 SPYKER	C8	0	6	0.0000

Issued on: December 16, 2010.

Joseph S. Carra,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2011–773 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 76, No. 10
Friday, January 14, 2011

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0821; Directorate Identifier 2010–NE–30–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 800 Series Turbofan Engines

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) issued 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:

In January 2009 a Trent 895 powered Boeing 777–200 aircraft experienced release of a low pressure (LP) compressor blade which failed due to fatigue cracking in the root section of the blade. The released blade (undercut root standard) had received a part life processing to apply a compression layer to the blade root (Service Bulletin SB 72–D672—Introduction of Laser Shock Peening (LSP)) and also a part life upgrade to the retention feature lubrication system. Investigation has revealed that the effectiveness of this upgraded blade root lubrication coating system may be reduced dependant on the extent of previous running with the earlier standard, leading to increased blade root stress levels. In the specific case of the released blade, a review of its in-service modification history has shown that it operated for a relatively high number of flight cycles prior to the compression layer processing and the new retention feature lubrication system. A review of the Engine Health Monitoring data has also identified it operated at high N1 speeds compared to the Trent 800 fleet average N1 speeds. The combination of these factors has resulted in increased fatigue life usage which is considered to have led to crack initiation and propagation prior to reaching the blades declared life limit. A review of all in-service undercut/LSP standard Trent 800 LP compressor blades has identified specific blades that carry a similar increased susceptibility to cracking.

This AD is issued to mitigate the risk of possible multiple fan blades failure affecting those blades identified as described above which could lead to high energy non contained debris from the engine.

We are proposing this AD to prevent LP compressor blades from failing due to blade root cracks, which could lead to uncontained engine failure and damage to the airplane.

DATES: We must receive comments on this proposed AD by February 28, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for the service information identified in this proposed AD.

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 (phone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

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–2010–0821; Directorate Identifier 2010–NE–30–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 with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

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 2010–0097, dated May 26, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

In January 2009 a Trent 895 powered Boeing 777–200 aircraft experienced release of a low pressure (LP) compressor blade which failed due to fatigue cracking in the root section of the blade. The released blade (undercut root standard) had received a part life processing to apply a compression layer to the blade root (Service Bulletin SB 72–D672—Introduction of Laser Shock Peening (LSP)) and also a part life upgrade to the retention feature lubrication system. Investigation has revealed that the effectiveness of this upgraded blade root lubrication coating system may be reduced dependant on the extent of previous running with the earlier standard, leading to

increased blade root stress levels. In the specific case of the released blade, a review of its in-service modification history has shown that it operated for a relatively high number of flight cycles prior to the compression layer processing and the new retention feature lubrication system. A review of the Engine Health Monitoring data has also identified it operated at high N1 speeds compared to the Trent 800 fleet average N1 speeds. The combination of these factors has resulted in increased fatigue life usage which is considered to have led to crack initiation and propagation prior to reaching the blades declared life limit. A review of all in-service undercut/LSP standard Trent 800 LP compressor blades has identified specific blades that carry a similar increased susceptibility to cracking.

This AD is issued to mitigate the risk of possible multiple fan blades failure affecting those blades identified as described above which could lead to high energy non contained debris from the engine.

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

Relevant Service Information

Rolls-Royce plc has issued Alert Service Bulletin No. RB.211–72–AG244, Revision 1, dated January 26, 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 the United Kingdom, and is approved for operation in the United States. Pursuant to our bilateral agreement with the United Kingdom, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA, and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 20 engines installed on airplanes of U.S. registry. We also estimate that it would take about 18 work-hours per engine to perform the inspections in one year's time. The average labor rate is $85 per work-hour. We estimate that one LP compressor blade per year would need replacement, at a cost of about $82,000. Based on these figures, we estimate the annual cost of the proposed AD on U.S. operators to be $112,600. Our cost estimate is exclusive of possible warranty coverage.

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:

Rolls-Royce plc: Docket No. FAA–2010–0821; Directorate Identifier 2010–NE–30–AD.

Comments Due Date

(a) We must receive comments by February 28, 2011.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 turbofan engines.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent low-pressure (LP) compressor blades from failing due to blade root cracks, which could lead to uncontained engine failure and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Using the corresponding compliance threshold in Table 1 of this AD, perform an initial ultrasonic inspection (UI) of the affected LP compressor blades identified by serial number (S/N) in Appendices 3A through 3F of RR Alert Service Bulletin (ASB) No. RB.211–72–AG244, Revision 1, dated January 26, 2010.

TABLE 1—INITIAL INSPECTION THRESHOLDS

Appendix number of RR ASB No. RB.211–72–AG244, Revision 1, that identifies affected LP compressor blades by S/N	Initial inspection threshold
3A	120 flight cycles after the effective date of this AD.

TABLE 1—INITIAL INSPECTION THRESHOLDS—Continued

Appendix number of RR ASB No. RB.211–72–AG244, Revision 1, that identifies affected LP compressor blades by S/N	Initial inspection threshold
3B	Blades shown in RR ASB No. RB.211–72–AG244, Revision 1 as fitted to engine serial number (ESN) 51039—802 flight cycles after the effective date of this AD. ESNs 51146, 51177, 51145, and 51149—380 flight cycles after the effective date of this AD.
3C	Blades shown in RR ASB No. RB.211–72–AG244, Revision 1 as fitted to ESNs 51001, 51137 and blade S/N RGG16694—1,680 flight cycles after the effective date of this AD. ESN 51145, 51149, 51150 and 51204—796 flight cycles after the effective date of this AD. ESN 51160—1,160 flight cycles after the effective date of this AD.
3D	Blades shown in RR ASB No. ASB RB.211–72–AG244, Revision 1 as fitted to ESN 51193 and blade S/N RGG20216—1,212 flight cycles after the effective date of this AD. ESN 51200—1,237 flight cycles after the effective date of this AD. ESN 51280—1,551 flight cycles after the effective date of this AD.
3E	Blades shown in RR ASB No. RB.211–72–AG244, Revision 1 as fitted to ESN 51004, "na" and blade S/Ns RGG12590, RGG14081, and RGG15419—3,433 flight cycles after the effective date of this AD. ESN 51156—1,627 flight cycles after the effective date of this AD.
3F	Blades shown in RR ASB No. RB.211–72–AG244, Revision 1 as fitted to ESN 51175, 51194, 51201, 51205, and 51228—2,042 flight cycles after the effective date of this AD. ESN 51264—4,309 flight cycles after the effective date of this AD. ESN 51443—2,636 flight cycles after the effective date of this AD. Blade S/N RGG15698—2,638 flight cycles after the effective date of this AD.

(2) Thereafter, perform repetitive UIs of the affected LP compressor blades within every 100 flight cycles.

(3) Use paragraph 3 of Accomplishment Instructions of RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010, and Appendix 1 of that ASB to perform the UIs.

(4) Remove blades from service before further flight that fail the inspection criteria in Appendix 1 of RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010.

(5) After the effective date of this AD, do not install any affected LP compressor blade unless it has passed the initial and repetitive UIs required by this AD.

FAA AD Differences

(f) This AD differs from MCAI European Aviation safety Agency (EASA) AD 2010–0097, dated May 26, 2010. The EASA AD uses calendar dates for initial inspection thresholds. This AD uses flight cycles.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to EASA AD 2010–0097, dated May 26, 2010, and RR Alert SB No. RB.211–72–AG244, Revision 1, dated January 26, 2010, for related information. Contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for a copy of this service information.

(i) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

Issued in Burlington, Massachusetts, on January 10, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–775 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1301; Directorate Identifier 2010–SW–008–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. (MDHI) Model MD900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes superseding an existing airworthiness directive (AD) for MDHI Model MD900 helicopters. That AD currently requires turning on both Vertical Stabilizer Control System (VSCS) switches and turning off the autopilot (AP/SAS) switch; pulling certain AP/SAS circuit breakers; installing a placard near the AP/SAS master switch; installing an airspeed limitation placard on the instrument panel; and making changes to the Rotorcraft Flight Manual (RFM). This action would retain those requirements and would provide an option of replacing each affected tube adapter with a newly-designed tube adapter, which would provide terminating action for the unsafe condition. This proposal is prompted by the manufacturer introducing an improved, newly-designed tube adapter. The actions specified by this AD are intended to prevent loss of yaw control and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before March 15, 2011.

ADDRESSES: Use one of the following addresses to submit comments on this proposed 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 proposed AD from MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, AZ 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or at *http://www.mdhelicopters.com.*

You may examine the comments to this proposed AD in the AD docket on

the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eric D. Schrieber, FAA, Los Angeles Aircraft Certification Office, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562–627–5348, fax 562–627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number "FAA–2010–1301, Directorate Identifier 2010–SW–008–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed 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 with FAA personnel concerning this proposed rulemaking. 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 or signed 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).

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information 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.

Discussion

On August 20, 2008, we issued Emergency AD (EAD) 2008–18–51, Directorate Identifier 2008–SW–50–AD, for Model 500N, 600N, and MD900 helicopters. That EAD required several actions related to the Yaw Stability Augmentation System (YSAS) for the Model 500N and 600N helicopters and to the VSCS for the Model MD900 helicopters.

We issued superseding EAD 2008–18–52, Directorate Identifier 2008–SW–52–AD, on August 27, 2008. That EAD required, for Model 500N, 600N and MD900 helicopters, turning OFF the VSCS or YSAS switches instead of pulling the circuit breakers and installing placards that limit airspeed to 100 KIAS or $V_{NE,}$ whichever is less. For the Model MD900 helicopters, the EAD also required limiting flight to VFR, prohibiting use of the autopilot, and making changes to the RFM. For all helicopters, the EAD required a terminating action of replacing each tube adapter with an airworthy tube adapter stamped with a date stamp of August 15, 2008, or later.

After issuing EAD 2008–18–52, the replacement tube adapter failed on 2 of the Model MD900 helicopters. Therefore, we separated the AD actions and issued two superseding EADs: 2008–22–52 for the Model 500N and 600N helicopters and 2008–22–53 for the Model MD900 helicopters. Those EADS were published in the **Federal Register** as final rules; request for comments. AD 2008–22–52 (73 FR 72326) was published on November 28, 2008. AD 2008–22–53 (73 FR 73165) was published on December 2, 2008.

AD 2008–22–53 does not include specific serial numbers in the applicability section because the unsafe condition can occur on any helicopter with an affected tube adapter installed. The AD also requires turning ON both VSCS switches to reduce pilot workload and to help control the helicopter if a tube adapter fails under normal flight conditions until the helicopter is on final approach. Also, AD 2008–22–53 did not include a terminating action because the manufacturer had not determined the cause of the failures.

Since issuing AD 2008–22–53, the manufacturer has designed a VSCS tube adapter to replace the existing tube adapter. Installing the newly designed tube adapter is optional but, if installed, would constitute terminating action for the requirements of this AD.

We have reviewed MDHI Service Bulletin No. SB900–110R1, dated December 3, 2008 (SB), which specifies replacing each VSCS tube adapter, part number (P/N) 500N7218–1, with an improved tube adapter, P/N 900C2010303–101, to prevent an uncommanded yaw of the helicopter. The SB specifies operating at a decreased speed until the newly designed tube adapters are installed.

This previously described unsafe condition is likely to exist or develop on other helicopters of this same type design. Therefore, the proposed AD would supersede AD 2008–22–53, retain the current requirements, and require continuing to operate at a reduced speed until you replace each tube adapter with an improved tube adapter.

We estimate that this proposed AD would affect 39 helicopters of U.S. registry. It would take about 5.5 hours to install the newly designed tube adapters and 0.5 hours for all other required modifications at an average labor rate of $85 per work hour. Required parts would cost about $244 for 2 tube adapters. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $29,406, assuming both tube adapters are replaced on the entire fleet of helicopters.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, 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 that the 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 draft economic evaluation of the estimated costs to comply with this proposed AD. See the AD docket to examine the draft 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, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–15756 (73 FR 73165, December 2, 2008), and by adding a new airworthiness directive (AD), to read as follows:

MD Helicopters, Inc.: Docket No. FAA–2010–1301; Directorate Identifier 2010–SW–008–AD. Supersedes AD 2008–22–53, Amendment 39–15756, Docket No. FAA–2008–1251, Directorate ID 2008–SW–61–AD.

Applicability: Model MD900 helicopters with a Vertical Stabilizer Control System (VSCS) tube adapter, part number (P/N) 500N7218–1, installed, certificated in any category.

Compliance: Required before further flight, unless done previously.

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

(a) Turn ON both VSCS switches.

(b) If installed, de-energize the autopilot (AP/SAS) as follows:

(1) Determine if the AP/SAS trim actuators are centered. If the AP/SAS trim actuators are not centered, center them.

(2) After the AP/SAS trim actuators are centered:

(i) Turn the AP/SAS MSTR switch to the OFF position.

(ii) Pull the following AP circuit breakers located on the A601 Essential Bus Circuit Breaker Panel, mounted in the cockpit console, and install a plastic cable tie on each circuit breaker to prevent accidental energizing of the circuit:

(A) AP/SAS CMPTR (CB28),

(B) AP/SAS DISC (CB29), and

(C) AP/SAS ACCEL (CB30).

(3) Install a placard next to the AP Mode Select panel that contains the AP/SAS MSTR switch stating "AP/SAS DEACTIVATED."

(c) Install a placard on the instrument panel as close as practicable to the airspeed indicator that states:

"AIRSPEED LIMIT 100 KIAS or V_{NE}, WHICHEVER IS LESS. VFR FLIGHT ONLY, AUTOPILOT OFF."

(d) Make pen and ink changes or insert a copy of this AD into the Limitations section of the rotorcraft flight manual (RFM) to revise the limitations as follows: "V_{NE} is limited to 100 KIAS or less as determined by referring to the airspeed V_{NE} placard already installed on the helicopter. VFR Flight Only, Autopilot OFF."

(e) Make pen and ink changes or insert a copy of this AD into the Limitations section of the RFM to revise the emergency procedures as follows: "If you experience an anti-torque system malfunction, turn both VSCS switches to OFF during final approach for a run-on landing."

(f) Instead of complying with paragraphs (a) through (e) of this AD, you may replace both VSCS tube adapters, P/N 500N7218–1, with airworthy VSCS tube adapters, P/N 900C2010303–101. If you install VSCS tube adapters, P/N 900C2010303–101, and previously have complied with AD 2008–22–53, return the helicopter to its normal configuration by returning the switches and circuit breakers to their normal operating position, operationally testing the auto-pilot system, removing the two placards, and removing the revisions to the RFM pertaining to the airspeed limitation. Replacing both VSCS tube adapters, P/N 500N7218–1, with airworthy VSCS tube adapters, P/N 900C2010303–101, and returning the helicopter to its normal operating configuration constitutes terminating action for the requirements of this AD.

Note: MD Helicopters Service Bulletin SB900–110R1, dated December 3, 2008, which is not incorporated by reference containing additional information about the subject of this AD.

(g) 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, Los Angeles Aircraft Certification Office, FAA, *Attn:* Eric D. Schrieber, Aviation Safety Engineer, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone 562–627–5348, fax 562–627–5210, for information about previously approved alternative methods of compliance.

(h) Copies of the applicable service information may be obtained from MD Helicopters, Inc., *Attn:* Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com*.

(i) The Joint Aircraft System/Component (JASC) Code is 6720: Tail Rotor Control System.

Issued in Fort Worth, Texas, on December 28, 2010.

Stefany James,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2011–726 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1246; Airspace Docket No. 10–ANM–17]

Proposed Amendment of Class E Airspace; Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Pueblo Memorial Airport, Pueblo, CO. Additional controlled airspace is necessary to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to Pueblo Memorial Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before February 28, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2010–1246; Airspace Docket No. 10–ANM–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2010–1246 and Airspace Docket No. 10–ANM–17) and be submitted in triplicate to the Docket Management System (*see*

"**ADDRESSES**" section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2010–1246 and Airspace Docket No. 10–ANM–17". The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify Class E airspace extending upward from 700 feet above the surface at Pueblo Memorial Airport, Pueblo, CO, to accommodate en route IFR aircraft at Pueblo Memorial Airport. The southern boundary of the 13,700 foot mean sea level section has a small gap of airspace associated with V–83–210 leaving over a .5 nautical mile gap of unprotected airspace in that area. This action would add the additional controlled airspace area necessary for the safety and management of aircraft operations at Pueblo Memorial Airport, Pueblo, CO.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Pueblo Memorial Airport, Pueblo, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

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

* * * * *

ANM CO E5 Pueblo, CO [Modify]

Pueblo Memorial Airport, CO
(Lat. 38°17′21″ N., long. 104°29′47″ W.)

That airspace extending upward from 700 feet above the surface within 21.8-mile radius of the Pueblo Memorial Airport, and within the 28.8-mile radius of Pueblo Memorial Airport clockwise between the 070° and 133° bearing from the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 38°30′00″ N., on the east by V–169, on the south by V–210, on the west by a line from lat. 37°37′26″ N., long. 105°00′02″ W.; to lat. 38°09′25″ N., long. 105°08′06″ W.; to lat. 38°05′51″ N., long. 105°30′49″ W.; to lat. 38°10′00″ N., long. 105°33′02″ W.; to lat. 38°30′00″ N., long. 105°33′02″ W.; that airspace extending upward from 13,700 feet MSL bounded by a line beginning at lat. 38°09′25″ N., long. 105°08′06″ W.; to lat. 37°37′26″ N., long. 105°00′02″ W.; to lat. 37°33′30″ N., long. 105°11′44″ W.; to lat. 38°05′51″ N., long. 105°30′49″ W.; thence to point of beginning.

Issued in Seattle, Washington, on January 7, 2011.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–812 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100827401–0619–01]

RIN 0648–BA20

Olympic Coast National Marine Sanctuary Regulations Revisions

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 304(e) of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1434(e)), the National Oceanic and Atmospheric Administration (NOAA) has been conducting a review of the management plan and regulations for Olympic Coast National Marine Sanctuary (OCNMS or sanctuary), located off the outer coast of the Olympic Peninsula in the State of Washington. As a result of the review, NOAA determined that it is necessary to revise the sanctuary's management plan and implementing regulations. NOAA proposes to revise the OCNMS regulations to: Prohibit wastewater discharges from cruise ships; update the language referring to tribal welfare considerations when issuing permits; correct the size of the sanctuary based on new area estimates without revising the sanctuary's actual boundaries; update the list of definitions; and update outdated information such as office location. NOAA also proposes additional changes to the grammar and wording of several sections of the regulations to ensure clarity and consistency with the NMSA and other sanctuaries in the National Marine Sanctuary System.

DATES: Comments on this proposed rule will be considered if received by March 15, 2011. Public hearings will be held as detailed below:

(1) *Port Angeles:* February 23rd, 6–9 pm, Clallam County Commissioners' hearing room (room 160), Clallam County Courthouse, 223 E. Fourth Street, Port Angeles, WA.

(2) *Forks:* February 24th, 6–9 pm, Washington Department of Natural Resources Community Room, 411 Tillicum Lane, Forks, WA.

ADDRESSES: Copies of the draft environmental assessment (DEA) that supports the proposed rule and revised draft management plan are available at Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362 and online at *http://olympiccoast.noaa.gov.*

You may submit comments, identified by RIN 0648–BA20, in the following ways:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 360–457–8496, *Attn:* George Galasso.
- *Mail:* George Galasso, Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362.

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. NOAA 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: George Galasso at (360) 457–6622, extension 12.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Olympic Coast National Marine Sanctuary

Designated in 1994, OCNMS is a place of regional, national and global significance. Connected to both the Juan de Fuca Eddy Ecosystem and the California Current Large Marine Ecosystem, OCNMS is home to one of North America's most productive marine ecosystems and to spectacular, undeveloped shorelines. OCNMS's mission is to protect the Olympic Coast's natural and cultural resources through responsible stewardship, to conduct and apply research to preserve the area's ecological integrity and maritime heritage, and to promote understanding through public outreach and education.

The sanctuary encompasses 2,408 square nautical miles (8,259 square kilometers) of marine waters off Washington State's rugged Olympic Peninsula. OCNMS is a highly productive, ocean and coastal environment of high ecological integrity that is important to the continued survival of many ecologically valuable species of fish, seabirds and marine mammals and commercially valuable fisheries. Abundant and diverse biological communities are supported by the several types of habitat that comprise the sanctuary, including: Offshore islands; dense, sheltering kelp beds; numerous and diverse intertidal pools; rocky headlands; seastacks and arches; exposed sand and cobble beaches; submarine canyons and ridges; and the continental shelf. The sanctuary adjoins significant historical resources including American Indian village sites, ancient canoe runs, petroglyphs, American Indian artifacts and numerous shipwrecks. In addition, OCNMS is encompassed by the usual and accustomed fishing grounds of four American Indian tribes who exercise treaty reserved rights within the sanctuary.

B. Need for Action

Section 304(e) of the NMSA requires NOAA to review the management plan of each sanctuary at regular intervals. NOAA has conducted a review of the OCNMS management plan and determined that it is necessary to revise the management plan and regulations for the sanctuary. Therefore, NOAA is now announcing the availability of a draft management plan (DMP) and draft environmental assessment (DEA) for public review and comment, and publishing this proposed rule requesting comment.

The draft management plan for the sanctuary contains a series of action plans outlining activities to better achieve resource protection, research, education, operations, and evaluation objectives for the next five to ten years. The action plans are designed to address specific issues facing the sanctuary and, in doing so, to achieve the NMSA's primary objective of resource protection (16 U.S.C. 1431(b)(6)) and fulfill the sanctuary's terms of designation (59 FR 24586, May 11, 1994).

This proposed rule revises the OCNMS regulations as described below in the "Summary of the Regulatory Amendments" section. The environmental effects of these proposed revisions are analyzed in the DEA. The public is invited to comment on the DEA, which includes the DMP, and which is available at *http://olympiccoast.noaa.gov* or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT.**

II. Summary of the Regulatory Amendments

This section describes the changes NOAA is proposing to make to the OCNMS regulations.

1. Clarify Size of the Sanctuary Area

The size of the sanctuary has been recalculated using improved area estimation techniques and technology, resulting in a new estimate of the size of the sanctuary. There is no proposal to change the boundaries of the sanctuary. This proposed change is technical in nature and would not affect physical, biological or socioeconomic resources because it would not alter the sanctuary's original size or boundaries.

OCNMS regulations that date from 1994 estimate the sanctuary's area as approximately 2,500 square nautical miles (approximately 8,577 square kilometers) (59 FR 24586; May 11, 1994). However, current techniques allow for more accurate area calculations. Without altering the sanctuary's existing boundaries (as defined in the OCNMS terms of designation), NOAA recalculated the area within sanctuary boundaries and found it to be 2,408 square nautical miles (approximately 8,259 square kilometers). This technical change is solely the result of the improved accuracy of area measurement techniques since the sanctuary's size was first estimated in 1994. No change to the sanctuary boundaries is proposed.

2. Clarify and Update Sanctuary Description

This proposed rule change would replace the term "seabed" with the term "submerged lands" in the current regulatory language prohibiting "drilling into, dredging or otherwise altering the seabed of the sanctuary" (59 FR 24586; May 11, 1994). The current definition of the sanctuary boundary in the OCNMS terms of designation (59 FR 24586; May 11, 1994) recognizes submerged lands as part of the sanctuary. This rule change would make the regulations, which currently use the term "seabed", consistent with the description of the sanctuary in the terms of designation. This proposed change would also make the regulations consistent with language used in the NMSA (16 U.S.C. 1432(3)). Additionally, using the term "submerged lands" uniformly among the NMSA, OCNMS terms of designation, and OCNMS regulations would improve consistency with the regulatory language for the other national marine sanctuaries, which all refer to "submerged lands". The use of the term "submerged lands" will not alter NOAA's current jurisdiction in OCNMS in any way. This regulatory change would not affect physical, biological or socioeconomic resources because it would not alter the original boundaries or designation of the sanctuary.

3. Clarify the Use of the Term "Traditional Fishing"

OCNMS regulations currently provide an exception for "traditional fishing" operations to three of the regulatory prohibitions. The term "traditional fishing" is defined as "using a fishing method that has been used in the sanctuary before the effective date of sanctuary designation (July 22, 1994), including the retrieval of fishing gear" (59 FR 24586; May 11, 1994). This OCNMS regulation allows fishing operations that were taking place before sanctuary designation to discharge certain fishing-related materials, disturb historical resources, and disturb the seabed. The precise language of these three exceptions is as follows (emphasis added):

- "Discharging or depositing, from within the boundary of the Sanctuary, any material or other matter except fish, fish parts, chumming materials or bait used in or resulting from traditional fishing operations in the Sanctuary;" (15 CFR 922.152(2)(i))
- "Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from traditional fishing operations." (15 CFR 922.152(3))
- "Drilling into, dredging or otherwise altering the seabed of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as an incidental result of * * * *Traditional fishing* operations." (15 CFR 922.152(4)(ii))

In addition to replacing "seabed" with "submerged lands," as described earlier, NOAA proposes to replace the term "traditional fishing" with the term "lawful fishing" in these three places to: (1) Use a term that is more clearly understood; and (2) ensure that there is no distinction between current and future fishing operations. "Lawful fishing" is proposed to be defined as follows: "Lawful fishing means fishing authorized by a tribal, state or federal entity with jurisdiction over the activity."

Despite the definition provided in the regulation, and because of its varied connotation, the term "traditional" in OCNMS regulations may be incorrectly interpreted (e.g., equating traditional fishing with Native American fishing techniques). By replacing the word "traditional" with "lawful" NOAA unambiguously recognizes fishing activities authorized by fisheries management authorities. This change is also consistent with terms used in the regulations for other national marine sanctuaries on the West Coast.

In addition to being more widely understood and consistent, this change makes clear that fishing activities authorized by regulations lawfully adopted by fishery management agencies are not subject to the prohibitions itemized in the OCNMS regulations. Since the time of Sanctuary designation, OCNMS has refrained from directly regulating fishing, and the proposed adoption of the "lawful fishing" terminology does not alter this approach. (*See,* generally, Final Environmental Impact Statement (NOAA 1993) and the final rule adopting regulations for OCNMS, 59 FR 24597 (May 11, 1994)).

4. Revise Regulations on Discharge/Deposit

This rule proposes to modify the regulations prohibiting discharging or depositing any material or other matter as follows:

a. Prohibit discharges/deposits of treated and untreated sewage and graywater from cruise ships. For the purpose of this regulation and consistency with regulations in other West Coast national marine sanctuaries, cruise ships would be defined as a vessel with 250 or more passenger berths for hire and graywater would be defined as galley, bath, and shower water, per section 312 of the Federal Water Pollution Control Act (FWPCA; 33 U.S.C. 1251–1387). These revisions address NOAA's concerns about possible impacts from large volumes of sewage and graywater discharges in the sanctuary, whether treated or not, from cruise ships. Currently, legal discharges from vessels, including cruise ships, transiting or engaging in activities in OCMNS have the potential to negatively impact water quality, as well as pose health risks to humans who use the area. These proposed modifications to OCNMS regulations would also make OCNMS discharge/deposit prohibitions consistent with the cruise ship discharge/deposit prohibitions already in effect within the other four West Coast national marine sanctuaries.

Sewage

Vessel sewage discharges typically are more concentrated than domestic land-based sewage. They may introduce disease-causing microorganisms (pathogens), such as bacteria,

protozoans, and viruses, into the marine environment (EPA 2007). They may also contain high concentrations of nutrients that can lead to eutrophication, which has been linked to harmful algal blooms and oxygen-depleted "dead zones" in aquatic environments, and may yield unpleasant esthetic impacts to the sanctuary (diminishing sanctuary resources and its ecological, conservation, esthetic, recreational and other qualities).

Graywater

Graywater discharges also have potential to degrade water quality. Graywater can contain a variety of substances including (but not limited to) detergents, oil and grease, pesticides and food wastes (Eley 2000). Graywater discharges from cruise ships can have constituent levels in a similar range to untreated domestic waste water, and levels for nutrients, biological oxygen demand, fecal coliforms, and food pulper wastes may be many times higher than typical domestic graywater. Additionally, fecal coliform concentrations in graywater often exceed the 200 fecal coliforms/100 ml performance standard for marine sanitation devices (MSDs) (EPA 2008a).

Very little research has been done on the impacts of graywater on the marine environment, but many of the chemicals commonly found in graywater are known to be toxic (Casanova *et al.* 2001). Furthermore, studies of graywater discharges from cruise ships in Alaska (prior to strict state effluent standards for cruise ship graywater discharges) found very high levels of fecal coliform in graywater (far exceeding the federal standards for fecal coliform from Type II MSDs). These same studies also found high total suspended solids concentrations in some graywater sources (exceeding the federal standards for total suspended solids from Type II MSDs).

Wastewater treatment systems used on large cruise ships discharging in Alaskan waters, which constitute most cruise ships that transit through OCNMS, have generally performed well at treating effluent constituents to the levels required by Alaska Department of Environmental Conservation and the U.S. Coast Guard since 2001 (ADEC 2010). Monitoring is conducted for constituents such as fecal coliform bacteria (an indicator of pathogens), pH, chlorine, biological oxygen demand, and total suspended solids. In 2009, exceedance of discharge standards applicable to cruise ships occurred most commonly with ammonia, less frequently for nickel, copper and zinc, and rarely or never for other contaminants (ADEC 2010).

Analysis of the actual time cruise ships transited OCNMS in 2009 and estimated wastewater generation rates provides a range of potential discharge volumes from 0.2 to 1.3 million gallons of treated sewage and from 1.5 to 5.0 million gallons of graywater. Evaluation of potential environmental impacts of these discharges is complicated. The nutrient and chemical concentrations in wastewater discharges varies depending on both the type of wastewater treatment system being used as well as the ongoing functional performance of individual systems. Also, the volume of wastewater actually discharged from cruise ships in the sanctuary is uncertain. While industry representatives have stated that cruise ships currently avoid all discharges in the sanctuary, this has not been verified. Thus, it is difficult to quantify specific reductions in individual nutrients or chemicals that would be achieved under this proposed rule.

The water quality of the sanctuary is generally considered to be good and influenced primarily by natural processes (ONMS 2008). Thus, this proposed regulatory change would result in a less than substantial improvement of water quality. However, naturally occurring harmful algal blooms and low dissolved oxygen events associated with deepwater upwelling often occur during the summer months off the coast of Washington and Oregon. Because cruise ship traffic volume through the sanctuary is highest during this same period, there has been some concern that discharge of nutrient rich sewage and graywater by cruise ships may exacerbate these natural phenomena. Elimination of nutrient contributions from cruise ship discharges would ensure that water quality conditions in the sanctuary are not degraded by additional nutrients and biological and chemical oxygen demand associated with these wastewater discharges.

Most cruise ships have sufficient holding tank capacity to hold sewage and graywater while within the sanctuary. As for other large oceangoing ships, given the small crew size (on average, large oceangoing ships carry crews of approximately twenty people, but crew size may range from five to fifty people, the treated sewage and graywater volumes generated by such ships are far less than those from cruise ships. Therefore, the proposed regulation specifically prohibits discharges from cruise ships and does not address discharges from other large oceangoing vessels.

Additional analysis of the potential impacts to biological, physical and socioeconomic resources from graywater and sewage discharges/deposits are provided in the DEA, which is available at *http://olympiccoast.noaa.gov* or may be obtained by contacting the individual listed under the heading **FOR FURTHER INFORMATION CONTACT.**

b. Adopt a definition of "cruise ship." A definition of "cruise ship" would be added to OCNMS regulations as follows: "Cruise ship means a vessel with 250 or more passenger berths for hire." This proposed definition is consistent with the vessel discharge regulations governing the other four national marine sanctuaries on the West Coast.

c. Adopt a definition of "clean." The definition of "clean" would be added to OCNMS regulations as follows: "*Clean* means not containing detectable levels of harmful matter." This proposed definition is consistent with the vessel discharge regulations governing the other four national marine sanctuaries on the West Coast.

5. Revise Permit Regulations in Relation to Tribal Welfare

Under the current regulations, ONMS can issue a permit to conduct an activity otherwise prohibited if it finds that the activity will meet criteria identified in the regulations. One of the criteria listed for permit issuance is to "promote the welfare of any Indian tribe adjacent to the sanctuary." This provision is ambiguous and could be interpreted as allowing an entity not affiliated with a tribe to apply for a permit that it alleges could promote the welfare of an Indian tribe adjacent to the sanctuary. The concept of "promote the welfare of any Indian tribe" is not defined or explained further in the regulations, the terms of sanctuary designation or the 1993 Final EIS. As a result there has been a reluctance to implement this provision.

NOAA is proposing to modify the regulation to clarify that a permit under this provision is available only to American Indian tribes adjacent to the sanctuary (i.e., Hoh, Makah, and Quileute Tribes and the Quinault Indian Nation). In addition, NOAA proposes to replace the phrase "or promote the welfare of any Indian tribe adjacent to the Sanctuary." with a more descriptive basis for permit issuance. NOAA intends to consider permit applications made by adjacent Indian Tribes "to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights or tribal economic development." NOAA acknowledges its trust responsibility to federally recognized Indian tribes. These permit criteria are consistent with

Executive Order 13175 on Consultation and Coordination With Indian Tribal Governments.

6. Make Other Minor Changes to Regulatory Text

a. NOAA proposes deleting the definition for the term "Federal project". The current OCNMS regulation that cites this definition refers to "Federal projects in existence on July 22, 1994". However, there is only one project that fits this definition (the Quillayute River Navigation Project). For clarity, NOAA would revise the OCNMS regulations to reference the Quillayute River project specifically. The definition for "Federal Project" would be deleted because the term would no longer be used in the regulations. The term "Quillayute River Navigation Project" would be used in § 922.152(a)(1)(E) and § 922.152(h).

b. The mailing address for permit applications in § 922.153 would be updated to reflect the new OCNMS office location.

III. Classification

National Environmental Policy Act

NOAA has prepared a draft environmental assessment to evaluate the environmental effects of the proposed rulemaking. Copies are available at the address and web site listed in the **ADDRESSES** section of this proposed rule. Responses to comments received on this proposed rule will be published in the final environmental assessment and preamble to the final rule.

Coastal Zone Management Act

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state's coastal program on potential Federal regulations having an effect on state waters. Because the Olympic Coast National Marine Sanctuary encompasses a portion of the Washington State waters, NOAA intends to submit a copy of this proposed rule and supporting documents to the State of Washington Coastal Zone Management Program for evaluation of Federal consistency under the CZMA.

Executive Order 12866: Regulatory Impact

Under Executive Order 12866, if the proposed regulations are "significant" as defined in section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This proposed rule has been determined to be not significant within the meaning of Executive Order 12866.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132. Members of the OCNMS Advisory Council, Olympic Coast Intergovernmental Policy Council, the Washington Department of Ecology, the Washington Department of Fish and Wildlife, the Washington Department of Natural Resources, the Washington State Ocean Caucus and Pacific Fishery Management Council have been closely involved with the development of the draft management plan for OCNMS and proposed regulatory changes. In addition, OCNMS staff have consulted with staff from all of the previously mentioned state agencies, along with the Washington State Historic Preservation Office, on development of the DEA that supports the proposed rule. The State of Washington Governor's Office, as a member of the Olympic Coast Intergovernmental Policy Council, has also been involved in developing the draft management plan, DEA and the proposed rule.

Executive Order 13175: Tribal Consultation and Collaboration

This proposed rule was developed after consultation and collaboration with representatives from the Makah, Hoh, and Quileute Tribes and the Quinault Indian Nation through their membership on the Olympic Coast Intergovernmental Policy Council and the OCNMS Advisory Council.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows:

Small businesses operating within the sanctuary include approximately 400 commercial fishermen, 30 consumptive recreational charter businesses, 7 non-consumptive recreational charter businesses, and one aviation business.

The replacement of the term "seabed" with "submerged lands" in the language prohibiting "drilling into, dredging or otherwise altering the seabed of the sanctuary" would not have a significant adverse impact on small entities within the sanctuary because there is no change in the sanctuary's protective measures for submerged lands and therefore no impact on any businesses. The current definition of the sanctuary boundary in the terms of designation (59 FR 24586; May 11, 1994) recognizes submerged lands as part of the sanctuary. Similarly, the proposed correction of the estimate of the size of the sanctuary would not impact any of the small entities operating within the sanctuary because the proposed correction is merely descriptive in nature. The proposed change does not alter the boundaries of the sanctuary or the scope of its jurisdiction but rather is a more accurate estimate of its size.

The proposed change from the term "traditional fishing" to "lawful fishing" would not affect the small entities who conduct fishing activities in the sanctuary because the proposed change would not alter the regulatory jurisdiction of the sanctuary, nor would it affect the prosecution of current fisheries in the sanctuary. The change to the term "lawful fishing" makes clear that fishing activities authorized by fishery management agencies with jurisdiction over such fisheries are not subject to certain prohibitions identified in the sanctuary regulations. Since this regulatory change would not alter the status quo, there would not be an impact on small fishing businesses as a result of this regulatory change.

The proposed prohibition on sewage and graywater discharges from cruise ships would not have a significant adverse impact on small entities because cruise ship companies, which operate under an annual budget of higher than $7 million, are generally large businesses that do not fit the definition of small entities under the Regulatory Flexibility Act (RFA; 5 U.S.C. 603(a)). The Small Business Administration does not provide a category of business for the cruise ship industry in their list of size standards for small businesses; however, it provides a category for "sporting goods store" and "marina", which can be used to approximate the size standards for the businesses affected by this rule. According to the SBA, a small business in the sporting goods or marina industries is one that has annual receipts of less than $7 million. None of the cruise ship businesses affected by this proposed rule falls under the SBA's definition of a "small entity" for the purposes of this action.

The modification of permit issuance criteria is proposed to clarify that only American Indian tribes adjacent to the sanctuary are eligible to seek permits for activities otherwise prohibited in the sanctuary for purposes of enhancing

tribal self-determination, tribal government functions, the exercise of treaty rights or tribal economic development. This modification would not have an effect on the American Indian tribes adjacent to the sanctuary because it would continue to offer the same opportunity to Tribes to obtain a sanctuary permit as is currently available. This modification could have an adverse effect on other entities that may have had an interest in proposing a project requiring a permit from the Sanctuary Superintendent; however, NOAA has no indication that any such project would be proposed by a small businesses or entities in the foreseeable future. Therefore, the proposed modification is not expected to have a significant adverse affect on any small entities, particularly tribal entities.

All other regulatory amendments to the OCNMS regulations proposed in this rulemaking are either technical changes or are not expected to have any measurable impact, economic or otherwise, on the resources and people of the United States of America.

Because this action would not have a significant economic impact on a substantial number of small entities, no initial regulatory flexibility analysis was prepared.

Paperwork Reduction Act

This rule does not contain any new information collection requirements or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Send comments regarding the burden estimate for this data collection requirement, or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (*see* **ADDRESSES**) and by e-mail to *OIRA_submission@omb.eop.gov*, or fax to (202) 395–7285. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

IV. Request for Comments

NOAA requests comments on this proposed rule for 60 days after publication of this notice.

V. References

A complete list of all references cited herein is available upon request (*see* **ADDRESSES** section).

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Historic preservation, Intergovernmental relations, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife.

Dated: January 7, 2011.

David M. Kennedy,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons discussed in the preamble, the National Oceanic and Atmospheric Administration proposes to amend 15 CFR part 922 as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Amend § 922.150 to revise paragraph (a) to read as follows:

§ 922.150 Boundary.

(a) The Olympic Coast National Marine Sanctuary (Sanctuary) consists of an area of approximately 2,408 square nautical miles (nmi) (approximately 8,259 sq. kilometers) of coastal and ocean waters, and the submerged lands thereunder, off the central and northern coast of the State of Washington.

* * * * *

3. Amend § 922.151 to remove the definitions of "Federal Project" and "Traditional fishing", and add definitions of "Clean", "Cruise ship", and "Lawful fishing", in alphabetical order to read as follows:

§ 922.151 Definitions.

* * * * *

Clean means not containing detectable levels of harmful matter.

Cruise ship means a vessel with 250 or more passenger berths for hire.

* * * * *

Lawful fishing means fishing authorized by a tribal, state or federal entity with jurisdiction over the activity.

* * * * *

4. Revise § 922.152 to read as follows:

§ 922.152 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (b) through (g) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing or producing oil, gas or minerals within the Sanctuary.

(2)(i) Discharging or depositing, from within or into the Sanctuary, other than from a cruise ship, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from lawful fishing operations in the Sanctuary;

(B) Biodegradable effluent incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322 *et seq.*;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down and graywater as defined by section 312 of the FWPCA) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) Dredge spoil in connection with beach nourishment projects related to the Quillayute River Navigation Project.

(ii) Discharging or depositing, from beyond the boundary of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(2)(i) (A) through (E) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(3) Discharging or depositing, from within or into the Sanctuary, any materials or other matter from a cruise ship except clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, engine exhaust or anchor wash.

(4) Moving, removing or injuring, or attempting to move, remove or injure, a Sanctuary historical resource. This prohibition does not apply to moving, removing or injury resulting incidentally from lawful fishing operations.

(5) Drilling into, dredging or otherwise altering the submerged lands of the Sanctuary; or constructing, placing or abandoning any structure, material or other matter on the submerged land of the Sanctuary, except as an incidental result of:

(i) Anchoring vessels;

(ii) Lawful fishing operations;

(iii) Installation of navigation aids;

(iv) Harbor maintenance in the areas necessarily associated with the Quillayute River Navigation Project, including dredging of entrance channels and repair, replacement or rehabilitation of breakwaters and jetties, and related beach nourishment;

(v) Construction, repair, replacement or rehabilitation of boat launches, docks or piers, and associated breakwaters and jetties; or

(vi) Beach nourishment projects related to harbor maintenance activities.

(6) Taking any marine mammal, sea turtle or seabird in or above the

Sanctuary, except as authorized by the Marine Mammal Protection Act, as amended, (MMPA), 16 U.S.C. 1361 *et seq.,* the Endangered Species Act, as amended, (ESA), 16 U.S.C. 1531 *et seq.,* and the Migratory Bird Treaty Act, as amended, (MBTA), 16 U.S.C. 703 *et seq.,* or pursuant to any Indian treaty with an Indian tribe to which the United States is a party, provided that the Indian treaty right is exercised in accordance with the MMPA, ESA and MBTA, to the extent that they apply.

(7) Flying motorized aircraft at less than 2,000 feet both above the Sanctuary within one NM of the Flattery Rocks, Quillayute Needles, or Copalis National Wildlife Refuge, or within one NM seaward from the coastal boundary of the Sanctuary, except for activities related to tribal timber operations conducted on reservation lands, or to transport persons or supplies to or from reservation lands as authorized by a governing body of an Indian tribe.

(8) Possessing within the Sanctuary (regardless of where taken, moved or removed from) any historical resource, or any marine mammal, sea turtle, or seabird taken in violation of the MMPA, ESA or MBTA, to the extent that they apply.

(9) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or permit issued under the Act.

(b) The prohibitions in paragraph (a)(2) through (5), (7) and (8) of this section do not apply to activities necessary to respond to emergencies threatening life, property or the environment.

(c) The prohibitions in paragraphs (a)(2) through (5), (7) and (8) of this section do not apply to activities necessary for valid law enforcement purposes.

(d)(1) All Department of Defense military activities shall be carried out in a manner that avoids to the maximum extent practicable any adverse impacts on Sanctuary resources and qualities.

(i) Except as provided in paragraph (d)(2) of this section, the prohibitions in paragraphs (a)(2) through (8) of this section do not apply to the following military activities performed by the Department of Defense in W–237A, W–237B, and Military Operating Areas Olympic A and B in the Sanctuary:

(A) Hull integrity tests and other deep water tests;

(B) Live firing of guns, missiles, torpedoes, and chaff;

(C) Activities associated with the Quinault Range including the in-water testing of non-explosive torpedoes; and

(D) Anti-submarine warfare operations.

(ii) New activities may be exempted from the prohibitions in paragraphs (a)(2) through (8) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that avoids to the maximum extent practicable any adverse impact on Sanctuary resources and qualities. Civil engineering and other civil works projects conducted by the U.S. Army Corps of Engineers are excluded from the scope of this paragraph (d).

(2) The Department of Defense is prohibited from conducting bombing activities within the Sanctuary.

(3) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings caused by the Department of Defense, the Department of Defense shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(e) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity executed in accordance with the scope, purpose, terms and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.153 or a Special Use permit issued pursuant to section 310 of the Act.

(f) Members of a federally recognized Indian tribe may exercise aboriginal and treaty-secured rights, subject to the requirements of other applicable law, without regard to the requirements of this part. The Director may consult with the governing body of a tribe regarding ways the tribe may exercise such rights consistent with the purposes of the Sanctuary.

(g) The prohibitions in paragraphs (a)(2) through (8) of this section do not apply to any activity authorized by any lease, permit, license, or other authorization issued after July 22, 1994 and issued by any Federal, State or local authority of competent jurisdiction, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities. Amendments, renewals and extensions of authorizations in existence on the effective date of designation constitute authorizations issued after the effective date.

(h) Notwithstanding paragraphs (e) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under §§ 922.48 and 922.153 or a Special Use permit under section 310 of the Act authorizing, or otherwise approve: The exploration for, development or production of oil, gas or minerals within the Sanctuary; the discharge of primary-treated sewage within the Sanctuary (except by certification, pursuant to § 922.47, of valid authorizations in existence on July 22, 1994 and issued by other authorities of competent jurisdiction); the disposal of dredged material within the Sanctuary other than in connection with beach nourishment projects related to the Quillayute River Navigation Project; or bombing activities within the Sanctuary. Any purported authorizations issued by other authorities after July 22, 1994 for any of these activities within the Sanctuary shall be invalid.

5. Amend § 922.153 to revise paragraphs (b) and (c) to read as follows:

§ 922.153 Permit procedures and criteria.

* * * * *

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Olympic Coast National Marine Sanctuary, 115 East Railroad Avenue, Suite 301, Port Angeles, WA 98362–2925.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by paragraphs (a)(2) through (7) of § 922.152, if the Director finds that the activity will not substantially injure Sanctuary resources and qualities and will: Further research related to Sanctuary resources and qualities; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; assist in managing the Sanctuary; further salvage or recovery operations in connection with an abandoned shipwreck in the Sanctuary title to which is held by the State of Washington; or be issued to an American Indian tribe adjacent to the sanctuary, or its designated representative, to promote or enhance tribal self-determination, tribal government functions, the exercise of treaty rights or the economic development of the American Indian tribe. For the purposes of this part, American Indian tribes adjacent to the sanctuary mean the Hoh, Makah, and

Quileute Indian Tribes and the Quinault Indian Nation.

* * * * *

[FR Doc. 2011–630 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Affairs is announcing that the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee will hold its fifth meeting in Nashville, Tennessee. The purpose of the meeting is to continue working on reports and recommendations to Congress and the Secretary as required under the No Child Left Behind Act of 2001.

DATES: The Committee's fifth meeting will begin at 8 a.m. on February 1, 2011, and end at 12:30 p.m. on February 4, 2011.

ADDRESSES: The meeting will be held at the Gaylord Opryland Resort and Convention Center, 2802 Opryland Drive, Nashville, Tennessee 37214.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Michele F. Singer, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104; telephone (505) 563–3805; fax (505) 563–3811.

SUPPLEMENTARY INFORMATION: The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee was established to prepare and submit to the Secretary a catalog of the conditions at Bureau-funded schools, and to prepare reports covering: the school replacement and new construction needs at Bureau-funded school facilities; a formula for the equitable distribution of funds to address those needs; a list of major and minor renovation needs at those facilities; and a formula for equitable distribution of funds to address those needs. The reports are to be submitted to Congress and to the Secretary. The Committee also expects to draft proposed regulations covering construction standards for heating, lighting, and cooling in home-living (dormitory) situations.

The following items will be on the agenda:

- Review and approve October 2010 meeting summary;
- Review report requirements and logistics;
- Review and discuss report sections addressing renovation repairs and school construction and replacement;
- Review and discuss dormitory standards language;
- Review and discuss updated findings from Complementary Educational Facilities and FMIS surveys and catalogue of facilities;
- Draft executive summary and key lessons;
- Identify next steps; and
- Receive public comments.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: January 10, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2011–722 Filed 1–13–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–124018–10]

RIN 1545–BJ65

User Fees Relating to Enrolled Agents and Enrolled Retirement Plan Agents; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking that amends the regulations relating to the imposition of user fees for enrolled agents and enrolled retirement plan agents.

DATES: The public hearing, originally scheduled for January 14, 2011, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Friday, December 10, 2010 (75 FR 76940), announced that a public hearing was scheduled for January 14, 2011, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 300 of the Internal Revenue Code.

The public comment period for these regulations expired on January 10, 2011. Outlines of topics to be discussed at the hearing were due on January 5, 2011. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Wednesday, January 12, 2011, the taxpayer, who wished to present oral comments, has requested to withdraw. Therefore, the public hearing scheduled for January 14, 2011, is cancelled.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–921 Filed 1–12–11; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 70, 71, 72, 75, and 90

RIN 1219–AB64

Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period; request for comments.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the comment period on the proposed rule addressing Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. This extension gives commenters additional time to review and comment on the proposed rule. The proposal was published on October 19, 2010 (75 FR 64412), and is available on MSHA's Web site at *http://www.msha.gov/REGS/FEDREG/PROPOSED/2010Prop/2010-25249.pdf.*

DATES: All comments must be received or postmarked by May 2, 2011.

ADDRESSES: Comments must be identified with "RIN 1219–AB64" and may be sent by any of the following methods:

(1) *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(2) *Electronic mail: zzMSHA-comments@dol.gov.* Include "RIN 1219–AB64" in the subject line of the message.

(3) *Facsimile:* 202–693–9441. Include "RIN 1219–AB64" in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA will post all comments on the Internet without change, including any personal information provided. Comments can be accessed electronically at *http://www.msha.gov* under the "Rules & Regs" link. Comments may also be reviewed in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to *http://www.msha.gov/subscriptions/subscribe.aspx.*

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances, MSHA, at *Fontaine.Roslyn@dol.gov* (E-mail), (202) 693–9440 (Voice), or (202) 693–9441 (Fax).

SUPPLEMENTARY INFORMATION:

Extension of Comment Period

On October 19, 2010 (75 FR 64412), MSHA published a proposed rule, Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. In response to requests from interested parties, MSHA is extending the comment period from February 28, 2011, to May 2, 2011. In support of their requests, commenters noted the comprehensive, extensive nature of the proposal. All comments and supporting documentation must be received or postmarked by May 2, 2011.

Request for Comments

MSHA solicits comments from the mining community on all aspects of the proposed rule.

MSHA is interested in commenters' views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the Excessive Concentration Value (ECV). In this situation, if operators use a CPDM, what alternative actions to those contained in the proposed rule would you suggest that MSHA and the operator take? MSHA is particularly interested in alternatives to those in the proposal and how such alternatives would be protective of miners.

Clarification

A commenter at the first public hearing suggested that the timeframe for miners' review of the Continuous Personal Dust Monitor (CPDM) Performance Plan be expanded. For clarification, MSHA, in developing the proposed rule, relied on the timeframe and process in the existing requirements for mine ventilation plans. In the proposal, MSHA did not intend to change the existing timeframe and process and stated that the proposed rule is consistent with ventilation plan requirements and would allow miners' representatives the opportunity to meaningfully participate in the process.

Dated: January 10, 2011.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 2011–704 Filed 1–11–11; 11:15 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R05–RCRA–2010–0738; FRL–9253–1]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Minnesota has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Minnesota's application with regards to Federal requirements, and is proposing to authorize the State's changes.

DATES: Comments on this proposed rule must be received on or before February 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2010–0738 by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: westefer.gary@epa.gov.

Mail: Gary Westefer, Minnesota Regulatory Specialist, LR–8J, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Instructions: Direct your comments to Docket ID Number EPA–R05–RCRA–2010–0738. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or 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.epagov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some of the information is not publicly available, *e.g.,* CBI or other information for which 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. You may view and copy Minnesota's application from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Gary Westefer (312) 886–7450; or Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55515, contact: Nathan Cooley (651) 757–2290.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, LR–8J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450, e-mail *westefer.gary@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and request EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We conclude that Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Minnesota final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Minnesota, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision, once finalized, is that a facility in Minnesota subject to RCRA would have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Minnesota has enforcement responsibilities under its State hazardous waste program for RCRA violations, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

1. Do inspections, and require monitoring, tests, analyses or reports; and

1. Enforce RCRA requirements and suspend or revoke permits.

This action will not impose additional requirements on the regulated community because the regulations for which Minnesota is being authorized are already effective, and will not be changed by EPA's final action.

D. What happens if EPA receives adverse comments on this action?

If EPA receives adverse comments on this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What has Minnesota previously been authorized for?

Minnesota initially received Final (base) authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756) to implement the RCRA hazardous waste management program. We granted authorization for changes to Minnesota's program on July 20, 1987, effective September 18, 1987 (52 FR 27199); on April 24, 1989, effective June 23, 1989 (54 FR 16361) amended June 28, 1989 (54 FR 27170); on June 15, 1990, effective August 14, 1990 (55 FR 24232); on June 24, 1991, effective August 23, 1991 (56 FR 28709); on March 19, 1992, effective May 18, 1992 (57 FR 9501); on March 17, 1993, effective May 17, 1993 (58 FR 14321); on January 20, 1994, effective March 21, 1994 (59 FR 2998); and on May 25, 2000, effective August 23, 2000 (65 FR 33774). Minnesota also received authorization for the U.S. Filter Recovery Services Project XL on May 22, 2001, effective May 22, 2001 (66 FR 28085), and for the Joint Powers Agreement with Hennepin County on October 23, 2008 (73 FR 63074), effective October 23, 2008.

F. What changes are we proposing with today's action?

On June 2, 2010, Minnesota submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We are now proposing to authorize, subject to receipt of written comments that oppose this action, Minnesota's hazardous waste program revision. We propose to grant Minnesota final authorization for the following program changes:

MINNESOTA'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of Federal requirement *(include checklist No., if relevant)*	**Federal Register** date and page *(and/or RCRA statutory authority)*	Analogous State authority
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) Checklist 95.	August 19, 1991, 56 FR 41164.	MR 7045.0125,4,K; 7045.0214,3,E; 7045.1390; Effective June 22, 2009.
Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units Checklist 100.	January 29, 1992, 57 FR 3462.	MR 7001.0150; 7001.0590; 7001.0600; 7001.0620; 7001.0720; MR 7045.0219; 7045.0220; 7045.0452; 7045.0461; 7045.0478; 7045.0532(3),(4),(5),(7); 7045.0534; 7045.0534(4),(5),(6); 7045.0538; 7045.0538(4),(5); 7045.0556; 7045.0556(8); 7045.0584; 7045.0630; 7045.0630(5),(6); 7045.0632; 7045.0632(4),(8),(9); 7045.0638; 7045.0638(2); Effective June 22, 2009.

MINNESOTA'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement *(include checklist No., if relevant)*	**Federal Register** date and page *(and/or RCRA statutory authority)*	Analogous State authority
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic; Corrections Checklist 108.	July 10, 1992, 57 FR 30657	MR 7045.0075; 7045.0100; 7045.0102; 7045.0120; 7045.0121; 7045.0638; Effective June 22, 2009.
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris Checklist 109.	August 18, 1992, 57 FR 37194.	MR 7001.0550(K); 7001.0560(B); 7001.0650(5)(F)(6); MR 7045.0219; 7045.0214(3)(E),(F),(G); 7045.0292(1)(B); 7045.0490(1)(D); 7045.0486(2),(3); 7045.0498(1)(D); 7045.0502(1); 7045.0551; 7045.0594(1); 7045.0600(1),(2); 7045.0608(1); 7045.0610(1); 7045.0630(2); 7045.0651; 7045.1390; Effective June 22, 2009.
Identification and Listing of Hazardous Waste; CERCLA Hazardous Designation; Reportable Quantity Adjustment; Coke By-Product Wastes Checklist 110.	August 18, 1992, 57 FR 37284.	MR 7045.0125(4)(F); 7045.0135(1a),(C),(M); Effective June 22, 2009.
Consolidated Liability Requirements:		
Financial Responsibility for Third Party Liability, Closure and Post-Closure Checklist 113.	September 16, 1992, 57 FR 42832.	MR 7045.0504(7)(L),(M); 7045.0518; 7045.0524; 7045.0608(2); 7045.0614; 7045.0620; Effective June 22, 2009.
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage Checklist 113.1.	September 1, 1988, 53 FR 33938.	
Liability Requirements; Technical Amendment Checklist 113.2.	July 1, 1991, 56 FR 30200.	
Hazardous Waste Management System; Identification and Listing of Hazardous Waste and CERCLA Hazardous Designation; Reportable Quantity Adjustment; Chlorinated Toluenes Production Wastes Checklist 115.	October 15, 1992, 57 FR 47376.	MR 7045.0135(1a)(C),(M); Effective June 22, 2009.
Hazardous Waste Management System; Land Disposal Restrictions; Case-By-Case Capacity Variance Checklist 116.	October 20, 1992, 57 FR 47772.	MR 7045.1390; Effective June 22, 2009.
Hazardous Waste Management System; Definition of Hazardous Waste; Mixture and Derived-From Rules Checklist 117B.	June 1, 1992, 57 FR 23062	MR 7045.0102(2); Effective June 22, 2009.
Hazardous Waste Management; Liquids in Landfills II Checklist 118.	November 18, 1992, 57 FR 54452.	MR 7045.0020(84a); 7045.0458(2)(G)(3); 7045.0538(10),(12); 7045.0564(2)(G)(3); 7045.0638(7),(9); Effective June 22, 2009.
Corrective Action Management Units and Temporary Units; Corrective Action Units Under Subtitle C Checklist 121.	February 16, 1993, 58 FR 8658.	MR 7001.0510; 7001.0720; 7045.0020; 7045.0219; 7045.0220; 7045.0485; 7045.0545; 7045.0552; Effective October 2, 1995.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance Checklist 123.	May 14, 1993, 58 FR 28506.	MR 7045.1390; Effective June 22, 2009.
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated Checklist 124.	May 24, 1993, 58 FR 29860.	MR 7045.0450(3)(E); 7045.0552(3)(F); 7045.1390; Effective June 22, 2009.
Hazardous Waste Management System; Testing and Monitoring Activities Checklist 126 as amended.	August 31, 1993, 58 FR 46040.	MR 7001.0510; 7045.0630(C); 7001.0700(3)(A)(3–5); MR 7045.0065(1); 7045.0075(2)(E)(1)(a); 7045.0131(4)(A),(B); 7045.0131(7)(A); 7045.0135(1); 7045.0528(1)(A); 7045.0538(10)(C); 7045.0628(1)(A); 7045.0638(7)(B); 7045.1390; Effective June 22, 2009.
Checklist 126.1	September 19, 1994, 59 FR 47980.	
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes From Wood Surface Protection Checklist 128.	January 4, 1994, 59 FR 458.	MR 7045.0065; 7045.0135(1a)(N); Effective June 22, 2009.
Recordkeeping Instructions; Technical Amendment Checklist 131.	March 24, 1994, 59 FR 13891.	MR 7045.0543(1)(A); 7045.0643(1)(A); 7045.0645(1)(A); Effective June 22, 2009.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes from Wood Surface Protection; Correction Checklist 132.	June 2, 1994, 59 FR 28484	MR 7045.0065(1); Effective June 22, 2009.
Hazardous Waste Management System; Correction of Listing of P015—Beryllium Powder Checklist 134.	June 20, 1994, 59 FR 31551.	MR 7045.0135(1a)(D),(N); 7045.1390; Effective June 22, 2009.
Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal; Final Rule Checklist 136.	August 24, 1994, 59 FR 43496.	MR 7045.0665(1)(B); 7045.1390; Effective June 22, 2009.

MINNESOTA'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement *(include checklist No., if relevant)*	**Federal Register** date and page *(and/or RCRA statutory authority)*	Analogous State authority
Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	September 19, 1994, 59 FR 47982.	MR 7045.0075(3),(4) MR7045.0450(3)(E); 7045.0552(3)(F); 7045.0665(4)(B); 7045.1390 Minnesota Stat. 116.06(11) 3745–266–106; 3745–266–107; Effective June 22, 2009.
Checklist 137 as amended	January 3, 1995, 60 FR 242.	
Checklist 137.1.		
Universal Waste Rule: General Provisions Checklist 142A.	May 11, 1995, 60 FR 25492.	MR 7001.0520(2)(N); MR 7045.0020; 7045.0120(2)(E); 7045.0206(5)(G); 7045.0208(1)(G); 7045.0214(1); 7045.0450(3)(L); 7045.1400; Effective July 25, 2005.
Universal Waste Rule: Specific Provisions for Batteries Checklist 142B.	May 11, 1995, 60 FR 25492.	MR 7045.0685(1); 7045.1400; Effective July 25, 2005.
Universal Waste Rule: Specific Provisions for Pesticides Checklist 142C.	May 11, 1995, 60 FR 25492.	MR 7045.1400; Effective July 25, 2005.
Universal Waste Rule: Specific Provisions for Thermostats Checklist 142D.	May 11, 1995, 60 FR 25492.	MR 7045.1400; Effective July 25, 1995.
Universal Waste Rule: Provisions for Petitions to Add a New Universal Waste Checklist 142E.	May 11, 1995, 60 FR 25492.	MR 7045.1400; Effective July 25, 2005.
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners Checklist 151 as amended.	April 8, 1996, 61 FR 15566	MR 7045.1390; Effective June 22, 2009.
Checklist 151.1 as amended	April 8, 1996, 61 FR 15566.	
Checklist 151.2 as amended	April 30, 1996, 61 FR 19117.	
Checklist 151.3 as amended	June 28, 1996, 61 FR 33680.	
Checklist 151.4 as amended	July 10, 1996, 61 FR 36419.	
Checklist 151.5 as amended	August 26, 1996, 61 FR 43924.	
Checklist 151.6	February 19, 1997, 62 FR 7502.	
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision C(92)39 Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations Checklist 152.	April 12, 1996, 61 FR 16290.	MR 7045.0125; 7045.0211; 7045.0213; 7045.0302(2),(4),(6); 7045.0351; 7045.0355; 7045.0375; 7045.0452; 7045.0474; 7045.0556; 7045.0578; 7045.0675; 7045.1400; Effective June 22, 2009.
Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs Checklist 153.	July 1, 1996, 61 FR 34252	MR 7045.0219; Effective June 22, 2009.
Hazardous Waste Treatment, Storage and Disposal Facilities and Hazardous Waste Generators; Organic Air Emissions Standards for Tanks, Surface Impoundments, and Containers Checklist 154 as amended.	November 25, 1996, 61 FR 59931.	MR 7001.0150(3)(P)(3),(4); 7001.0560(E); 7001.0570(G); 7001.0580(K); 7001.0590(N); 7001.0635; MR 7045.0065(1); 7045.0125(9); 7045.0292; 7045.0452(5)(C); 7045.0458(2); 7045.0478(3); 7045.0482(4)(C); 7045.0526(10); 7045.0528(12); 7045.0532(11); 7045.0539(2); 7045.0547; 7045.0548; 7045.0549; 7045.0564(2); 7045.0556(5)(C); 7045.0584(3); 7045.0588(4)(D); 7045.0626(9); 7045.0628(13); 7045.0630(9); 7045.0647; 7045.0648;7045.0649; Effective June 22, 2009.
Checklist 154.1 as amended	December 6, 1994, 59 FR 62896.	
Checklist 154.2 as amended	May 19, 1995, 60 FR 26828.	
Checklist 154.3 as amended	September 29, 1995, 60 FR 50426.	
Checklist 154.4 as amended	November 13, 1995, 60 FR 56952.	
Checklist 154.5 as amended	February 9, 1996, 61 FR 4903.	
Checklist 154.6	June 5, 1996, 61 FR 28508.	
Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance Checklist 155.	January 14, 1997, 62 FR 1992.	MR 7045.1390; Effective June 22, 2009.
Land Disposal Restrictions Phase IV; Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions Checklist 157.	May 12, 1997, 62 FR 25998.	MR 7045.0020; 7045.0120(2)(E),(F); 7045.0125(4)(C); 7045.1390; Minnesota Stat. 116.06(11); Effective June 22, 2009.

MINNESOTA'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement *(include checklist No., if relevant)*	**Federal Register** date and page *(and/or RCRA statutory authority)*	Analogous State authority
Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions Checklist 159.	June 17, 1997, 62 FR 32974.	MR 7045.0135; 7045.1390; Effective June 22, 2009.
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment Checklist 160.	July 14, 1997, 62 FR 37694	MR 7045.1390; Effective June 22, 2009.
Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production Checklist 161.	August 28, 1997, 62 FR 45568.	MR 7045.1390; Effective June 22, 2009.
Classification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances Checklist 162.	December 5, 1997, 62 FR 64504.	MR 7045.1390; Effective June 22, 2009.
Hazardous Waste Treatment, Storage and Disposal Facilities and Hazardous Waste Generators; Organic Air Emissions Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendment Checklist 163.	December 8, 1997, 62 FR 64636.	MR 7001.0560(E); MR 7045.0452(5)(C); 7045.0478(3)(H); 7045.0547; 7045.0548; 7045.0549; 7045.0556(4)(C); 7045.0584(3)(H); 7045.0643(1)(F); 7045.0647; 7045.0648; 7045.0649; Effective June 22, 2009.
Land Disposal Restrictions Phase IV; Treatment Standards for Metal Wastes and Mineral Processing Wastes Checklist 167A.	May 26, 1998, 63 FR 28556.	MR 7045.1390; Effective June 22, 2009.
Land Disposal Restrictions Phase IV; Hazardous Soils Treatment Standards and Exclusions Checklist 167B.	May 26, 1998, 63 FR 28556.	MR 7045.1390; Effective June 22, 2009.
Land Disposal Restrictions Phase IV; Corrections Checklist 167C as amended.	May 26, 1998, 63 FR 28556.	MR 7045.1390; Effective June 22, 2009.
Checklist 167C.1	June 8, 1998, 63 FR 31266.	
Minerals Processing Secondary Materials Exclusion Checklist 167D.	May 26, 1998, 63 FR 28556.	MR 7045.1390; Effective June 22, 2009.
Bevill Exclusion Revisions and Clarification Checklist 167E.	May 26, 1998, 63 FR 28556.	MR 7045.0102(2)(H),(I); 7045.0120(1)(I); Effective June 22, 2009.
Exclusion of Recycled Wood Preserving Wastewaters Checklist 167F.	May 26, 1998, 63 FR 28556.	MR 7045.0120(1)(T); Effective June 22, 2009.
Hazardous Waste Combustors; Revised Standards; Final Rule-Part 1–RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent to Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions Checklist 168.	June 19, 1998, 63 FR 33782.	MR 7001.0650(5)(F)(7); 7001.0730(6); MR 7045.0120(2)(E); Effective June 1, 2004.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities Checklist 169.	August 6, 1998, 63 FR 42110.	MR 7045.0075; 7045.0100; 7045.0102; 7045.0120; 7045.0121; 7045.0124; 7045.0125; 7045.0135(2),(3); 7045.0141; 7045.1390; Effective June 22, 2009.
Hazardous Waste Recycling; Land Disposal Restrictions Phase IV Zinc Micronutrient Fertilizers, Administrative Stay Checklist 170.	August 31, 1998, 63 FR 46332.	MR 7045.1390; Effective June 22, 2009.
Emergency Revisions of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production Checklist 171.	September 4, 1998, 63 FR 47409.	MR 7045.1390; Effective June 22, 2009.
Characteristic Slags Generated From Thermal Recovery of Lead by Secondary Lead Smelters; Land Disposal Restrictions; Final Rule; Extension of Compliance Date Checklist 172.	September 9, 1998, 63 FR 48124.	MR 7045.1390; Effective June 22, 2009.
Land Disposal Restrictions (LDR) Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088) Checklist 173.	September 24, 1998, 63 FR 51254.	MR 7045.1390; Effective June 22, 2009.
Standards Applicable to Owners and Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process; Final rule Checklist 174.	October 22, 1998, 63 FR 56710.	MR 7001.0500; 7001.0520; 7001.0560; 7001.0640; MR 7045.0060; 7045.484(1); 7045.486; 7045.0490; 7045.0498; 7045.0590; 7045.0594; 7045.600; 7045.0602(2); 7045.0608(1); 7045.628; 7045.0630; 7045.0670(2); Effective February 14, 2005.
Hazardous Remediation Waste Management Requirements (HWIR–Media) Checklist 175.	November 30, 1998, 63 FR 65874.	MR 7001.0060; 7001.0070; 7001.0190; 7001.0510; 7001.0720; 7001.0650(7); MR 7045.0020; 7045.0075; 7045.0100; 7045.0102; 7045.0120; 7045.0121; 7045.0219; 7045.0220; 7045.0450; 7045.0478; 7045.0485; 7045.0545; 7045.0552; 7045.1390; Effective February 14, 2005.

MINNESOTA'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of Federal requirement *(include checklist No., if relevant)*	**Federal Register** date and page *(and/or RCRA statutory authority)*	Analogous State authority
Universal Waste Rule—Technical Amendments Checklist 176.	December 24, 1998, 63 FR 71225.	MR 7045.0685; 7045.1400; Effective July 25, 2005.
Hazardous Waste Treatment, Storage and Disposal Facilities and Hazardous Waste Generators; Organic Air Emissions Standards for Tanks, Surface Impoundments, and Containers Checklist 177.	January 21, 1999, 64 FR 3381.	MR 7045.0547; 7045.0549; 7045.0649; Effective June 22, 2009.
Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, Treatment Standards for Metal Wastes, Zinc Micronutrient Fertilizers, Carbamate Treatment Standards, and K088 Treatment Standards Checklist 179.	May 11, 1999, 64 FR 25408.	Minnesota Stat. 166.06(11); MR 7045.0120(1); 7045.0292(5)(G); 7045.1390; Effective June 22, 2009.
Hazardous Waste Management System; Modification of the Hazardous Waste Program; Hazardous Waste Lamps; Final Rule Checklist 181.	July 6, 1999, 64 FR 36466	MR 7001.0500; 7001.0520; MR 7045.0219; 7045.0220; 7045.0450; 7045.0552; 7045.1300; 7045.1400; Effective July 25, 2005.
Land Disposal Restrictions Phase IV: Final Rule Promulgating Treatment Standards for Metal Wastes, and Mineral Processing Wastes; Mineral Processing Secondary Materials and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters Checklist 183.	October 20, 1999, 64 FR 56469.	MR 7045.0135(1)(C); 7045.0292(1)(G); 7045.1390; Effective June 22, 2009.
Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities Checklist 185.	March 17, 2000, 65 FR 14472.	MR 7045.0135(1); 7045.1390; Effective June 22, 2009.
Organobromine Production Wastes; Petroleum Refining Wastes; Land Disposal Restrictions; Checklist 187.	June 8, 2000, 65 FR 36365	MR 7045.0135(1)(B); 7045.1390; Effective June 22, 2009.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities Checklist 189.	November 8, 2000, 65 FR 67068.	MR 7045.0135(1); 7045.1390; Effective June 22, 2009.
Deferral of Phase IV Standards for PCBs as a Constituent Subject to Treatment in Soil Checklist 190.	December 26, 2000, 65 FR 81373.	MR 7045.1390; Effective June 22, 2009.
Hazardous Waste Identification Rule (HWIR); Revisions to the Mixture and Derived From Rules Checklist 192A.	May 16, 2001, 66 FR 27266.	MR 7045.0102(2); 7045.0214(3)(A); Effective June 22, 2009.
Hazardous Waste Identification Rule (HWIR); Land Disposal Restrictions Correction Checklist 192B.	May 16, 2001, 66 FR 27266.	MR 7045.1390; Effective June 22, 2009.
Corrections to the Hazardous Waste Identification Rule (HWIR); Revisions to the Mixture and Derived From Rules (Revision II) Checklist 194.	October 3, 2001, 66 FR 50332.	MR 7045.0102; 7045.0124; Effective June 22, 2009.
Amendments to the Corrective Action Management Unit Rule Checklist 196.	January 22, 2002, 67 FR 2962.	MR 7045.0020; 7045.0545(1)(a); 7045.0547(1); 7045.0548(1); Effective February 14, 2005.
Hazardous Waste Management System; Definition of Solid Waste; Toxicity Characteristic; Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste Checklist 199.	March 13, 2002, 67 FR 11251.	Minnesota Stat. 116.06(11); MR 7045.0120(1)(X); 7045.0131(7); Effective June 22, 2009.
Land Disposal Restrictions; National Treatment Variance to Designate New Treatment Subcategories for Radioactively Contaminated Cadmium-, Mercury-, and Silver-Containing Batteries Checklist 201.	October 7, 2002, 67 FR 62618.	MR 7045.1390; Effective June 22, 2009.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Amendment to Hazardous Waste Code F019 Checklist 218.	June 4, 2008, 73 FR 31756	MR 7045.0135; Effective June 22, 2009.

G. Which revised State rules are different from the Federal rules?

Minnesota has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements. In this action, Minnesota has chosen to remain more stringent in the Hazardous Remediation Waste Management Requirements, (Checklist 175 above) by choosing not to adopt 40 CFR 270.79 through 270.230 which allow for Remedial Action Plans (RAP). The RAP is considered to be less stringent. Minnesota is more stringent in checklist 108, as it does not recognize the list of excluded processes, nor does it have provision to waive the double liner requirement in 40 CFR 265.301(d). In rule revision (Checklist) 118, Minnesota does not allow any liquids in landfills even as provided for in 40 CFR 264.314. In rule revision (Checklist) 142, Minnesota does not contain a provision to add a Universal Waste under 40 CFR 273.80 or 260.23.

H. Who handles permits after the authorization takes effect?

Minnesota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Minnesota is not yet authorized.

I. How does today's action affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in "Indian Country," as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Minnesota, including:

a. Bois Forte Indian Reservation

b. Fond Du Lac Indian Reservation

c. Grand Portage Indian Reservation

d. Leech Lake Indian Reservation

e. Lower Sioux Indian Reservation

f. Mille Lacs Indian Reservation

g. Prairie Island Indian Reservation

h. Red Lake Indian Reservation

i. Shakopee Mdewankanton Indian Reservation

j. Upper Sioux Indian Reservation

k. White Earth Indian Reservation

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, EPA retains the authority to implement and administer the RCRA program in Indian Country.

J. What is codification and is EPA codifying Minnesota's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Minnesota's rules, up to and including those revised June 7, 1991, as corrected August 19, 1991, have previously been codified through incorporation by reference effective February 4, 1992 (57 FR 4162) .

K. Statutory and Executive Order Reviews

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (see **SUPPLEMENTARY INFORMATION**, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. Regulatory Flexibility Act

This rule authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those required by State law. Accordingly, I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.,* 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).

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, or 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.)

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. 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 to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

12. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 28, 2010.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–749 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[WT Docket No. 10–254; DA 10–2388]

Comment Sought on 2010 Review of Hearing Aid Compatibility Regulations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Wireless Telecommunications Bureau (Bureau) seeks comments on the operation and effectiveness of the Commission's rules relating to hearing aid compatibility of wireless handsets. On the basis of the evaluation, the Bureau will consider whether to recommend to the Commission both rule revisions and non-regulatory measures to ensure that persons with hearing loss will continue to have broad access to evolving modes of wireless communication.

DATES: Interested parties may file comments on or before February 14, 2011, and reply comments on or before March 1, 2011.

ADDRESSES: All filings should refer to WT Docket No. 10–254. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/.* Filers should follow the instructions provided on the Web site for submitting comments. If multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, filers should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form ⟨your e-mail address⟩." A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at *FCC@BCPIWEB.COM* or (202) 488–5563 (facsimile).

Copies of the public notice and any subsequently-filed documents in this matter may be obtained from Best Copy and Printing, Inc. in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM.* The public notice and any associated documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The public notice is also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet Web site at *http://www.fcc.gov.*

To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Michael Rowan, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, at (202) 418–1883 or by *e-mail: Michael.Rowan@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in WT Docket No. 10–254 and DA 10–2388, released on December 28, 2010. In the *Hearing Aid Compatibility Second Report and Order and Further NPRM* released on August 5, 2010, in WT Docket No. 07–250, 75 FR 54508 and 75 FR 54546 (Sept. 8, 2010), the

Commission reiterated its intention, first stated in 2008, to initiate a review of the hearing aid compatibility rules for digital wireless services and handsets in 2010. In this review, the Bureau will comprehensively evaluate the operation of the current hearing aid compatibility rules, 47 CFR 20.19, and their success in making a broad selection of wireless phones accessible to people who use hearing aids and cochlear implants, as well as in making information about those phones available to the public. On the basis of this evaluation, the Bureau will consider whether to recommend to the Commission both rule revisions and non-regulatory measures to ensure that persons with hearing loss will continue to have broad access to evolving modes of wireless communication, consistent with the three principles the Commission set forth in the *Hearing Aid Compatibility Second Report and Order and Further NPRM* to guide its hearing aid compatibility policies:

- Ensuring that developers of new technologies consider and plan for hearing aid compatibility at the earliest stages of the product design process;
- Accounting for technological feasibility and marketability in the Commission's rules pertaining to hearing aid compatibility, thereby maximizing conditions for innovation and investment; and
- Providing industry with the ability to harness innovation to promote inclusion by allowing the necessary flexibility for developing a range of solutions to meet consumers' needs while keeping up with the rapid pace of technological advancement.

The Commission is required by law to ensure that persons with hearing loss have access to telephone service. The Hearing Aid Compatibility Act of 1988, 47 U.S.C. 610, required all telephones manufactured or imported for use in the United States to meet established technical standards for hearing aid compatibility, with certain exceptions, among them an exception for telephones used with mobile wireless services. To ensure that the Act kept pace with the evolution of telecommunications technology, Congress granted the Commission authority to "revoke or otherwise limit" the wireless telephone exception, based on considerations of public interest, adverse effect on individuals with hearing loss, technological feasibility, and marketability of compliant wireless telephones.

In *2003,* the Commission determined that continuation of a complete exemption for wireless telephones would have an adverse effect on individuals with hearing loss, and that limiting the exemption was technologically and economically feasible and in the public interest. Accordingly, the Commission promulgated rules to ensure that all manufacturers and service providers offer consumers a selection of wireless handsets that are compatible with hearing aids. These rules were later modified and strengthened in 2008 and in August 2010.

In the *Hearing Aid Compatibility Second Report and Order and Further NPRM,* the Commission sought comment on proposed changes to the wireless hearing aid compatibility rules in three specific areas: (1) Whether to extend the hearing aid compatibility requirements beyond the currently covered class of commercial mobile radio services to include handsets used to provide wireless voice communications over any type of network among members of the public or a substantial portion of the public; (2) whether to extend the in-store testing requirement to include retail outlets other than those owned or operated by service providers; and (3) whether to generally permit a user-controlled reduction of power as a means to meet the hearing aid compatibility standard for operations over the Global System for Mobile (GSM) air interface in the 1900 MHz band. The Commission will address these matters in a Report and Order in WT Docket No. 07–250, and the Bureau urges commenters not to repeat their comments on these matters in response to this document. To the extent any comments made in the rulemaking docket are relevant to the questions asked in this document, commenters should restate those points in response to the questions below.

On October 8, 2010, President Obama signed into law the Twenty-first Century Communications and Video Accessibility Act of 2010 (Communications Accessibility Act), Public Law 111–260, ensuring that individuals with disabilities have access to emerging Internet Protocol-based communications and video programming technologies in the 21st Century. Among other provisions, the Communications Accessibility Act extends hearing aid compatibility requirements to customer premises equipment "used with advanced communications services that is designed to provide 2-way voice communications via a built-in speaker intended to be held to the ear in a manner functionally equivalent to a telephone." The Communications Accessibility Act preserves the exemption of mobile handsets from the requirement that all telephones be hearing aid-compatible, while maintaining the Commission's authority to revoke or limit such exemption. The Commission will address in WT Docket No. 07–250 whether changes to its rules are necessary to effectuate the hearing aid compatibility provisions of the Communications Accessibility Act. Commenters should consider the context of the new legislation in framing their responses to this document.

All parties with knowledge and interest are encouraged to file. In addition to written responses, the Bureau encourages submission of any data, charts or proposed plans that can be entered into the public record for purposes of building a record on this subject.

In order to assist the Commission in evaluating the wireless hearing aid compatibility rules, the Bureau ask commenters specifically to address the questions set forth below. To the extent feasible, commenters may want to organize their responses alphabetically/numerically as set forth below in order to facilitate Commission review.

Availability of Hearing Aid-Compatible Handsets

On July 15, 2010, manufacturers of handsets were required to file reports detailing the hearing aid compatibility status of their handset offerings from July 1, 2009, through June 30, 2010. Twenty-one manufacturers have filed reports pursuant to this provision identifying a total of 302 handset models that they offered as of June 2010. The hearing aid compatibility status of these handsets, sorted according to the air interface(s) incorporated in the handset, is summarized in the table below.

June 2010	Total offered by handset manufacturers	M3/M4 handsets	T3/T4 handsets
CDMA-Only	134	133	105
CDMA/WCDMA	1	1	1
GSM-Only	60	33	26

June 2010	Total offered by handset manufacturers	M3/M4 handsets	T3/T4 handsets
GSM/CDMA	3	3	3
GSM/WCDMA	88	44	31
iDEN	16	14	8
Total	302	228	174

In this section, the Bureau seeks comment on whether hearing aid-compatible handsets are sufficiently available to consumers in the current marketplace, including phones with a full range of different feature sets. In this regard, the Bureau seeks comment on the impact that the Commission's deployment benchmarks and technical standards have had on increasing compatibility between hearing aids and wireless handsets. The Bureau also seeks comment on the impact of the rules on smaller service providers.

1. Do the Commission's deployment benchmarks appropriately ensure that hearing aid-compatible handsets are available to all consumers?

a. The Commission's rules currently require handset manufacturers, other than those subject to the *de minimis* exception, to meet at least an M3 rating for radio frequency (RF) interference reduction for at least one-third of their models (rounded down) over each air interface, with a minimum of two models, and to meet a T3 rating for inductive coupling capability for at least 25 percent of their models (rounded down) over each air interface, with a minimum of two models. The percentage benchmark for inductive coupling capability will increase to one-third on February 15, 2011. Service providers must meet an M3 rating for at least 50 percent of their models or 10 models over each air interface, and must meet a T3 rating for at least one-third of their models or seven models over each air interface. The numerical benchmark for inductive coupling capability will increase to 10 models in 2011. Under these benchmarks, has a selection of hearing aid-compatible handsets become readily available to all consumers across the various air interfaces, including third-generation (3G) air interfaces? Should the benchmarks be increased in future years or restructured in any way? In particular, should the T3 benchmark be increased to equal the M3 benchmark, given the growing number of consumers using hearing aids with telecoils? Commenters should consider the cost to manufacturers and service providers of complying with any changed benchmarks and any effects on innovation as well as the benefits to consumers with hearing loss.

b. In enacting the Hearing Aid Compatibility Act, Congress found that people with hearing loss should have access to the telecommunications network "to the fullest extent made possible by technology and medical science." In light of this policy, should the Commission be moving toward a goal of ensuring that all wireless handsets meet hearing aid compatibility standards? If the Commission were to institute a 100% compatibility requirement, what would be the effects on investment and innovation?

c. Should the Commission consider applying different benchmarks to different technologies in light of the circumstances surrounding each technology? For example, should higher benchmarks apply to future technologies in order to encourage consideration of hearing aid compatibility in the early stages of product development? Should lower benchmarks be kept in place for the legacy GSM air interface in recognition of the technical challenges to achieving hearing aid compatibility using that technology, as well as the likelihood that it will be phased out over the next several years? The Bureau notes that the ANSI C63.19 standard revision that is under consideration, by measuring RF interference potential directly, would eliminate the need for certain conservative assumptions and make it approximately 2.2dB easier for GSM phone to achieve an M3 rating. Should different benchmarks be adopted for CDMA than for GSM?

d. Are hearing aid-compatible handsets widely available across all market segments, including the prepaid phone market? The Bureau notes that under the current rules, service providers must meet the hearing aid compatibility benchmarks across their entire product line, and are not required separately to account for the phones offered to different market segments, such as prepaid versus postpaid. Is there a need for rules specifically addressing the prepaid market or any other segment, and what would be the effects of any such rules on manufacturers or service providers?

2. Are hearing aid-compatible phones available to consumers with a full range of different feature sets?

a. The Commission's rules require manufacturers to "refresh" their hearing aid-compatible products by ensuring, in most instances, that at least half their required minimum number of M3-rated phones is met by models introduced within a given calendar year. Service providers must offer hearing aid-compatible models with different levels of functionality. The Bureau seeks comment on whether these rules have succeeded in making hearing aid-compatible handsets available to consumers with different feature sets? For example, do consumers with hearing loss have access comparable to the general population both to handsets with the most advanced features, including smartphones, and to basic models? Is there a concentration of hearing aid-compatible handsets in a particular feature set? Commenters should note any differences in variety specific to particular air interfaces or market segments. Are any additional rules needed to ensure availability of a full range of hearing aid-compatible models?

b. At the same time, are the refresh and level of functionality rules necessary? Given the usual product cycles for wireless handsets, would manufacturers produce and service providers offer hearing aid compatibility in many of the newest models in the absence of these rules simply to meet the benchmarks? What paperwork or other burdens do these rules impose, and are these burdens outweighed by the benefits to consumers? Do these rules remain necessary in the CDMA air interface, given that nearly all CDMA phones produced today meet hearing aid compatibility standards? Should the rules be modified or eliminated for some or all handset lines?

3. Do the rules appropriately account for the challenges facing smaller service providers?

a. When the Commission adopted the current handset deployment

benchmarks, it provided service providers other than commercial mobile radio service providers with nationwide footprints (Tier I carriers) with an additional three months to meet each benchmark. In addition, businesses that are small entities as defined by the U.S. Small Business Administration, unlike larger manufacturers and service providers, are exempt from offering hearing aid-compatible phones over an air interface indefinitely so long as they offer no more than two models. The Bureau requests comment on whether these provisions appropriately accommodate the difficulties faced by smaller service providers in offering hearing aid-compatible handsets.

b. The Bureau seeks information on the burden that hearing aid compatibility requirements impose on smaller service providers. Is there a significant difference in the cost of rule compliance between Tier I carriers and non-Tier I carriers? To what extent are smaller service providers delayed in their ability to obtain new and desirable handsets, or are they able to obtain these handsets at all? Does the extent of any additional costs or delays depend on the size of the service provider, for example, as between a small local company and a sizable regional carrier? Are resellers differently situated than small facilities-based providers?

c. In light of these burdens, is it appropriate to modify the Commission's rules with respect to smaller service providers? For example, would smaller providers need more than three months additional time to meet any future benchmarks the Commission may adopt, or is no additional time warranted? Are the current benchmarks appropriate for non-Tier I carriers, or should they be reduced? Should different rules apply to different tiers of non-Tier I service providers, and if so, on what criteria should these tiers be based? Commenters should address the effect of any such potential rule changes on the customers of smaller service providers, and how their access to hearing aid-compatible handsets can be protected.

d. Similarly, should the Commission consider amending the *de minimis* rule to exempt some small entities from requirements to offer hearing aid-compatible handset models, even if they offer more than two models per air interface? For example, an exception could be based on a service provider's monthly sales. Would such a rule better reflect market realities, under which small service providers may have access only to small lots of multiple different handset models? Would customers of small carriers, particularly in the most rural areas, still have access to a selection of hearing aid-compatible handsets?

e. Are smaller service providers and manufacturers, particularly new entrants, adequately informed about their obligations under the hearing aid compatibility rules? Is there anything the Commission can and should do to improve communications with these entities?

4. Do the M3 and T3 technical standards appropriately ensure compatibility with hearing aids?

a. The Commission's rules consider a handset to be hearing aid-compatible for RF interference reduction if it meets at least an M3 rating under ANSI Standard C63.19–2007, and for inductive coupling capability if it meets at least a T3 rating. Are these requirements appropriate to ensure that users of hearing aids and cochlear implants will be able to access wireless communications? Would any other standards be more appropriate? Should there be any requirements to offer handsets that meet M4 and/or T4 ratings? On the other hand, do handsets that are rated less than M3 or T3 provide effective compatibility for some users of hearing aids and cochlear implants, and if so should the Commission's rules recognize their performance?

b. Under the 2007 revision of ANSI Standard C63.19, a handset must meet an acceptable rating for RF interference reduction—*i.e.,* an M3 or M4 rating under the Commission's rules—in order to be rated T3 or T4 for inductive coupling capability. Would there be benefits to wearers of hearing aids with telecoils if the minimum RF noise threshold requirement to achieve a T3 rating were relaxed? Is there evidence to support such a change that ANSI Accredited Standards Committee C63® (ANSI ASC C63®) should consider?

Sufficiency of Information

The hearing aid compatibility rules include several provisions to ensure that device manufacturers and service providers share information on their hearing aid-compatible handset offerings with the Commission and with the public. In this section, the Bureau seeks comment on the value and any negative effects of the information disclosures required in reports to the Commission, on manufacturers' and service providers' Web sites, at the point of sale, and in packaging materials. The Bureau also seeks comment on the in-store testing requirement and on measures that could be taken to improve the availability of information to consumers who purchase their phones from sources other than their service provider.

5. Is the reporting system collecting appropriate information in an efficient way, and is the Commission making this information available to the public in an accessible and easily manipulable manner?

a. The wireless hearing aid compatibility rules require handset manufacturers and service providers to submit annual reports to the Commission on the status of their compliance. In June 2009, the Bureau introduced the electronic FCC Form 655 as the mandatory form for filing these reports, and since that time both service providers and manufacturers have filed reports using the electronic system. The Bureau seeks comment on the functioning of this system.

b. Does Form 655 collect the necessary information on hearing aid-compatible handset offerings? Is any unnecessary information being collected? Do third-party sources provide information about hearing aid-compatible handsets that may diminish the need for reporting to the Commission? Even if information about hearing aid-compatible handsets is available from other sources, is reporting to the Commission still necessary to ensure compliance with the rules?

c. Is the electronic Form 655 an efficient means of collecting information? What burdens does the reporting impose on device manufacturers and service providers? What changes to the system might improve its operation?

d. Does the reporting requirement impose special burdens on small device manufacturers and service providers? In light of any such burdens, should smaller entities be exempt from some or all reporting requirements? If so, what should be the threshold for such an exemption? What effects would an exemption of smaller entities have on the availability of information to consumers?

e. Is the information collected by the Commission on Form 655 made accessible to the public in an easily usable manner at *http://wireless.fcc.gov/hac*? What changes might the Commission make to its Web site to improve the accessibility of this information? Are there measures the Commission could take that would facilitate use of this information by application developers to provide richer information products? Would it be helpful to collect and post the information in XML or any other format? Should the Commission

incorporate the information it receives on Form 655 into the clearinghouse of information on the availability of accessible products and services and accessibility solutions that it is establishing pursuant to new Section 717(d) of the Communications Act, 47 U.S.C. 618(d)?

6. Are manufacturers' and service providers' Web sites providing useful information in an accessible manner?

a. The rules require that each handset manufacturer and service provider make available on its Web site a list of its hearing aid-compatible handset models, the hearing aid compatibility ratings of those models, and an explanation of the rating system. Service providers also must include the levels of functionality of their hearing aid-compatible phones and an explanation of their methodology for determining levels of functionality. Do these Web sites contain the required information? Is it posted in a manner that is easily accessible to and understandable by consumers? Would it be helpful to develop best practices or other guidance to promote the most user-friendly approaches? If so, should this guidance be promulgated by the Commission or developed through collaboration among industry and consumer representatives?

b. Is there any additional information that consumers or other stakeholders would find helpful to have posted on manufacturers' or service providers' Web sites? Should the posting of any such information be required by the Commission or should it be voluntary?

7. Are the point-of-sale and packaging disclosures appropriately informing consumers?

a. The rules require that manufacturers and service providers clearly display the hearing aid compatibility ratings on the packaging material of a hearing aid-compatible handset, and that they include an explanation of the rating system in the device's user manual or as a packaging insert. Are manufacturers and service providers supplying this information, and are they doing so in a manner that is clear and helpful to consumers? Are consumers able to understand the hearing aid compatibility rating system? If not, are there any measures the Commission can and should take to improve the disclosures? Should such measures take the form of a rule or voluntary guidance?

b. The rules further require that, for handsets that include operations over an air interface or frequency band for which hearing aid compatibility technical standards do not currently exist, each manufacturer and service provider must disclose to consumers by clear and effective means that such handset has not been rated for hearing aid compatibility with respect to that operation. Effective March 8, 2011, manufacturers and service providers will be required to use specific prescribed language in making this disclosure. The Bureau notes that ANSI ASC C63® is developing a revision of the C63.19 technical standard that would be independent of air interface and cover a broad range of frequency bands. Until such time as the promulgation and adoption of a revised technical standard renders this disclosure unnecessary, is the disclosure effective and should any changes be made?

c. Are consumers adequately informed of the need to activate the hearing aid compatibility functions in their phones, particularly when used with hearing aids containing a telecoil? If not, what actions might the Commission take to promote more effective dissemination of this information?

d. Is there any additional information that should be made available to users of hearing aids or cochlear implants at the point of sale or in product manuals? How should any such additional disclosure be achieved?

8. Is the rule that requires phones to be made available for in-store testing effective?

The current rules require that service providers offer in-store testing of hearing aid-compatible handset models in each retail store they own or operate. Is the testing offered under this rule effective in helping consumers choose a hearing aid-compatible phone? What challenges have service providers encountered in offering effective in-store testing? Are there any rule changes or other Commission action that would make the testing more effective or efficient?

9. What actions might the Commission take to provide better information to consumers with hearing loss who obtain phones from sources other than their service provider?

In the *Hearing Aid Compatibility Second Report and Order and Further NPRM,* the Commission asked whether the in-store testing requirement should be extended to independent retailer outlets not owned or operated by service providers, and whether independent retailers should be required to offer a customer with hearing loss a flexible return policy to ensure that a handset is compatible with the customer's hearing aid. Are there any other measures the Commission might take to assist consumers who purchase their phones from independent retailers in obtaining hearing aid-compatible phones? For example, is there a need for disclosure of hearing aid compatibility information by third-party online vendors? Commenters should address the Commission's authority to adopt these measures and the burdens imposed on retailers as well as the benefits for consumers.

Technical Issues

In this section, the Bureau seeks comment on questions relating to technical issues affecting hearing aid compatibility. In particular, the Bureau asks about the need for additional measures to facilitate acoustic coupling compatibility, as well as the effects of display screens, wireless headsets, and simultaneous transmission capabilities in handsets. The Bureau also seeks comment on what the Commission can do to facilitate better operation of hearing aids and cochlear implants with wireless handsets.

10. Are measures needed to facilitate acoustic coupling between wireless handsets and hearing aids?

a. ANSI Standard C63.19 and the Commission's existing wireless hearing aid compatibility rules address the compatibility of wireless handsets with hearing aids in two respects: (1) RF interference with hearing aids operating in acoustic mode and (2) inductive coupling capability with hearing aids containing a telecoil. However, other obstacles to acoustic coupling compatibility may exist. In particular, a Working Group of the Alliance for Telecommunications Industry Solutions (ATIS), WG–11, is studying issues involving volume control and acoustic coupling. The Bureau seeks comment on any measures the Commission should take, in addition to the rules regarding RF interference reduction, to promote acoustic coupling capability between wireless handsets and hearing aids or cochlear implants.

b. Wireline and cordless phones are subject to technical standards and rules regarding volume levels and controls, 47 CFR 68.4. Are similar rules feasible and necessary to ensure that wireless phones will operate at appropriate volumes to achieve acoustic coupling compatibility? If so, what should these rules require? What burdens would these requirements impose on manufacturers and service providers?

c. Is adequate information currently available to consumers and hearing aid manufacturers regarding wireless

phones' volume settings and sound quality? What challenges exist to providing such information? For example, to what extent are volume and sound quality affected by the network rather than the consumer device? Is information about volume and sound quality proprietary to the handset manufacturer or service provider? What actions can and should the Commission take to promote greater availability of this information?

d. Are there any other measures the Commission should take to facilitate acoustic coupling compatibility? For example, wireline phones typically emit a magnetic field that may be sensed by some hearing aids to trigger an acoustic coupling telephone mode. Wireless phones, however, may not emit a magnetic field of similar strength. Do differences between wireline and wireless technology mean that certain hearing aids are not receiving effective signals to activate special acoustic coupling modes for telephone use? If so, are there actions the Commission might take to enable such signaling? What would be the costs of such measures?

11. Are measures needed to address the effect of display screens on hearing aid compatibility?

In earlier proceedings, concerns have been expressed that the display screens on smart phones emit electromagnetic energy that may interfere with the operation of hearing aids. In light of ongoing experience, are measures needed to address the effects of display screens on hearing aid compatibility? Do the measurement procedures specified in ANSI Standard C63.19 appropriately account for these effects? Might these effects be ameliorated by, for example, programming a handset so that the backlighting fades when it is held close to an object such as the human ear? The Bureau seeks comment on the benefits and costs of regulatory or non-regulatory measures that might be appropriate to promote this and other potential technical solutions.

12. Do wireless headsets create special issues for hearing aid compatibility?

Consumers are increasingly using Bluetooth and other headset or earpiece technologies to communicate over their wireless phones. Does the use of these technologies pose special challenges for users of hearing aids and cochlear implants? For example, might the headset or earpiece create RF interference with the hearing assistance device? Are there physical difficulties using a headset or earpiece with certain types of hearing aids? What regulatory or non-regulatory measures might be appropriate to address these concerns?

13. Are measures needed to address handsets that can transmit simultaneously over multiple air interfaces or frequency bands?

The 2007 revision of ANSI Standard C63.19 does not include a detailed method for testing RF interference when a handset is simultaneously transmitting over more than one air interface or frequency band. Current Commission guidance requires handsets with such capability to be tested over each air interface or frequency band separately. Until a protocol for testing in these situations has been developed, are there other actions the Commission should take?

14. What actions might the Commission take to facilitate better interoperability of hearing aids and cochlear implants with handsets?

a. Interoperability between wireless handsets, on the one hand, and hearing aids and cochlear implants on the other involves the functioning of two different devices in a single operating system. In order to help the Bureau best to understand this system, the Bureau encourages commenters to provide information regarding the technical operation of hearing aids and cochlear implants. In particular, the Bureau seeks information on new and emerging technical advances that may affect how hearing aids and cochlear implants interoperate with wireless phones.

b. The Bureau invites public comment on how effectively different types of hearing assistance devices operate with wireless handsets. Do they generally function as anticipated, or is there a substantial amount of uncertainty? Is the functioning different for different types of hearing aids? Are cochlear implants different from hearing aids in this regard?

c. Are there actions that the Commission, in coordination with the Food and Drug Administration, could take to facilitate the dissemination of information about hearing aids and cochlear implants to wireless handset manufacturers, service providers, and consumers of wireless service?

Innovation, Investment, and Competition

15. What is the state of innovation in solutions to enable people with hearing loss to access wireless technology, and do the Commission's rules appropriately facilitate and encourage such innovation?

a. As the number and types of features embedded in smartphones and other wireless handsets continue to evolve, new challenges may be posed for hearing aid compatibility. For example, as noted above, simultaneous transmission capabilities pose challenges for measuring RF interference. Are there other emerging or anticipated technological developments that may create similar issues? Do the Commission's rules create appropriate incentives to consider hearing aid compatibility early in the product development cycle, when any concerns can be most efficiently addressed? Are there measures the Commission could take that would better ensure the early consideration of such issues?

b. The Commission's rules assume that wireless handsets will achieve hearing aid compatibility by meeting an M3 and/or T3 rating through features that are built into the handset. Are there other means of achieving hearing aid compatibility, either existing or under development, that may be more efficient or effective? For example, could hearing aid compatibility be achieved through a downloaded application? Do the Commission's rules in any way inhibit development of such innovative solutions? If so, how might the rules be modified to address this without compromising their effectiveness?

c. Are there other technologies, either in existence or on the horizon, that may assist people with hearing loss in using wireless technology? Are there technical developments that may create new obstacles for people with hearing loss?

16. Do the Commission's rules successfully promote investment and competition with respect to hearing aid-compatible wireless handset offerings?

a. What is the nature and extent of competition among device manufacturers and service providers with respect to hearing aid-compatible phones? Is it similar to competition in the handset and service markets generally? Is the incentive to invest in features for hearing aid-compatible phones comparable to that in the broader handset market?

b. Do the Commission's rules appropriately assign responsibility for hearing aid compatibility compliance in cases of joint ventures and other complex market arrangements? Is there any need for clarification in this regard?

Ongoing Collaboration

17. What actions should the Commission take to promote ongoing collaboration among consumers with hearing loss, the communications industry, and the hearing aid industry?

a. In July 2003, the ATIS Incubator Solutions Program #4 (AISP.4) (Incubator), was created to investigate methods of enhancing interoperability and usability between hearing aids and wireless handsets. The Incubator has performed invaluable work in bringing together wireless device manufacturers, service providers, and consumers to discuss and develop solutions to hearing aid compatibility problems and in proposing to the Commission consensus plans to best meet the needs of both the industry and consumers with hearing loss. The Bureau understands that this body is now approaching the end of its institutional life. In the absence of the Incubator, how can the Commission best ensure that the industry and consumers will continue collaborating to address new technological and market developments in a timely manner. Could the Commission's Accessibility and Innovation Initiative, described at *http://www.broadband.gov/accessibilityandinnovation/,* provide support for such collaboration?

b. The Bureau also seeks comment on how best to promote increased collaboration between the communications and hearing aid industries. Could the Accessibility and Innovation Initiative be an appropriate venue for these conversations as well?

Federal Communications Commission.

Ruth Milkman,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 2011–801 Filed 1–13–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567, 591, 592, and 593

[Docket No. NHTSA 2009–0143; Notice 1]

RIN 2127–AK32

Certification; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured To Conform to the Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes several amendments to the regulations pertaining to registered importers ("RIs") of motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety, bumper, and theft prevention standards. The agency proposes amending RI application and renewal requirements to enable the agency to deny or revoke registration to entities that have been convicted of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment. Also, the RI would be required to certify that it destroyed or exported nonconforming motor vehicle equipment removed from a vehicle during conformance modifications. The agency is also proposing new requirements for motor vehicles imported under import eligibility petitions, adopting a clearer definition of the term "model year" for import eligibility purposes, and requiring that import eligibility petitions include the type classification and gross vehicle weight rating ("GVWR") of the subject vehicle. This notice also proposes several amendments to the RI regulations that would include adding citations to provisions that can be used as a basis for the non-automatic suspension of an RI registration, deleting redundant text from another provision, and revising several sections to include the agency's current mailing address.

DATES: Comments should be submitted early enough to ensure that Docket Management receives them by February 28, 2011.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

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

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues contact Clint Lindsay, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–5288). For legal issues contact Nicholas Englund, Office of Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–5263).

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I. Background of This Rulemaking Action

A. The 1968 Importation Regulations (19 CFR 12.80) and the Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562)

The National Traffic and Motor Vehicle Safety Act of 1966 as amended ("the Safety Act"), now codified at 49 U.S.C. Chapter 301 ("Motor Vehicle Safety"), requires imported vehicles to meet Federal motor vehicle safety standards ("FMVSS") as well as bumper and theft prevention standards. Effective January 10, 1968, a regulation jointly issued by NHTSA and the United States Customs Service ("Customs"), 12 CFR 12.80, allowed permanent importation of motor vehicles not originally manufactured to meet applicable FMVSS if, within 120 days, the importer demonstrated that the vehicle had been brought into compliance with those standards.

The Imported Vehicle Safety Compliance Act of 1988 (Pub. L. 100–562, "the 1988 Act"), which became effective on January 31, 1990, limited the importation of vehicles that did not comply with the FMVSS to those capable of being modified to comply. To enhance oversight, the 1988 Act required that necessary modifications be performed by "registered importers" ("RIs"). RIs are business entities that have proven to NHTSA that they are technically and financially capable of importing nonconforming motor vehicles and of performing the necessary modifications on those vehicles so that they conform to all applicable FMVSS. See generally, 49 U.S.C. 30141–30147.

B. Previous Regulatory Actions

1. The 2000 Notice of Proposed Rulemaking (65 FR 69810 (Nov. 20, 2000))

As mandated by the 1988 Act, the agency issued regulations covering the RI program (49 CFR parts 591 through 594) which superseded 12 CFR 12.80. *See* 54 FR 40069, Sept. 29, 1989.

After about a decade of experience with the initial regulations under the 1988 Act, the agency identified a number of unanticipated difficulties in administering the RI program. To address these difficulties and to ensure that imported vehicles were properly brought into conformance, the agency tentatively concluded that more information from applicants and more specificity about the duties of RIs would be necessary. NHTSA published a Notice of Proposed Rulemaking ("NPRM") on November 20, 2000 seeking to clarify RI duties and application requirements. 65 FR 69810, Nov. 20, 2000. The NPRM proposed amendments clarifying the registration, suspension, and revocation procedures for RIs.

2. The 2004 Final Rule (69 FR 52070 (Aug. 24, 2004))

After considering the comments to the NPRM, the agency published a final rule amending the importation regulations on August 24, 2004. 69 FR 52070, Aug. 24, 2004. These amendments established new requirements for RI applicants and further delineated the duties of RIs. The amendments also clarified the procedures for suspending or revoking RI registrations.

II. Proposed Substantive Amendments to the RI Regulations

A. The Agency May Deny or Revoke the RI Status of Entities Convicted of Certain Crimes

The statute authorizing the RI program directs the agency to "establish procedures for registering a person who complies with requirements prescribed by the Secretary [of Transportation] by regulation under this subsection [49 U.S.C. 30141(c)] * * * " As part of its responsibilities, an RI has the duty to ensure that each nonconforming vehicle that it imports or agrees to modify is brought into compliance with all applicable Federal motor vehicle safety and bumper standards, that an accurate statement of conformity is submitted to NHTSA certifying the vehicle's compliance following the completion of the modifications, and that the vehicle is not released for operation on the public roads until NHTSA releases the conformance bond. The agency approves RIs for the specific purpose of carrying out these important safety responsibilities. In this respect, each RI occupies a position of public trust to ensure that nonconforming vehicles imported under its auspices are properly conformed to all applicable standards before they are operated on public roads in the United States.

Congress provided a non-exhaustive list of requirements that NHTSA should adopt to promote integrity in the RI program. These include record keeping requirements, records and facilities inspection authority, and establishing technical and financial requirements. The statute does not explicitly address denying, suspending, or revoking RI registrations except in circumstances in which a person had failed to comply with motor vehicle regulations, has failed to pay required fees, or has already had a registration revoked.

Conviction of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment is, in NHTSA's view, inconsistent with holding a position of public trust such as being an RI.

The 2004 Rule (69 FR 52070, Aug. 24, 2004) required applicants to disclose the Social Security numbers of RI principals so the agency could perform criminal background checks. *See* 69 FR 52074, Aug. 24, 2004. The primary goal of these background checks was to ensure RI accountability and compliance with legal requirements. *Id.* at 52073–74. Applications that did not disclose Social Security numbers would be denied. *Id.* Two commenters to that final rule supported denying registration to applicants with a felony record involving motor vehicles or the motor vehicle business; no one opposed it. *Id.* at 52074.

After adopting the rule, a petition for reconsideration challenged the use of RIs' Social Security numbers to perform background checks. *See* 70 FR 57797, Oct. 4, 2005. In response, the agency reassessed the need for applicants to submit Social Security numbers. NHTSA determined that disclosure of Social Security numbers was unnecessary. *Id.* Accordingly, the agency amended sections 592.5(a)(4)(ii) and (iii), eliminating requirements that RI applicants disclose Social Security numbers. *Id.*

We now propose amending the RI regulations to prevent entities convicted of certain crimes from gaining or maintaining RI status. We propose amending 49 CFR 592.5(e)(1) to state that the agency may deny registration to applicants who have been convicted of a crime related to the importation, purchase or sale of motor vehicles or motor vehicle equipment. We also propose amending the regulations to allow the agency to deny registration to an applicant if any person associated with direct or indirect ownership or control of the applying entity, or any person employed by or associated with the applicant or applying entity, has been convicted of a crime related to the

importation, purchase or sale of motor vehicles or motor vehicle equipment. These offenses include, but are not limited to, title fraud, odometer fraud, or the sale of stolen vehicles. For the purposes of this rulemaking, the phrase "convicted of a crime" means a criminal conviction, whether entered on a verdict or plea, including a plea of *nolo contendere,* for which sentence has been imposed, whether convicted in U.S. or foreign jurisdictions.

Similarly for RIs seeking to renew their registration, we propose adding a new paragraph (i) to 49 CFR 592.5 that would allow the agency to deny registration renewal to RIs who have been convicted of a motor vehicle related crime.

The integrity of the RI program is also vulnerable to abuse when an entity, after becoming an RI, is convicted of a motor vehicle related crime. A convicted entity, possessing current registration and knowing that its registration will not be renewed, may have little incentive to faithfully follow its duties as an RI. The agency believes waiting until the end of the fiscal year to deny registration renewal to a convicted entity is an unacceptable risk. To protect the program from this risk, we propose amending Section 592.5(f) to state that an existing RI or any person who directly or indirectly owns or controls, or has common ownership or control of the RI's business, must not be convicted of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment. After the RI has been convicted, RI status may be revoked under Section 592.7(b).

B. Information Submitted in Annual RI Registration Renewal Must Be True and Correct

Under 49 CFR 592.5(a)(11), parties applying for RI status must certify that all information provided in the application is true and correct. As noted above, RIs occupy a position of public trust by certifying that imported nonconforming vehicles have been brought into conformity with all applicable safety standards. In deciding whether to register an applicant as an RI, the agency must be able to trust that the information provided in the application is accurate and truthful. If the agency discovers that an applicant submitted false or inaccurate information, the application may be denied. 49 CFR 592.5(e)(1).

NHTSA's regulations require RIs to annually renew their registrations. When evaluating a request for renewal, the Administrator must be able to rely on the accuracy and truthfulness of the annual statement submitted in support of that request, under 49 CFR 592.5(f) and 592.6(k). However, existing RIs are not currently required to certify that the renewal request is truthful. Therefore, we are proposing to amend § 592.5(f) and § 592.6(k) to require an RI to certify that all the information submitted in its annual renewal statement is true and correct. Any RI making a false or inaccurate certification in this statement may have its registration suspended or revoked pursuant to § 592.7(b).

C. RIs Must Certify Destruction or Exportation of Nonconforming Motor Vehicle Equipment Removed From Imported Vehicles During Conformance Modifications

The 1988 Act allows an RI to permanently import nonconforming vehicles if NHTSA has determined that the vehicle can be modified to comply with all applicable FMVSS. RIs must often remove nonconforming motor vehicle equipment items and replace the components with equipment meeting applicable FMVSS. Motor vehicle equipment items subject to the FMVSS include tires, wheels, brake hoses, brake fluid, seat belt assemblies, lighting equipment, and glazing.

NHTSA has previously directed RIs to destroy or export the noncompliant equipment they remove from the vehicles they conform and to certify to NHTSA that they have done so in the statements of conformity that they submit for those vehicles.

Despite these efforts, there have been instances where nonconforming equipment removed from vehicles by RIs has been offered for sale. To help ensure that this noncompliant equipment does not enter interstate commerce, we propose amending § 592.6(d) to require RIs to certify that such equipment has been destroyed or exported. This certification would be made in the statement of conformity RIs submit to the agency upon the completion of all conformance modifications. Failing to certify the destruction or exportation of nonconforming equipment items removed from imported vehicles would result in the agency withholding release of the DOT conformance bond furnished for the vehicle at its time of entry and may also subject the RI to the suspension or revocation of its registration.

D. Establishing Procedures for Importation of Motor Vehicles for the Purpose of Preparing an Import Eligibility Petition

A motor vehicle not originally manufactured to meet applicable FMVSS may not be imported on a permanent basis unless NHTSA determines, on its own initiative or upon the petition of an RI, that the vehicle is eligible for importation. 49 U.S.C. 30141(a)(1)(A).

Two categories of vehicles are eligible for importation under section 30141(a)(1). The first are vehicles that can be readily altered to conform to the FMVSS and are substantially similar to vehicles certified as conforming to those standards (i.e., U.S.-certified counterparts). The second category covers vehicles that do not have a substantially similar U.S.-certified counterpart but are capable of being altered to comply with all applicable FMVSS. In the latter category, proof of compliance is based on dynamic test data or evidence that NHTSA decides adequately demonstrates compliance. After NHTSA decides that a particular model and model year vehicle is eligible for importation, the agency assigns the vehicle a unique vehicle eligibility number that permits entry of the vehicle into the United States.

To develop a petition, an RI may need to physically examine at its facility in the United States a motor vehicle that was not certified by its manufacturer as complying with all applicable FMVSS and compare that vehicle to a U.S.-certified vehicle of the same model and model year. If there is no substantially similar U.S.-certified vehicle, the RI may need to import as many as two motor vehicles in order to conduct crash tests and submit to NHTSA in conjunction with its petition the resultant test data or other evidence that the agency decides is adequate to show that the vehicle has safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS. NHTSA has previously informed RIs that only one vehicle may be imported for the purpose of preparing an import eligibility petition, unless destructive test data is needed, in which case the agency will authorize the importation of one additional vehicle.

These allowances have been made on an *ad hoc* basis. In May 2006, NHTSA amended the HS–7 Declaration form by including a new Box 13 to permit the entry of nonconforming vehicles by RIs for the purpose of preparing an import eligibility petition. When it amended the form, the agency did not make corresponding amendments to 49 CFR part 591 to reflect the new contents of the HS–7 Declaration form. The agency is now proposing such an amendment to § 591.5.

NHTSA seeks to adopt a rule that will facilitate import eligibility petitions

without imposing unnecessary burdens on RIs or on the agency. To this end, NHTSA encourages commenters to state whether importing one vehicle is sufficient for the purpose of preparing an import eligibility petition for a substantially similar U.S.-certified vehicle and whether the importation of two vehicles is sufficient where destructive crash test data is required to prove compliance with all applicable FMVSS. Under today's proposal, an RI seeking to import a vehicle needed for preparing an import eligibility petition would inform NHTSA that it will, or has, petitioned the agency for an import eligibility decision. The RI would then need NHTSA's written permission to import the vehicle. RIs would be required to follow this procedure and could not declare the vehicle under Box 3 as one that has already been determined eligible for importation, or enter an agency-assigned vehicle eligibility number on the form. Improper use of an agency-assigned vehicle eligibility number on the HS–7 Declaration form for a vehicle imported to prepare an eligibility petition will be considered a violation of 49 U.S.C. 30112(a) and 49 CFR 592.6(a), which requires an RI to assure that the vehicle it imports is eligible for importation pursuant to 49 CFR part 593. Such a violation would subject the RI to the suspension or revocation of its registration. *See* 49 CFR 592.7(b)(1).

Vehicles imported for the purpose of preparing an import eligibility petition would only be authorized to remain in the United States for a limited time. The importing RI would be required to file an import eligibility petition with the agency within 180 days of the vehicle's entry date. The RI would be required to declare that it will destroy, export, or abandon the vehicle to the United States if NHTSA dismisses or denies the petition, if the RI withdraws the petition, or if the RI does not file a petition within 180 days from the date of entry. The RI would be required to have the vehicle destroyed, delivered to Customs for exportation, or abandoned to the United States within 30 days from the date of the dismissal, denial, or withdrawal of the RI's petition, as appropriate, or within 210 days from the date of the vehicle's entry if the RI fails to submit a petition. The RI would also be required to submit to NHTSA documentary proof of the vehicle's destruction, exportation, or abandonment within 15 days from the date of such action.

An RI would not need to obtain a DOT conformance bond when importing a nonconforming vehicle for the purpose of preparing an import eligibility petition because these bonds are only needed when NHTSA has decided that a particular vehicle is capable of being modified to meet U.S. standards. The proposal thus relies on the use of a Temporary Importation Bond ("TIB"). The TIB serves as the RI's promise that the vehicle, which is imported on a temporary basis for up to one year for the purpose of testing or inspection, will be exported or destroyed. The RI must post a TIB with U.S. Customs and Border Protection ("CBP") for twice the amount of duty, taxes, etc. that would otherwise be due at the time the vehicle is imported. If the RI does not export or destroy the vehicle, it is subject to forfeiture of the TIB and penalties for violations of NHTSA's regulations including civil penalties and the suspension or revocation of the RI's registration.

The agency is also proposing that once an eligibility petition is granted, the RI must furnish a DOT conformance bond, export the vehicle, abandon the vehicle to the United States, or destroy it. If the RI intends to bring the vehicle into compliance, a complete conformance package must be submitted to the agency within 120 days from the date the petition is granted. If the vehicle has been destroyed, the RI must submit documentary proof of the destruction to the agency within 30 days from the date destruction. These recitals would be reflected in the text that the agency is proposing to add to § 591.5.

E. Adopting a Clearer Definition of the Term "Model Year" for the Purpose of Import Eligibility Decisions

When an import eligibility petition is based on the substantial similarity of the subject vehicle to a U.S.-certified counterpart, section 30141(a)(1)(A) requires the agency to make the eligibility decision on a model and model year basis. If there is no substantially similar U.S.-certified counterpart, the statute does not specify that the decision be made on a model year basis.

Vehicles manufactured for sale in the United States are typically assigned model year designations for marketing purposes. Although the model year traditionally begins on September 1, it can begin on other dates as well. A date that is more important from the agency's perspective is the vehicle's "date of manufacture," defined as the date on which manufacturing operations are completed on a vehicle at its place of main assembly. *See* 49 CFR 571.7 and 49 CFR 567.4(g)(2). The agency uses a vehicle's date of manufacture to identify the specific FMVSS requirements that the vehicle must be certified to meet. Manufacturers of vehicles intended for sale in the U.S. must affix to those vehicles a label that, among other things, identifies the vehicle's date of manufacture and certifies that the vehicle complies with all applicable FMVSS in effect on that date. 49 U.S.C. 30115; 49 CFR 567.4(g). The model year designation that a manufacturer assigns to a U.S.-certified vehicle has no bearing on the vehicle's compliance with applicable FMVSS.

Many European manufacturers do not use a model year designation for vehicles manufactured for their own markets. Instead, they rely on the calendar year in which the vehicle is produced. Moreover, the countries in which these vehicles are produced generally do not assign model year designations. Although, as previously noted, September 1 through August 31 is commonly accepted as the model year for the purpose of marketing vehicles in the United States, these dates have limited relevance, if any, to vehicles that are produced for sale abroad. Consequently, the agency is proposing to amend 49 CFR 593.4 by deleting "the calendar year that begins on September 1 and ends on August 31 of the next calendar year," as one of the alternative definitions of the term "model year," and adopting in its place "the calendar year (i.e., January 1 through December 31) in which manufacturing operations are completed on the vehicle at its place of main assembly." This language corresponds to 49 CFR 567.4(g)(2), which identifies how the date of manufacture is to be selected for the purpose of a vehicle's certification label.

This change should eliminate much of the confusion now confronting RIs over the issue of whether a given vehicle manufactured for sale abroad has a substantially similar U.S.-certified counterpart of the same model year.

After an RI performs all modifications necessary to conform a vehicle to all applicable Federal motor vehicle safety and bumper standards, and remedies all noncompliances and defects that are the subject of any pending safety recalls, the RI must permanently affix to the vehicle a certification label that meets the content requirements of 49 CFR 567.4(k). Under 49 CFR 567.4(k)(4)(i), the RI must identify the vehicle's model year or year of manufacture on the label. We propose to amend 49 CFR 567.4(k)(4)(i) to reflect the proposed definition of model year that would be added to 49 CFR 593.4.

F. Requiring Import Eligibility Petitions To Identify the Type Classification and Gross Vehicle Weight Rating ("GVWR") of the Subject Vehicles

In making import eligibility determinations, the agency determines the safety standards applicable to a particular vehicle by, among other things, taking account of the model, model year, the type classification, and the gross vehicle weight rating ("GVWR") of the vehicle. The various type classifications that a vehicle can be assigned are defined in the agency's regulations at 49 CFR 571.3. Those type classifications include passenger car, multipurpose passenger vehicle ("MPV"), truck, bus, motorcycle, trailer, and low speed vehicle ("LSV"). The regulations also define GVWR as the loaded weight of the vehicle as specified by the original manufacturer. 49 CFR 571.3.

The agency has ready access to the type classification and GVWR for U.S.-certified vehicles. Manufacturers of U.S.-certified vehicles must identify the type classification on the vehicle's certification label. *See* 49 CFR 567.4. Manufacturers must also identify on the certification label the GVWR they have assigned to the vehicle. 49 CFR 567.4(g)(3). However, determining the type classification and GVWR of a motor vehicle without a substantially similar U.S.-certified counterpart can be difficult. The agency may expend considerable time and effort ascertaining this information, thereby delaying the processing of the petition.

To rectify this situation, NHTSA is proposing that all import eligibility petitions must include the type classification and the GVWR assigned to the vehicle by its original manufacturer. Under 49 CFR 593.6(b), petitions must now include the model and model year of the subject vehicle, as well as data, views, and arguments demonstrating that the vehicle has safety features that comply with, or are capable of being modified to comply with, all applicable FMVSS. This proposal would amend 49 CFR 593.6(b) by adding language to require identification of the vehicle's type classification and GVWR as defined in 49 CFR 571.3.

G. Identifying a Violation of Regulations in Part 592 as a Basis for The Non-Automatic Suspension or Revocation of an RI Registration

NHTSA is required by statute to establish procedures for revoking or suspending an RI's registration for not complying with a requirement of 49 U.S.C. 30141–30147, or any of 49 U.S.C. 30112, 30115, 30117–30122, 30125(c), 30127, or 30166, or any regulations issued under these sections. 49 U.S.C. 30141(c)(4). Regulations implementing this provision are found at 49 CFR 592.7. The agency amended § 592.7(b) as part of the 2004 rule to list the regulations, if violated, that are grounds for suspension or revocation. These regulations were identified as including, but not being limited to, parts 567, 568, 573, 577, 591, 593, and 594. Part 592 was inadvertently omitted from this list (which was not exclusive); we now propose amending the provision to add Part 592.

H. Deletion of Redundant Text From 49 CFR 592.5(a) Identifying Contents of the RI Application

49 CFR 592.5(a)(4)(v) requires an application for registration as an RI to include the statement that "the applicant has never had a registration revoked pursuant to § 592.7, nor is it, nor was it, directly or indirectly, owned or controlled by, or under common ownership or control with, a Registered Importer that has had a registration revoked pursuant to § 592.7." This requirement is also expressed, in identical language, in § 592.5(a)(6). To correct this redundancy, we propose deleting the text at § 592.5(a)(4)(v).

III. Technical Corrections

Revisions to Certain Provisions To Reflect the Agency's New Street Address

Sections 591.6(f)(1), 592.5(a)(1), 592.8(b), 593.5(b)(2), and 593.10(a), prescribe requirements for submitting information to NHTSA and list the agency's address. The agency will amend these sections to reflect the agency's new street address. This does not require notice and comment but, for ease of administration, we are including it in this notice.

IV. Effective Date

The amendments proposed in this notice would become effective 60 days after issuance of the final rule, apart from those revising provisions that identify the agency's street address.

V. Rulemaking Analyses and Notices Regulatory Text

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993), provides for making determinations as to whether a regulatory action is "significant" and therefore subject to Office of Management and Budget ("OMB") review and subject to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12886. Further, NHTSA has determined that the rulemaking is not significant under the Department of Transportation's regulatory policies and procedures. NHTSA currently anticipates the costs of the final rule to be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There would be no substantial effect upon State and local governments. There would be no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the RI program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within

the United States." See 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency has considered the effects of this proposed rulemaking under the Regulatory Flexibility Act, and certifies that if the proposed amendments are adopted they would not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The proposed amendments would primarily affect entities modifying nonconforming vehicles that are small businesses within the meaning of the Regulatory Flexibility Act. At present, 65 such entities are registered with NHTSA. The proposed amendments would not significantly increase operating costs for any of these entities or impose any additional financial burden upon them.

Small governmental jurisdictions would not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and believes that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency believes that the NPRM, if made final, would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This NPRM, if made final, 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."

D. National Environmental Policy Act

NHTSA has analyzed this action for the purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is not likely to change the volume of motor vehicles imported through RIs.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988 "Civil Justice Reform," this agency has considered whether this proposed rule would have any retroactive effect. NHTSA concludes that this proposed rule would not have any retroactive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA") 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 more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Because a final rule based on this proposal would not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this document.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's NPRM includes collections of information that are part of "Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards," OMB control number 2127–0002. This clearance is valid though November 30, 2010. NHTSA has submitted to OMB a request for renewal of OMB control number 2127–0002. The request for renewal addresses the minor increase in the collection of information that would result if this NPRM is made final.

I. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking is not economically significant and no analysis of its impact on children is required.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or

adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers ("SAE"). The NTTAA directs the agency to provide Congress, through the OMB, with explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have concluded that there are no voluntary consensus standards applicable to this proposed rule.

K. Public Participation

How do I prepare and submit comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management identified at the beginning of this document, under **ADDRESSES**.

How can I be sure that my comments were Rrceived?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given at the beginning of this document under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation, 49 CFR part 512.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date identified at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address and times given at the beginning of this document under **ADDRESSES**.

You may also read the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System ("FDMS") Web page *http://www.regulations.gov.*

(2) On that page, click on "search for dockets."

(3) On the next page (*http://www.regulations.gov/fdmspublic/component/main*), select NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION from the drop-down menu in the Agency field, enter the Docket ID number and title shown at the heading of this document, and select "RULEMAKING" from the drop-down menu in the Type field.

(4) After entering that information, click on "submit."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the "pdf" versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number ("RIN") to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR parts 567, 591, 592, and 593

Imports, Motor Vehicle Safety, Motor Vehicles, Reporting and Recordkeeping Requirements.

In consideration of the foregoing, the agency proposes to amend part 567, Certification, part 591, Importation of Vehicles and Equipment Subject to Federal Safety, Bumper and Theft Prevention Standards; part 592, Registered Importers of Vehicles Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards; and part 593, Determinations that a Vehicle Not Originally Manufactured to Conform to the Federal Motor Vehicle Safety Standards is Eligible for Importation, in Title 49 of the Code of Federal Regulations as follows:

PART 567—CERTIFICATION

1. The authority citation for part 567 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166, 32502, 32504, 33101–33104, 33108, and 33109; delegation of authority at 49 CFR 1.50.

2. In *§ 567.4,* revise the second sentence in paragraph (k)(4)(i) to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(k) * * *

(4) * * *

(i) * * * "Model year" is used as defined in § 593.4 of this chapter.

* * * * *

PART 591—IMPORTATION OF VEHICLES AND EQUIPMENT SUBJECT TO FEDERAL SAFETY, BUMPER AND THEFT PREVENTION STANDARDS

1. The authority citation for part 591 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

2. Add § 591.5(l) to read as follows:

§ 591.5 Declarations required for importation.

* * * * *

(l) The vehicle does not conform to all applicable Federal Motor Vehicle Safety and Bumper Standards (but does conform to applicable Federal Theft Prevention Standards) but the importer is eligible to import it because:

(1) The importer has registered with NHTSA pursuant to Part 592 of this chapter, and such registration has not been revoked or suspended;

(2) The importer has informed NHTSA that (s)he intends to submit, or has already submitted, a petition requesting that NHTSA determine whether the vehicle is eligible for importation; and

(3) The importer has:

(i) Submitted to the Administrator a letter requesting permission to import the vehicle for the purpose of preparing an import eligibility petition; and

(ii) Received written permission from the Administrator to import the vehicle.

3. Amend § 591.6 by revising the last sentence of paragraph (f)(1) and adding a new paragraph (g) to read as follows:

§ 591.6 Documents accompanying declarations.

* * * * *

(f) * * *

(1) * * * The request shall be addressed to Director, Office of Vehicle Safety Compliance, West Building—Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE, Washington, DC 20590.

* * * * *

(g) A declaration made pursuant to § 591.5(l) shall be accompanied by the following documentation:

(1) A letter from the Administrator authorizing importation pursuant to § 591.5(l). Any person seeking to import a motor vehicle pursuant to this section must submit, in advance of such importation, a written request to the Administrator containing a full and complete statement identifying the vehicle, its original manufacturer, model, model year (if assigned) or date of manufacture (if a model year is not assigned), VIN, the vehicle classification (the various classifications are defined in § 571.3), and the Gross Vehicle Weight Rating (GVWR) assigned to the vehicle by its manufacturer. The statement must also declare that the specific purpose of importing this vehicle is to prepare a petition to the Administrator requesting a determination whether the vehicle is eligible for importation pursuant to part 593 and that the importer has filed, or intends to file within 180 days of the vehicle's entry date, a petition pursuant to § 593.5. The request must be addressed to Director, Office of Vehicle Safety Compliance, Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590.

4. In § 591.7, add paragraph (f) to read as follows:

§ 591.7 Restrictions on importations.

* * * * *

(f) If a vehicle has entered the United States under a declaration made pursuant to § 591.5(l) and:

(1) If the Administrator of NHTSA dismisses the petition or decides that the vehicle is not eligible for importation, or if the importer withdraws the petition or fails to submit a petition covering the vehicle within 180 days from the date of entry, the importer must deliver the vehicle, unless it is destroyed, to the Secretary of Homeland Security for export, or abandon the vehicle to the United States, within 30 days from the date of the dismissal, denial, or withdrawal of the importer's petition, as appropriate, or within 210 days from the date of entry if the importer fails to submit a petition covering the vehicle, and furnish NHTSA with documentary proof of the vehicle's exportation, abandonment, or destruction within 15 days from the date of such action; or

(2) If the Administrator grants the petition, the importer must:

(i) Furnish a bond, in an amount equal to 150 percent of the entered value of the vehicle as determined by the Secretary of the Treasury, within 15 days from the date the importer is notified that the petition has been granted, unless the vehicle has been destroyed, and bring the vehicle into conformity with all applicable Federal motor vehicle safety and bumper standards within 120 days from the date the petition is granted; or,

(ii) Deliver the vehicle to the Secretary of Homeland Security for export within 30 days from the date the importer is notified that the petition has been granted; or

(iii) Abandon the vehicle to the United States within 30 days from the date the importer is notified that the petition has been granted; or

(iv) Destroy the vehicle within 30 days from the date the importer is notified that the petition has been granted; and

(v) Furnish NHTSA with documentary proof of the vehicle's exportation, abandonment, or destruction within 15 days from the date of such action.

PART 592—REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 592 continues to read as follows:

Authority: Pub. L. 100–562, 49 U.S.C. 322(a), 30117, 30141–30147; delegation of authority at 49 CFR 1.50.

2. In § 592.4, add the definition of "Convicted of a crime" to read as follows:

§ 592.4 Definitions.

* * * * *

Convicted of a crime means receiving a criminal conviction in the United States or in a foreign jurisdiction, whether entered on a verdict or plea, including a plea of *nolo contendere,* for which sentence has been imposed.

* * * * *

3. In § 592.5, revise paragraph (a)(1), remove paragraph (a)(4)(v), redesignate paragraph (a)(4)(vi) as paragraph (a)(4)(v), revise paragraph (e)(1), revise paragraph (f), and add paragraph (i) to read as follows:

§ 592.5 Requirements for registration and its maintenance.

(a) * * *

(1) Is headed with the words "Application for Registration as Importer", and submitted in three copies to: Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590.

* * * * *

(e)(1) The Administrator:

(i) Shall deny registration to an applicant who (s)he decides does not comply with the requirements of paragraph (a) of this section;

(ii) Shall deny registration to an applicant whose previous registration has been revoked;

(iii) May deny registration to an applicant who has been convicted of, or whose business is directly or indirectly owned or controlled by, or under common ownership or control with, a person who has been convicted of, a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment, including, but not limited to, offenses such as title fraud, odometer fraud, auto theft, or the sale of stolen vehicles; and

(iv) May deny registration to an applicant that is or was owned or controlled by, or under common ownership or control with, or in affinity with, a Registered Importer whose registration has been revoked. In determining whether to deny an application, the Administrator may consider whether the applicant is comprised in whole or in part of relatives, employees, major shareholders, partners, or relatives of former partners or major shareholders of

a Registered Importer whose registration has been revoked.

* * * * *

(f) In order to maintain its registration, a Registered Importer must:

(1) Not be convicted of, or have any person associated with direct or indirect ownership or control of the registered importer's business or any person employed by or associated with the registered importer who is convicted of, a crime related to the importation, purchase, or sale of motor vehicles or motor vehicle equipment. These offenses include, but are not limited to, title fraud, odometer fraud, or the sale of stolen vehicles.

(2) File an annual statement. The annual statement must be titled "Yearly Statement of Registered Importer" and include the following written statements:

(i) "I certify that I have read and understand the duties of a Registered Importer, as set forth in 49 CFR 592.6, and that [name of Registered Importer] continues to comply with the requirements for being a Registered Importer."

(ii) "I certify that all information provided in each of my previous annual statements, submitted pursuant to § 592.6(q), or changed in any notification that [name of Registered Importer] may have provided to the Administrator in compliance with § 592.6(l), remains correct and that all the information provided in this annual statement is true and correct."

(iii) "I certify that I understand that, in the event that its registration is suspended or revoked, or lapses, [name of Registered Importer] will remain obligated to notify owners and to remedy noncompliance issues or safety related defects, as required by 49 CFR 592.6(j), for each vehicle for which [name of Registered Importer] has furnished a certificate of conformity to the Administrator."

(3) Include with its annual statement a current copy of the Registered Importer's service insurance policy. Such statements must be filed not later than September 30 of each year; and

(4) Pay an annual fee and any other fee that is established under part 594 of this chapter. An annual fee must be paid not later than September 30 of any calendar year for the fiscal year that begins on October 1 of that calendar year. The Registered Importer must pay any other fee not later than 15 days after the date of the written notice from the Administrator.

* * * * *

(i) The Administrator may deny registration renewal to any applicant who has been convicted of, or whose business is directly or indirectly owned or controlled by, or under common ownership or control with, a person who has been convicted of a crime related to the importation, purchase, or sale of a motor vehicle or motor vehicle equipment, including, but not limited to, title fraud, odometer fraud, or the sale of stolen vehicles.

4. In § 592.6, add a sentence immediately before the last sentence of paragraph (d)(1) and revise paragraph (k) to read as follows:

§ 592.6 Duties of a registered importer.

* * * * *

(d) * * *

(1) * * * The Registered Importer shall also certify that it has destroyed or exported any noncompliant motor vehicle equipment items that were removed from an imported vehicle in the course of performing conformance modifications. * * *

* * * * *

(k) Provide an annual statement, certifying that the information therein is true and correct, and pay an annual fee as required by § 592.5(f).

* * * * *

5. In § 592.7, revise the last sentence of paragraph (b)(1) to read as follows:

§ 592.7 Suspension, revocation, and reinstatement of suspended registrations.

* * * * *

(b) * * *

(1) * * *

These regulations include, but are not limited to, parts 567, 568, 573, 577, 591, 592, 593, and 594 of this chapter.

* * * * *

6. In § 592.8, revise the third sentence of paragraph (b) of to read as follows:

§ 592.8 Inspection; release of vehicle and bond.

* * * * *

(b) * * * Each submission shall be mailed by certified mail, return receipt requested, or by private express delivery service to: Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590 or delivered in person. * * *

PART 593—DETERMINATIONS THAT A VEHICLE NOT ORIGINALLY MANUFACTURED TO CONFORM TO THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS IS ELIGIBLE FOR IMPORTATION

1. The authority citation for part 593 continues to read as follows:

Authority: 49 U.S.C. 322 and 30141(b); delegation of authority at 49 CFR 1.50.

2. In § 593.4, revise the definition of "Model Year" to read as follows:

§ 593.4 Definitions.

* * * * *

Model year means the year used by a manufacturer to designate a discrete vehicle model irrespective of the calendar year in which the vehicle was actually produced, or the model year as designated by the vehicle's country of origin, or, if neither the manufacturer nor the country of origin has made such a designation, the calendar year (*i.e.,* January 1 through December 31) in which manufacturing operations are completed on the vehicle at its place of main assembly.

* * * * *

3. In § 593.5, revise paragraph (b)(2) to read as follows:

§ 593.5 Petitions for eligibility determinations.

* * * * *

(b) * * *

(2) Be headed with the words "Petition for Import Eligibility Determination" and submitted in three copies to: Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Fourth Floor, Room W43–481, Mail Code NVS–220, 1200 New Jersey Avenue, SE., Washington, DC 20590.

* * * * *

4. In § 593.6, revise paragraph (b)(1) of to read as follows:

§ 593.6 Basis for petition.

* * * * *

(b) * * *

(1) Identification of the model and model year of the vehicle for which a determination is sought, as well as the gross vehicle weight rating (GVWR) and type classification of the vehicle, as defined by § 571.3 of this chapter, (e.g., passenger car, multipurpose passenger vehicle, bus, truck, motorcycle, trailer, low-speed vehicle).

* * * * *

Issued on: December 20, 2010.

Daniel C. Smith,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 2011–295 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101228634–0481–01]

RIN 0648–BA26

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2011 Atlantic Bluefish Specifications; Regulatory Amendment

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

ACTION: Proposed specifications; regulatory amendment; request for comments.

SUMMARY: NMFS proposes specifications for the 2011 Atlantic bluefish fishery, including total allowable landings (TAL), a commercial quota and recreational harvest limit (RHL), and a recreational possession limit. The intent of this action is to establish the allowable 2011 harvest levels and other management measures to achieve the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP). NMFS also proposes to amend the bluefish regulations that specify the process for setting the annual TAL and target F to more clearly reflect the intent of the FMP.

DATES: Comments must be received on or before January 31, 2011.

ADDRESSES: You may submit comments, identified by 0648–BA26, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal: *http://www.regulations.gov*
- *Fax:* 978–281–9135, Attn: Regional Administrator.
- *Mail and Hand Delivery:* Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on 2011 Bluefish Specifications."

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.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273, or Sarah Heil, Fishery Management Specialist, (978) 281–9257.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the FMP is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.16.

The FMP requires the Council to recommend, on an annual basis, a total allowable catch (TAC) and a TAL that will control fishing mortality. An estimate of annual discards is deducted from the TAC to calculate the TAL that can be made during the year by the commercial and recreational fishing sectors combined. The FMP requires that 17 percent of the TAL be allocated to the commercial fishery, as a quota (further allocated to the states from Maine to Florida in specified shares), with the remaining 83 percent of the TAL allocated as an RHL. The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

Pursuant to § 648.162, the annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator. Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**, and after considering public comment, NMFS will publish final specifications in the **Federal Register.**

Proposed Specifications

Updated Model Estimates

According to Amendment 1 to the FMP (Amendment 1), overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as ½ B_{MSY}. Amendment 1 also established that the long-term target F is 90 percent of F_{MSY} ($F_{MSY} = 0.19$, therefore F_{target} = 90 percent of F_{MSY}, or 0.17), and the long-term target B is $B_{MSY} = 324$ million lb (146,964 mt).

An age-structured assessment program (ASAP) model for bluefish was approved by the 41st Stock Assessment Review Committee (SARC 41) in 2005 to estimate F and annual biomass. In June 2010, the ASAP model was updated in order to estimate the current status of the bluefish stock (i.e., 2009 biomass and F estimates) and enable the Monitoring Committee and SSC to recommend 2011 specifications using landings information and survey indices through the 2009 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2009, B_{2009} = 343.901 million lb (155,991 mt); and (2) an estimated fishing mortality rate for 2009, $F_{2009} = 0.10$. Based on the updated 2009 estimate of bluefish stock biomass, the bluefish stock is not considered

overfished: B_{2009} is greater than the minimum biomass threshold, ½ B_{MSY} = 162 million lb (73,526 mt), and is above B_{MSY}. Biomass has been above the target since 2007, and the stock was declared rebuilt in October 2009, satisfying the rebuilding program requirement to achieve rebuilding by 2010 that was established in Amendment 1. Estimates of F have declined from 0.41 in 1991 to 0.10 in 2009. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent F (F_{2009} = 0.10) is less than the maximum F overfishing threshold specified by SARC 41 (F_{MSY} = 0.19).

2011 TAL

The Council's SSC met in July 2010 to review updated stock status and other fishery independent and dependent data to recommend an acceptable biological catch (ABC) for the 2011 bluefish fishing year. Based on the updated bluefish assessment, the SSC recommended an ABC of 31.744 million lb (14,399 mt), which corresponds to an F of 0.15. Following the SSC meeting, the Monitoring Committee met to review the SSC's ABC determination and recommend bluefish management measures for 2011. The MC recommended an F_{target} of 0.15 and a corresponding TAC of 31.744 million lb (14,399 mt). After subtracting an estimate of discards of 4.451 million lb (2,019 mt) (the average annual discard level from 2007–2009) from the TAC, the Monitoring Committee recommended a 2011 TAL of 27.293 million lb (12,380 mt). At its August 2010 meeting, the Council concurred with the recommendation of the Monitoring Committee for a TAC of 31.744 million lb (14,299 mt) and a TAL of 27.293 million lb (12,380 mt). The proposed TAL is a 7-percent decrease from the 2010 TAL of 29.264 million lb (13,274 mt) due to a slight decrease in the 2009 estimate of bluefish stock biomass. The discussion below describes the recommended allocation of TAL between the commercial and recreational sectors, and the proportional adjustments to account for the recommended bluefish RSA quota.

Proposed Commercial Quota and Recreational Harvest Limit

Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2011 would be 4.640 million lb (2,105 mt) and the RHL would be 22.653 million lb (10,275 mt) in 2011. However, the FMP stipulates that, in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt), and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial quota may be increased up to 10.500 million lb (4,763 mt), provided that the combined projected recreational landings and commercial quota would not exceed the TAL. The RHL would then be adjusted downward so that the TAL would be unchanged.

The Council postponed projections of estimated recreational harvest for 2011 until Marine Recreational Fisheries Statistics Survey (MRFSS) harvest data through Wave 5 of 2010 became available (six "Waves" of data are released each year by MRFSS). In the meantime, the 3-year average of annual recreational harvest from 2007 through 2009 (17.882 million lb (8,111 mt)) was applied as the estimated recreational harvest for 2011. As such, it was expected that a transfer of up to 4.772 million lb (2,164 mt) from the recreational sector to the commercial sector could be approved. This option represents the preferred alternative recommended by the Council in its specifications document.

Northeast Regional Office staff recently updated the recreational harvest projection using 2010 MRFSS data through Wave 5. Using the best available data, the 2011 recreational harvest was estimated to be 16.992 million lb (7,707 mt), or approximately 62 percent of the TAL. Consistent with the Council's recommendation, this would allow for a transfer of 4.772 million lb (2,164 mt) from the recreational sector to the commercial sector. This would result in an adjusted commercial quota of 9.411 million lb (4,269 mt) and an RHL of 17.882 million lb (8,111 mt).

RSA

Two research projects that would utilize bluefish RSA quota have been preliminarily approved and forwarded to NOAA's Grants Management Division. A 105,000-lb (48-mt) RSA quota is preliminarily approved for use by these projects during 2011. Proportional adjustments of this amount to the commercial and recreational allocations would result in a final commercial quota of 9.375 million lb (4,253 mt) and a final RHL of 17.813 million lb (8,080 mt). NMFS staff will update the commercial and recreational allocations based on the final 2011 RSA awards as part of the final rule for the 2011 specifications.

Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2011 commercial quota are shown in Table 1, based on the percentages specified in the FMP. These quotas do not reflect any adjustments for quota overages that may have occurred in some states in 2010. Any potential deductions for states that exceeded their quota in 2010 will be accounted for in the final rule.

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2011

[Including RSA deductions]

State	Percent share	2011 Council-proposed commercial quota (lb)	2011 Council-proposed commercial quota (kg)
ME	0.6685	62,673	28,428
NH	0.4145	38,860	17,627
MA	6.7167	629,704	285,629
RI	6.8081	638,273	289,516
CT	1.2663	118,718	53,850
NY	10.3851	973,624	441,629
NJ	14.8162	1,389,049	630,062
DE	1.8782	176,085	79,871
MD	3.0018	281,425	127,652
VA	11.8795	1,113,727	505,178
NC	32.0608	3,005,765	1,363,392
SC	0.0352	3,300	1,497

TABLE 1—PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2011—Continued

[Including RSA deductions]

State	Percent share	2011 Council-proposed commercial quota (lb)	2011 Council-proposed commercial quota (kg)
GA	0.0095	891	404
FL	10.0597	943,117	427,791
Total	100.0001	9,375,204	4,252,521

Proposed Regulatory Amendment

Amendment 1, implemented in 2000, established a rebuilding schedule to rebuild the bluefish stock biomass to its biomass target using a graduated step reduction in fishing mortality over a 9-year period. Amendment 1 specified a target F of 90 percent of F_{MSY}, to become effective after the rebuilding period. The regulations at § 648.160(a) state that the Council must set the TAL to "achieve the target fishing mortality rate (F) specified in the Fishery Management Plan for Atlantic Bluefish for the upcoming fishing year or the estimated F for the fishing year preceding the Council submission of the recommended specifications, whichever F is lower." These regulations reflect the annual specification process during the rebuilding period; however, the regulations do not reflect the intent of the FMP for specification of the TAL after the rebuilding period. The "whichever F is lower" provision was only intended to apply to annual specifications during the rebuilding period. Therefore, this rule proposes to eliminate the "whichever F is lower" provision to more clearly reflect the intent of the FMP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA), which describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to $4.0 and $6.5 million, respectively. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters. All federally permitted vessels fall into the definition of small businesses; thus, there would be no disproportionate impacts between large and small entities as a result of the proposed rule.

An active participant in the commercial sector was defined as any vessel that reported having landed one or more lb (0.45 kg) in the Atlantic bluefish fishery in 2009 (the last year for which there are complete data). The active participants in the commercial sector were defined using two sets of data. The Northeast dealer reports were used to identify 688 vessels that landed bluefish in states from Maine through North Carolina in 2009. However, the Northeast dealer database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 908 vessels [1] that landed bluefish in North Carolina and 685 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero in 2009, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. Therefore, this analysis assumed that no vessel activity for these two states took place in 2009. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

[1] Some of these vessels were also identified in the Northeast dealer data; therefore, double counting is possible.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

The IRFA in the Draft EA analyzed three alternatives (including a no action/status quo alternative) for the 2011 Atlantic bluefish fishery. All quota alternatives considered in this analysis are based on various commercial harvest levels for bluefish (a low, medium, and high level of harvest). For analysis of impacts of each alternative, the maximum potential RSA quota of 3 percent of the TAL (818,797 lb (371 mt)) was used. For analysis of impacts of Alternatives 1 and 3, the recommended transfer of 4.772 million lb (2,164 mt) from the recreational sector to the commercial sector was used. Under Alternative 2, no transfer of bluefish would be made from the recreational sector to the commercial sector, and the allocation of the TAL would be based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational).

Alternatives 1 and 2 would implement a TAL of 27.293 million lb (12,380 mt). Alternative 3 would implement status quo management measures for 2011, which would result in a TAL identical to the 2010 TAL, or 29.264 million lb (13,274 mt). The proposed 2011 Atlantic bluefish specification alternatives are shown in Table 2, along with the resulting commercial quota and RHL after any applicable transfer described earlier in the preamble and after deduction of the RSA quota. Alternative 1 (Council's preferred) would allocate 9.129 million lb (4,141 mt) to the commercial sector and 17.345 million lb (7,868 mt) to the recreational sector. Alternative 2 would result in the most restrictive commercial quota and would allocate 4.501 million lb (2,041 mt) to the commercial sector and 21.974 million lb (9,967 mt) to the recreational sector. Alternative 3 (status quo) would allocate 10.051 million lb (4,559 mt) to the commercial sector and 18.335 million lb (8,317 mt) to the recreational sector. The commercial

quota and RHL under Alternative 3 would be slightly different than those in 2010 due to differences in the RSA quota.

Table 2. Proposed 2011 Atlantic Bluefish Specification Alternatives for TAL, Commercial Quota, and RHL (million lb).

TABLE 2—PROPOSED 2011 ATLANTIC BLUEFISH SPECIFICATION ALTERNATIVES FOR TAL, COMMERCIAL QUOTA, AND RHL

[million lb]

	TAL	Commercial quota	RHL
Alternative 1	27.293 (12,380 mt)	9.129 (4,141 mt)	17.345 (7,868 mt)
Alternative 2	27.293 (12,380 mt)	4.501 (2,041 mt)	21.974 (9,967 mt)
Alternative 3	29.264 (13,274 mt)	10.051 (4,559 mt)	18.335 (8,317 mt)

Commercial Fishery Impacts

To assess the impact of the alternatives on commercial fisheries, the Council conducted a threshold analysis and analysis of potential changes in ex-vessel gross revenue that would result from each alternative, using Northeast dealer reports and South Atlantic Trip Ticket reports.

Under Alternative 1, the recommended commercial quota for 2011 is approximately 40 percent higher than 2009 commercial landings. When this commercial quota is distributed to the states from Maine to Florida (based on the percentages specified in the FMP), each state's 2011 quota is higher than its 2009 landings, except for New York and New Jersey. New York and New Jersey both fully harvested their initial bluefish quota and received commercial quota transfers from other states in 2009. Therefore, New York and New Jersey's 2009 landings were greater than their initially allocated 2009 commercial quota. Results of the threshold analysis from dealer data estimated that, coast wide, there would be no revenue change for 449 vessels, while 219 vessels could incur slight revenue losses of less than 5 percent. Approximately 20 vessels could incur revenue losses of more than 5 percent. A larger number of these vessels have home ports in New York than in any other state. Of the 20 vessels that may experience revenue losses of more than 5 percent, 15 percent had gross sales of $1,000 or less, and 80 percent had gross sales of $10,000 or less. This likely indicates that the dependence on income from fishing for some of these vessels is very small. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2011, as was done in 2010 and frequently in previous years, the number of affected entities described above could decrease, thus decreasing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

Alternative 2 would result in a commercial quota 31 percent below the 2009 commercial landings. Although the overall commercial quota would be lower than 2009 commercial landings, when distributed to the states, each state's 2011 quota is higher than its 2009 landings, except for Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, and North Carolina. For these states, 2011 commercial landings would be constrained by the 2011 commercial quota under Alternative 2. The threshold analysis projected that 566 vessels could incur revenue losses of less than 5 percent and 61 vessels could incur revenue losses of 5 percent or more. Of the vessels likely to be impacted with revenue reductions of 5 percent or more, 36 percent had gross sales of $1,000 or less and 61 percent had gross sales of $10,000 or less, which may indicate that the dependence on fishing for some of these vessels is small. A larger number of impacted vessels have home ports in New York, New Jersey, and North Carolina, which may indicate a higher dependence on bluefish for these states.

Under Alternative 3, the 2011 commercial quota is approximately 54 percent higher than the 2009 commercial landings. Most states show a similar directional change in fishing opportunities under this alternative; however, New York's 2011 commercial quota would be lower than its 2009 commercial landings. Analysis of Alternative 3 concluded that, coast wide, 565 vessels would likely have no change in revenue relative to 2009, but 8 vessels were projected to incur revenue losses of more than 5 percent. Of the vessels projected to incur revenue losses of more than 5 percent, 88 percent had gross sales of $10,000 or less, likely indicating that the dependence on fishing for some of these vessels is small. No revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida under Alternative 3. If commercial quota is transferred from a state or states that do not land their entire bluefish quota for 2011, as was done in 2010 and frequently in previous years, the number of affected entities described above could decrease, thus decreasing the adverse economic impact on vessels landing in the state(s) receiving quota transfers.

Recreational Fishery Impacts

For Alternative 1, the recommended RHL for the recreational sector (17.345 million lb, 7,868 mt) is approximately 28 percent above the recreational landings for 2009 and 7 percent below the RHL implemented for 2010 (18.631 million lb (8,451 mt)). The proposed 2011 RHL is approximately 3 percent less than the projected 2011 recreational landings. There is little empirical evidence regarding the sensitivity of charter/party anglers to fishing regulations. However, under Alternative 1, given the recreational landings in recent years, it is possible that the proposed RHL may cause a slight decrease in recreational satisfaction. In addition, if the proposed measures discourage trip-taking behavior, the demand for party/charter boat trips may be slightly negatively impacted as a result of the proposed 2011 RHL under Alternative 1. Some anglers may reduce their effort in 2011 as a result of the RHL, and are likely to transfer this effort to alternative species, resulting in little change in overall fishing effort. The IRFA analyzed the maximum transfer amount from the recreational sector to the commercial sector, but future updates of recreational harvest projections could result in a lesser transfer amount.

The 2011 RHL under Alternative 2 would be 62 percent higher than the recreational landings in 2009 and 18 percent higher than the 2010 RHL. In addition, the 2011 RHL is 23 percent higher than the projected recreational landings for 2011. Under Alternative 3, the 2011 RHL would be 35 percent higher than 2009 recreational landings and 2 percent lower than the 2010 RHL. The 2011 RHL would be approximately

3 percent higher than the projected 2011 recreational landings. Thus, Alternatives 2 and 3 are not expected to have any negative effects on recreational fishermen or the demand for party/charter boat trips. In addition, neither of these alternatives are expected to result in recreational landings in excess of the RHL.

RSA Quota Impacts

For analysis of each alternative, the maximum RSA quota amount (3 percent of the TAL) was deducted from the initial overall TAL for 2011 to derive the adjusted 2011 commercial quota and RHL under each alternative. Thus, the threshold analyses for each alternative accounted for overall reductions in fishing opportunities due to RSA. Specification of RSA quota for 2011 is expected to benefit all participants in the fishery as a result of improved data and information for management or stock assessment purposes.

Summary

The Council recommended Alternative 1 over Alternatives 2 and 3 because it is projected to achieve the target F in 2011, while providing the second least restrictive commercial quota among the alternatives analyzed. Alternative 2 was not recommended by the Council because it would yield the lowest commercial fishing opportunities among the alternatives due to an absence of a quota transfer under this alternative. Alternative 3 was not selected because it would result in a TAC above the level recommended by the SSC and Monitoring Committee.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: January 11, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.160, paragraph (a) is revised to read as follows:

§ 648.160 Catch quotas and other restrictions.

* * * * *

(a) *Annual review.* On or before August 15 of each year, the Bluefish Monitoring Committee will meet to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve the appropriate target fishing mortality rate (F) specified in the Atlantic Bluefish FMP. In determining the TAL and other restrictions necessary to achieve the appropriate F, the Bluefish Monitoring Committee will review the following data, subject to availability: Commercial, recreational, and research catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; discards; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of bluefish; and any other relevant information.

* * * * *

[FR Doc. 2011–798 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 10
Friday, January 14, 2011

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

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: Technical & Supervisory Assistance Grants.

OMB Control Number: 0575–0188.

Summary of Collection: Section 525(a) of title V of the Housing Act of 1949 implemented through 7 CFR part 1944, subpart K, gives authorization to the Rural Housing Service (RHS) to make grants to enter into contracts with eligible organizations, "to pay part or all of the cost of developing, conducting, administering or coordinating comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, state, and local housing programs in rural areas."

Need and Use of the Information: RHS staff in its local, State and National offices will collect information from applicants to determine eligibility for a grant, project feasibility, and to monitor performance after grants have been awarded. Failure to collect this information could result in waste and improper use of Federal funds.

Description of Respondents: Not for profit institutions.

Number of Respondents: 30.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 665.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–702 Filed 1–13–11; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business–Cooperative Service

Title: Value-Added Producer Grants.

OMB Control Number: 0570–0039.

Summary of Collection: The Rural Business–Cooperative Service (RBS) an agency within the USDA Rural Development mission area will administer the Value-Added Producer Grants Program. The Program is authorized by the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by the Farm Security and Rural Investment Act of 2002 (Farm Bill) (Pub. L. 107–171). The objective of this program is to encourage producers of agricultural commodities and products of agricultural commodities to further refine these products increasing their value to end users of the product. These grants will be used for two purposes: (1) To fund feasibility studies, marketing and business plans, and similar development activities; (2) to use the grant as part of the venture's working capital fund. Grants are awarded either for planning purposes such as conducting a feasibility study or

developing a business plan or for working capital expenses such as inventory, utilities, and salaries.

Need and Use of the Information: RBS will use the information collected to determine (1) Eligibility; (2) the specific purpose for which the funds will be utilized; (3) time frames or dates by which activities are to be accomplished; (4) feasibility of the project; (5) applicants' experience in managing similar activities; and (6) the effectiveness and innovation used to address critical issues vital to value-added ventures development and sustainability. Without this information, there would be no basis on which to award funds.

Description of Respondents: Farms; Business or other for-profit; Not-for-profit institutions; Individuals.

Number of Respondents: 535.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Semi-annually; Annually.

Total Burden Hours: 59,500.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–703 Filed 1–13–11; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince of Wales Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince of Wales Resource Advisory Committee will meet in Craig, Alaska, January 26, 2011. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATE: The meeting will be held January 26, 2011 from 10 a.m. to 4 p.m.

ADDRESS: The meeting will be held at the Craig Ranger District, 504 9th Street, Craig, Alaska. Send written comments to Prince of Wales Resource Advisory Committee, c/o District Ranger, USDA Forest Service, P.O. Box 500, Craig, AK 99921, or electronically to Rebecca Sakraida, RAC Coordinator at *rsakraida@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Rebecca Sakraida, RAC Coordinator Craig Ranger District, Tongass National Forest, (907) 826–1601.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Jason C. Anderson,

District Ranger.

[FR Doc. 2011–760 Filed 1–13–11; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Nebraska Advisory Committee to the Commission will convene by conference call at 1:30 p.m. and adjourn at approximately 2:30 p.m. on Thursday, February 10, 2011. The purpose of this meeting is to continue planning a civil rights project.

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 35491595. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on February 4, 2011.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by February 22, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be emailed to *frobinson@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, January 10, 2011.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2011–697 Filed 1–13–11; 8:45 am]

BILLING CODE 6335–02–P

DEPARTMENT OF COMMERCE

Bureau of the Census

2010 Census Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the 2010 Census Advisory Committee. The Committee will address advisory committee restructuring issues and recommendations for the coming decade. Last-minute changes to the agenda are possible, which could prevent giving advance notification of schedule changes.

DATES: February 1, 2011. The meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium and Conference Center, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Suitland, Maryland 20746; telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The 2010 Census Advisory Committee is composed of a Chair, Vice-Chair, and 20 member organizations—all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census, including the American Community Survey and related programs, and users' needs for information provided by the decennial census from the perspective of outside data users and other organizations having a substantial interest and expertise in the conduct and outcome of

the decennial census. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

The meeting is open to the public, and a brief period is set aside for public comments and questions. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: January 11, 2011.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2011–814 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before February 3, 2011. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–070. *Applicant:* Stanford University, 450 Serra Mall, Stanford, CA 94305. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used for a wide variety of research projects, including the study of graphene nanoribbons, carbon nanotube networks as transparent electrodes, and functionalized nanoparticles and nanotubes for medical applications. The instrument will offer much improved resolution, as well as enhanced capabilities in characterizing insulating materials. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* December 22, 2010.

Docket Number: 10–071. *Applicant:* Stanford University, 450 Serra Mall, Stanford, CA 94305. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used for a wide variety of research projects including the study of artificial atoms, nanomagnetic research, and advanced semiconductor devices. The device will be used to complement a high-resolution electron beam lithography system. Electron beam lithography is required for the creation of the fine electrode or etch patterns to define an artificial atom, for quantitative detection of local magnetic fields, and to fabricate semiconductor devices with extreme short channels. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* December 22, 2010.

Docket Number: 10–074. *Applicant:* Wake Forest University Health Sciences, Medical Center Blvd., Winston-Salem, NC 27157. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used for the examination of the fine structural details of diseased tissues, such as cancer, the structure of biological molecules, such as DNA and proteins, and the location of specifically labeled molecules inside these structures. The instrument is necessary to achieve sufficient resolution and detail for the research. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* December 23, 2010.

Docket Number: 10–075. *Applicant:* The Virginia Tech Carilion Research Institute, 2 Riverside Circle, Roanoke, VA 24016. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used for the examination of biological specimens including proteins, protein complexes and other cellular constituents. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* December 23, 2010.

Dated: January 7, 2011.

Gregory Campbell,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2011–776 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–412–801]

Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 14, 2011.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom for the period May 1, 2009, through April 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). The preliminary results of the reviews are currently due no later than January 31, 2011.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order for which a review

is requested and the final results within 120 days after the date on which the preliminary results are published. 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 results to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limit because we received requests from several respondents for extensions of time to respond to our supplemental questionnaires and because we have scheduled verifications for several respondents in these reviews which have not yet been completed. Therefore, we are extending the time period for issuing the preliminary results of these reviews by 45 days until March 17, 2011.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: January 10, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–793 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts From People's Republic of China: Extension of Time Limit for the Preliminary Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* January 14, 2011.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg or Patricia Tran, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0588 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2010, the U.S. Department of Commerce ("Department") published a notice of initiation of administrative review of the countervailing duty order on citric acid and certain citrate salts from the People's Republic of China, covering the period September 19, 2008, through December 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). The preliminary results of this administrative review are currently due no later than January 31, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of a countervailing duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

Due to the complexity of the issues in this case, such as new subsidy allegations and comments on those allegations, the Department requires additional time to review and analyze the respondents' submitted information and to issue supplemental questionnaires. Thus, it is not practicable to complete the preliminary results of this review within the original time limit (*i.e.,* January 31, 2011). Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days to no later than May 31, 2011, in accordance with section 751(a)(3)(A) of the Act.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 10, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–792 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent To Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 14, 2011.

SUMMARY: The Department of Commerce (the Department) is currently conducting an administrative review of the antidumping duty order on hand trucks and parts thereof (hand trucks) from the People's Republic of China (PRC) covering the period of review (POR) of December 1, 2008, through November 30, 2009. We preliminarily determine that sales made by New-Tec Integration (Xiamen) Co., Ltd. (New-Tec), were not made below normal value (NV). We also preliminarily determine that two companies for which a review was requested had no shipments during the POR, and therefore we intend to rescind the review with respect to them. Furthermore, we determine that three companies for which a review was requested have not been responsive, and thus have not demonstrated entitlement to a separate rate. As a result, we have preliminarily determined that they are part of the PRC-wide entity, and continue to be subject to the PRC-wide entity rate. We invite interested parties to comment on these preliminary results.

Parties who submit comments are requested to submit with each argument a statement of the issue and a summary of the argument.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, 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) 482–2924, (202) 482–4947 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 2004, the Department published in the **Federal Register** the antidumping duty order on hand trucks from the PRC. *See Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China,* 69 FR 70122 (December 2, 2004). On December 1,

2009, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on hand trucks from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 62743 (December 1, 2009). On December 30, 2009, Gleason Industrial Products, Inc., and Precision Products, Inc., requested that the Department conduct reviews of New-Tec, Century Distribution Systems, Inc. (Century Distribution), Sunshine International Corporation (Sunshine International), Zhejiang Yinmao Import and Export Co. (Zhejiang Yinmao), Qingdao Huazhan Hardware and Machinery Co., Ltd. (Qingdao Huazhan), and Yangjiang Shunhe Industrial Co. (Yangjiang Shunhe). On January 29, 2010, the Department published in the **Federal Register** a notice of initiation of the antidumping duty administrative review of hand trucks from the PRC for the period December 1, 2008, through November 30, 2009, with respect to the six companies named above. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 4770 (January 29, 2010) (*Initiation Notice*).

We issued the standard antidumping duty questionnaire to each of the six companies on February 4, 2010, and received timely responses from New-Tec in March 2010. We issued supplemental questionnaires to New-Tec covering sections A, C, and D of the original questionnaire in May 2010, July 2010, and November 2010 and received timely responses to those questionnaires.

On February 25, 2010, and February 26, 2010, we received certifications of no-shipments during the POR from Century Distribution and Yangjiang Shunhe.

Period of Review

The POR covers December 1, 2008, through November 30, 2009.

Scope of the Order

The merchandise subject to this antidumping duty order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof. A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of the United States (HTSUS), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular materials measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

Intent To Rescind Review in Part

As indicated above, in February 2010, we received certifications of no shipments from Century Distribution and Yangjiang Shunhe. We made inquiries with U.S. Customs and Border Protection (CBP) as to whether any shipments were entered with respect to these two companies during the POR. *See* message numbers 0158302 and 0158303, both dated June 7, 2010. We received no responses to those inquiries indicating that any shipments from either Century Distribution or Yangjiang Shunhe entered during the POR. We also examined CBP information to further confirm no shipments by these companies during the POR. Based on the above, we preliminarily find that both of these companies had no shipments of subject merchandise during the POR, and we intend to rescind the review with respect to them pursuant to 19 CFR 351.213(d)(3).

Interested parties may submit comments on the Department's intent to rescind with respect to these two companies no later than 30 days after the date of publication of these preliminary results of review. The Department will issue the final rescission (if appropriate), which will include the results of its analysis of issues raised in any comments received, in the final results of review.

Non-Market Economy Country Status

In every case conducted by the Department involving the PRC, we have treated the PRC as a non-market economy (NME) country. *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 76336 (December 16, 2008); and *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 12, 2009). In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the Act), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006). None of the parties to this proceeding have contested such treatment or provided record evidence

to reconsider our continued treatment of the PRC as an NME. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Separate Rates Determination

A designation of a country as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control, and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), (*Sparklers*) as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589. In this review New-Tec submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted by New-Tec includes government laws and regulations on corporate ownership and control (*i.e.,* the Foreign Trade Law of the People's Republic of China and the Law of the People's Republic of China on Foreign Joint Ventures), its individual business license, and narrative information regarding its operations and selection of management. The evidence provided by New-Tec supports a preliminary finding of a *de jure* absence of government control over its export activities based on the record: (1) There are no controls on exports of subject merchandise, such as quotas applied to, or licenses required for, exports of the subject merchandise to the United States; (2) the government of the PRC has passed legislation decentralizing control of companies; and (3) there are other formal measures by the government decentralizing control of companies. *See* New-Tec's March 30, 2010, submission at 1 and its June 8, 2010, submission at 2–5.

Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the company: (1) Sets its own export prices independent of the government and without the approval of a government authority; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate and sign contracts and other agreements; (4) has autonomy from the government regarding the selection of management. *See Silicon Carbide,* 59 FR at 22587; *Sparklers,* 56 FR at 20589; and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

In its March 1, 2010, submission, New-Tec submitted evidence demonstrating an absence of *de facto* government control over its export activities. Specifically, this evidence indicates that: (1) The company sets its own export prices independent of the government and without the approval of a government authority; (2) the company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) the company has a general manager with the authority to negotiate and bind the company in an agreement; (4) the general manager is selected by the board of directors; (5) the general manager appoints the other management personnel; and (6) there are no restrictions on the company's use of export revenues. Therefore, we preliminarily find that New-Tec has established that it qualifies for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers.*

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production (FOPs), valued in a surrogate market economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

The Department determined that India, the Philippines, Indonesia, Thailand, Ukraine, and Peru are countries comparable to the PRC in terms of economic development.[1] Moreover, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from the countries. *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Surrogate Country Policy Bulletin). In the most recently completed proceeding involving the Order, we determined that India is comparable to the PRC in terms of economic development and has surrogate value data that are available and reliable. *See Hand Trucks and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 75 FR 29314 (May 25, 2010). In the current proceeding, we received no comments regarding surrogate country selection. Because India meets all of the criteria discussed below, we continue to find that India is the appropriate surrogate country. Specifically, we have selected India because it is at a level of economic development similar to the PRC, it is a significant producer of comparable merchandise, and we have reliable, publicly available data from India representing broad-market averages. *See* 773(c)(4) of the Act; *see also* Memorandum to the File, from Fred Baker, Analyst, Subject: Antidumping Duty Administrative Review of Hand Trucks and Parts Thereof from the People's Republic of China: Selection of a Surrogate Country, dated January 7, 2011.

[1] *See* Memorandum from Carole Showers, Director, Office of Policy, to Richard Weible, Director, Office 7; Subject: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Hand Trucks and Parts Thereof from the People's Republic of China, dated June 28, 2010. The Department notes that these six countries are part of a non-exhaustive list of countries that are at a level of economic development comparable to the PRC. *See* the Department's letter to "All Interested Parties; First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Deadlines for Surrogate Country and Surrogate Value Comments," dated March 25, 2010 at 1 and Attachment I ("*Surrogate Country List*").

U.S. Price

Pursuant to 19 CFR 351.401(i), we used invoice date as the date of sale. Because record evidence indicated the terms of New-Tec's U.S. sales changed following the contract date, we determine that no date other than invoice date better reflects when the material terms of sale are set. *See* 19 CFR 351.401(i); *see also* New-Tec's June 8, 2010, submission at 3.

In accordance with section 772(a) of the Act, we based New-Tec's U.S. prices on export prices (EP), because its first sales to an unaffiliated purchaser were made before the date of importation and the use of constructed export price was not otherwise warranted by the facts on the record. As appropriate, we deducted foreign inland freight and foreign brokerage and handling from the starting price (or gross unit price), in accordance with section 772(c)(2) of the Act. These services were provided by NME vendors for New-Tec's U.S. sales. Therefore, we based the deduction of these movement charges on surrogate values. *See* Memorandum to the File, "Administrative Review of Hand Trucks and Parts Thereof from the People's Republic of China: Surrogate Values for the Preliminary Results" (New-Tec Surrogate Values Memorandum) at Exhibit 7.

We valued foreign inland freight (which consisted of truck freight) using a per-unit, POR-wide, average rate calculated from Indian data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. *See* New-Tec Surrogate Values Memorandum at Exhibit 6.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank. *See* New-Tec Surrogate Values Memorandum at Exhibit 7.

Our surrogate values for truck freight and for brokerage and handling were in Indian rupees. Therefore, in accordance with section 773A(a) of the Act and 19 CFR 351.415, we converted them to U.S. dollars (USD) using the official exchange rate for India recorded on the date of sale of subject merchandise in this case. *See http://www.ia.ita.doc.gov/exchange/index.html.*

Normal Value

1. Methodology

Section 773(c)(1)(A) & (B) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise under review is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on FOPs because the presence of government controls on various aspects of the NME economy renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.[2]

In accordance with section 773(c) of the Act, we calculated NV by adding the value of the FOPs, general expenses, profit, and packing costs reported by New-Tec. The FOPs for subject merchandise include: (1) Quantities of raw materials employed; (2) hours of labor required; (3) amounts of energy and other utilities consumed; (4) representative capital and selling costs; and (5) packing materials. *See* section 773(c)(3) of the Act. We valued the FOP that New-Tec reported by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor derived from the Indian surrogate values selected.

The Department used Indian import statistics to value the raw material and packing material inputs that New-Tec used to produce the merchandise under review except where listed below. In past cases, it has been the Department's practice to use import statistics reported by the World Trade Atlas (WTA),[3] as published by Global Trade Information Services (GTIS). However, in October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the USD. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian rupee to the USD. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the official reporting currency for Indian data from the Indian rupee to the USD in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS explained that it converts the Indian rupee to the USD using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted.[4]

Notwithstanding the GTIS reporting methodology, the data reported in the Global Trade Atlas (GTA) software report import statistics, such as data from India, in the original reporting currency, and thus these data correspond to the original currency value reported by each country. Additionally, the data reported in the GTA software is reported to the nearest digit, and thus there is not a loss of data by rounding as there is with the data reported by the WTA software. Consequently, the Department will now obtain import statistics from GTA for valuing various FOPs because the GTA import statistics are in the original reporting currency of the country from which the data are obtained and have the same level of accuracy as the original data released.

As appropriate, we added freight costs to the surrogate values that we calculated for New-Tec's material inputs to make these prices delivered prices. We calculated these freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. Where there were multiple domestic suppliers of a material input, we calculated a weighted-average distance after limiting each supplier's distance to no more than the distance from the nearest seaport to New-Tec. This adjustment is in accordance with the decision by the

[2] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39744 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006).

[3] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review,* 74 FR 50946, 50950 (October 2, 2009), unchanged in *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping duty New Shipper Review,* 74 FR 65520 (December 20, 2009).

[4] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping,* 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 4.

Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). We increased the calculated costs of the FOPs for surrogate general expenses and profit. *See* New-Tec Surrogate Values Memorandum at Exhibit 8.

Energy inputs consisted of water, electricity, and liquid petroleum gas. We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity in India,* dated March 2008. *See* Surrogate Values Memorandum at Exhibit 4. These electricity rates represent actual country-wide publicly available information on tax-exclusive electricity rates charges to industries in India. To value water, the Department used the revised Maharastra Industrial Development Corporation water rates, which are available at *http://www.midcindia.com/water-supply.* The Department found this source to be the best available information because it includes a wide range of industrial water rates. Since the water rates were not contemporaneous with the POR, the Department adjusted the value for inflation. *See* Surrogate Values Memorandum at Exhibit 4. We valued liquid petroleum gas using import statistics from the GTA as described above. *See* Surrogate Values Memorandum at Exhibit 3.

We offset New-Tec's material costs for revenue generated from the sale of recovered steel scrap and recovered aluminum scrap. *See* New-Tec Surrogate Values Memorandum at Exhibit 8.

Indian surrogate values were denominated in rupees and were converted to USD using the applicable average exchange rate based on exchange rate data from the Department's Web site. For further details regarding the surrogate values used for these preliminary results, *see* New-Tec's Surrogate Value Memorandum.

New-Tec reported that several of its raw materials were sourced from market-economy countries and paid for in market-economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from a market-economy supplier in meaningful quantities (*i.e.,* not insignificant quantities), the Department normally will use the actual price paid by the respondent for those inputs.[5] Because information reported by New-Tec demonstrates that it purchased significant quantities (*i.e.,* 33 percent or more) of certain inputs from market-economy suppliers, the Department used New-Tec's actual market-economy purchase prices to value its FOPs for these inputs.[6] Where appropriate, we added freight expenses to the market-economy prices for these inputs. Where New-Tec made market economy purchase of inputs that may have been dumped or subsidized, were not bona fide, or were otherwise not acceptable for use in a dumping calculation, the Department excluded them from the numerator of the ratio to ensure a fair determination of whether valid market-economy purchases meet the 33 percent threshold.[7]

To value the surrogate financial ratios for factory overhead (OH), selling, general & administrative (SG&A) expenses, and profit, the Department used the 2008–2009 financial statement of Godrej & Boyce Manufacturing Company, Ltd. (Godrej). Godrej is a producer of comparable merchandise. Its financial ratios for OH and SG&A are comparable to New-Tec's financial ratios by virtue of each company's production of comparable merchandise. *See* Surrogate Values Memorandum at Exhibit 8.

2. Selection of Surrogate Values

In selecting the "best available information for surrogate values" (*see* section 773(c)(1) of the Act) consistent with the Department's practice, we considered whether the information was publicly available, product-specific, representative of broad market average prices, contemporaneous with the POR, and free of taxes.[8] We also considered the quality of the source of surrogate information. *See Manganese Metal From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 63 FR 12440 (March 13, 1998). Where we could obtain only surrogate values that were not contemporaneous with the POR, consistent with our practice, we inflated the surrogate values using, where appropriate, the Indian wholesale price index as published in *International Financial Statistics* by the International Monetary Fund. *See* New-Tec Surrogate Values Memorandum at Exhibit 2.

In accordance with the legislative history of the Omnibus Trade and Competitiveness Act of 1988, *see* Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) (OTCA 1988) at 590, the Department continues to disregard surrogate values if it has a reason to believe or suspect the source data may be subsidized and there are other usable data on the record. *See Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 75 FR 80791 (December 23, 2010). In this regard, the Department has previously found that it is appropriate to disregard such prices from Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies. Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from Indonesia, South Korea and Thailand may have benefitted from these subsidies.[9] Additionally, we disregarded prices from NME countries. Finally, we excluded imports that were labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[10]

On May 14, 2010, the Court of Appeals for the Federal Circuit (Federal Circuit) in *Dorbest Ltd.* v. *United States,* 604 F.3d 1363, 1372 (CAFC 2010) (*Dorbest IV*), found that the "(regression-based) method for calculating wage rates

[5] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27366 (May 19, 1997).

[6] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments,* 71 FR 61716, 61717 (October 19, 2006) (*Antidumping Methodologies*).

[7] *See Antidumping Methodologies,* 71 FR at 61717–18.

[8] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[9] *See, e.g., Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at page 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at Comment 1, pages 17, 19–20; and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

[10] *See Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Review,* 75 FR 24578 (May 5, 2010), unchanged in *Fresh Garlic From the People's Republic of China: Final Results of New Shipper Review* , 75 FR 51004 (August 18, 2010).

(as stipulated by 19 CFR 351.408(c)(3)) uses data not permitted by (the statutory requirements laid out in section 773 of the Act (*i.e.,* 19 U.S.C. 1677b(c)))." The Department is continuing to evaluate options for determining labor values in light of the recent Federal Circuit decision. However, for these preliminary results, we have calculated an hourly wage rate to use in valuing respondents' reported labor input by averaging industry-specific earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

For the preliminary results of this AR, the Department is valuing labor using a simple average industry-specific wage rate using earnings or wage data reported under Chapter 5B by the International Labor Organization (ILO). To achieve an industry-specific labor value, we relied on industry-specific labor data from the countries we determined to be both economically comparable to the PRC and significant producers of comparable merchandise. A full description of the industry-specific wage rate calculation methodology is provided in the New-Tec Surrogate Values Memorandum at Exhibit 5. The Department calculated a simple-average, industry-specific wage rate of $1.51 for these preliminary results. Specifically, for this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 34 of the ISIC–Revision 3 standard by countries determined to be both economically comparable to the PRC and significant producers of comparable merchandise. The Department finds the two-digit description under ISIC–Revision 3 ("Manufacture of Motor Vehicles, Trailers, and Semi-Trailers") to be the best available wage rate surrogate value on the record because it is specific and derived from industries that produce merchandise comparable to the subject merchandise. Consequently, we averaged the ILO industry-specific wage rate data or earnings data available from the following countries found to be economically comparable to the PRC and are significant producers of comparable merchandise: Ecuador, Egypt, Indonesia, Jordan, Peru, Philippines, Thailand, and Ukraine. For further information on the calculation of the wage rate, *see* New-Tec Surrogate Values Memorandum.

Use of Facts Available and Adverse Facts Available (AFA)

Section 776(a) of the Act provides that the Department shall apply "facts otherwise available" if (1) necessary information is not on the record or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Furthermore, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous AR, or other information placed on the record.

Application of Total AFA to the PRC-Wide Entity

Because Sunshine International, Qingdao Huazhan, and Zhejiang Yinmao did not respond to the Department's antidumping questionnaire, we preliminarily determine that these companies withheld information requested by the Department in accordance with sections 776(a)(2)(A) and (B) of the Act. Furthermore, these companies' refusal to participate in the review significantly impeded the proceeding in accordance with section 776(a)(2)(C) of the Act. Specifically, had these companies participated in the review, the Department would have calculated dumping margins for them.

Further, because there is no information on the record demonstrating these companies' entitlement to a separate rate in accordance with section 776(a) of the Act, the Department has preliminarily treated these companies as part of the PRC-wide entity.

Because these companies did not respond to the Department's antidumping questionnaire, and are part of the PRC-wide entity, the PRC-wide entity's refusal to provide any information constitutes circumstances under which the Department can conclude that less than full cooperation has been shown.[11] Hence, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with respect to the PRC-wide entity.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) The petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, the Department normally selects as AFA the highest rate determined for any respondent in any segment of the proceeding.[12] The Court of International Trade (CIT) and the Federal Circuit have consistently upheld the Department's practice.[13] The Department's practice, when selecting an AFA rate from among the possible sources of information, has been to ensure that the margin is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[14] In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the

[11] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8911 (February 23, 1998); *see also Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005) and the SAA at 870.

[12] *See e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review,* 68 FR 19504, 19507 (April 21, 2003).

[13] *See KYD, Inc.* v. *United States,* 607 F.3d 760 (Fed. Cir. 2010) (*KYD*); *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a less-than-fair-value (LTFV) investigation); *Kompass Food Trading Int'l* v. *United States,* 24 CIT 678, 684 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States,* 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[14] *See Uruguay Round Agreement Act, Statement of Administrative Action,* H.R. Doc. No. 103–316, vol. 1, at 870 (1994) (*SAA*); *see also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil,* 69 FR 76910, 76912 (December 23, 2004); and *D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1223 (Fed. Cir. 1997).

highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing the rule, would have produced current information showing the margin to be less." [15] Consistent with the statute, court precedent, and its normal practice, the Department has assigned 383.60 percent to the PRC-wide entity (including Sunshine International, Qingdao Huazhan, and Zhejiang Yinmao) as AFA. This rate was assigned in the less-than-fair value (LTFV) investigation of this proceeding and is the highest rate determined for any party in any segment of this proceeding. *See Amended Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts thereof From the People's Republic of China,* 69 FR 65410 (November 12, 2004) (*Hand Trucks Amended Final Determination*). As discussed below, this rate has been corroborated.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise. *See SAA* at 870. Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.[16] Independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[17]

As stated above, we are applying as AFA the highest rate from any segment of this administrative proceeding, which is the PRC-wide rate of 383.60 percent. The 383.60 percent AFA margin is the highest rate on the record of any segment of this antidumping duty order. In the investigation, the Department determined the reliability of the margin contained in the petition by comparing the U.S. prices from the price quotes in the petition to prices of comparable products sold by Qingdao Huatian Hand Truck Co., Ltd., a mandatory respondent in the LTFV investigation, and found them to be comparable. The Department also compared the SVs used in the petition to the SVs selected for the final determination, and then adjusted and replaced certain values to make them more accurate. Finally, the Department replaced the SV ratios in the petition with those used in the final investigation. Therefore, in the investigation we found this margin to be reliable. This rate continues to be relevant to the PRC-wide entity in this proceeding. No party has provided information related to the PRC-wide entity. The Federal Circuit has held that "{t}he presumption that a prior dumping margin imposed against an exporter in an earlier AR continues to be valid if the exporter fails to cooperate in a subsequent administrative review." *Id.* Here, the PRC-wide entity failed to cooperate or demonstrate that the margin applied is no longer valid.

Because the Department continues to find the 383.60 percent margin is probative, as it is both reliable and relevant as discussed above, we have assigned this AFA rate to exports of the subject merchandise by the PRC-wide entity, including Sunshine International, Qingdao Huazhan, and Zhejiang Yinmao.

Preliminary Results of the Review

The Department has determined that the following preliminary dumping margins exist for the period December 1, 2008, through November 30, 2009:

Manufacturer/Exporter	Weighted-average margin (percent)
New-Tec Integration (Xiamen) Co., Ltd	0.00
PRC-wide Entity	383.60

Public Comment

The Department will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results. *See* 19 CFR 351.224(b). Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing case briefs. *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1). Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the briefs.

Unless the deadline is extended pursuant to section 751(a)(2)(B)(iv) of the Act, the Department will issue the final results of this AR, including the results of our analysis of the issues raised by the parties in their comments, within 120 days after issuance of these preliminary results.

Deadline for Submission of Publicly Available Surrogate Value Information

In accordance with 19 CFR 351.301(c)(3), the deadline for submission of publicly available information to value FOPs under 19 CFR 351.408(c) is 20 days after the date of publication of these preliminary

[15] *See KYD* (citing *Rhone Poulenc,* 899 F.2d at 1190).

[16] *See Tapered Roller Bearings and Parts Thereof Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

[17] *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 35627, 35629 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan,* 68 FR 62560 (November 5, 2003); and *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada,* 70 FR 12181, 12183–84 (March 11, 2005).

results. In accordance with 19 CFR 351.301(c)(1), if an interested party submits factual information less than ten days before, on, or after (if the Department has extended the deadline), the applicable deadline for submission of such factual information, an interested party has ten days to submit factual information to rebut, clarify, or correct the factual information no later than ten days after such factual information is served on the interested party. However, the Department notes that 19 CFR 351.301(c)(1), permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. *See, e.g., Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the Department generally will not accept business proprietary information in either the surrogate value submissions or the rebuttals thereto, as the regulation regarding the submission of surrogate values allows only for the submission of publicly available information.

Assessment Rates

Upon issuing the final results of the review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of review. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will apply to all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for New-Tec will be the rate established in the final results of this administrative review; (2) for any previously reviewed or investigated PRC or non-PRC exporter, not covered in this administrative review, with a separate rate, the cash deposit rate will be the company-specific rate established in the most recent segment of this proceeding; (3) for all other PRC exporters, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* 383.60 percent); and (4) the cash-deposit rate for any non-PRC exporter of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: January 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–791 Filed 1–13–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on honey from Argentina. The review covers imports of subject merchandise from three firms (*see* "Background" section of this notice for further explanation). The period of review (POR) is December 1, 2008, through November 30, 2009. We preliminarily determine that sales of honey from Argentina have not been made below normal value (NV) by TransHoney S.A. (TransHoney), Compania Inversora Platense S.A. (CIPSA), or Patagonik S.A. (Patagonik) during the POR. If these preliminary results are adopted in our final results of administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP). Interested parties are invited to comment on these preliminary results. Parties who submit argument in this review are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities.

DATES: *Effective Date:* January 14, 2011.

FOR FURTHER INFORMATION CONTACT: David Cordell (Patagonik), Dena Crossland (CIPSA), or Patrick Edwards (TransHoney), AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7850, Washington, DC 20230; telephone (202) 482–0408, (202) 482–3362, or (202) 482–8029, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published the antidumping duty order on honey from Argentina. *See Notice of Antidumping Duty Order: Honey From Argentina,* 66 FR 63672 (December 10, 2001). On December 1, 2009, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 62743 (December 1, 2009). In response, on December 31, 2009, Asociacion de Cooperativas Argentinas (ACA), Nexco S.A. (Nexco), CIPSA, Patagonik, and TransHoney requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2008, through November 30, 2009. In addition, on December 31, 2009, the American Honey Producers Association and Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2008, through November 30, 2009. Specifically, the petitioners requested that the Department conduct an administrative review of entries of

subject merchandise made by 18 Argentine producers/exporters. ACA, Nexco, CIPSA, Patagonik, and TransHoney were included in the petitioners' request for review.

On January 29, 2010, the Department initiated a review of 17 of the 18 companies for which an administrative review was requested.[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review,* 75 FR 4770, 4772 (January 29, 2010) (*Initiation Notice*).

On February 17, 2010, Mielar S.A. (Mielar) and Compania Apicola Argentina S.A. (CAA) submitted a letter certifying that during the POR, neither made any shipment, sale, or U.S. entry of subject merchandise, and requested that the Department rescind the administrative review with respect to Mielar and CAA.

Also on February 17, 2010, the Department issued a memorandum to the file indicating its intention to limit the number of respondents selected for review and to select mandatory respondents based on CBP data for U.S. imports of Argentine honey during the POR. The Department encouraged all interested parties to submit comments regarding the use of CBP entry data for respondent selection purposes. *See* Memorandum to the File through Richard Weible, Director, Office 7, AD/CVD Operations, regarding "Honey from Argentina—United States Customs and Border Protection Entry Data for Selection of Respondents for Individual Review," dated February 17, 2010.

On March 5, 2010, the Department selected the four producers/exporters with the largest export volume during the POR as mandatory respondents: HoneyMax S.A. (HoneyMax), Nexco, Patagonik, and TransHoney. *See* Memorandum to Richard Weible, "Administrative Review of the Antidumping Duty Order on Honey from Argentina: Respondent Selection Memorandum," dated March 5, 2010. On March 9, 2010, the Department issued its antidumping questionnaire to all four mandatory respondents.

On March 31, 2010, and pursuant to 19 CFR 351.213(d)(1), the petitioners timely withdrew their request for review of HoneyMax.

On April 7, 2010, the petitioners and Nexco timely withdrew their requests for review of Nexco.

On April 16, 2010, the petitioners timely withdrew their request for review with respect to all companies except TransHoney, Patagonik, CIPSA, and ACA. Accordingly, the Department informed interested parties of its intent to rescind the review for all companies except TransHoney, Patagonik, and CIPSA, to continue with its deferral of the review with respect to ACA, and to select CIPSA as a mandatory respondent in place of Nexco. *See* Memorandum to the File, "2008/2009 Administrative Review of the Antidumping Duty Order on Honey from Argentina: Selection of New Mandatory Respondent," dated April 19, 2010. On April 19, 2010, the Department issued sections A, B, and C of its antidumping questionnaire to CIPSA.

On April 29, 2010, ACA timely withdrew its request for review submitted on December 31, 2009.[2]

On September 14, 2010, the Department rescinded the administrative review with respect to fifteen companies: AGLH S.A., Algodonera Avellaneda S.A., Alimentos Naturales-Natural Foods, Alma Pura, Bomare S.A., CAA, El Mana S.A., Interrupcion S.A., Mielar, Miel Ceta SRL., Productos Afer S.A., Seabird Argentina S.A., HoneyMax, Nexco, and ACA. This rescission, in part, was based on the timely withdrawal of the request for review by the interested parties that requested the review. *See Honey Extension Notice.* Additionally, the Department extended the preliminary results of this administrative review to no later than January 7, 2011. *Id.*

On October 6, 2010, the Department determined that a "particular market situation" with respect to the honey market existed in Argentina during the POR for certain exporters under review. *See* Memorandum to Richard Weible, Director AD/CVD Operations, Office 7, from David Cordell and Dena Crossland, entitled "Whether a particular market situation exists such that the Argentine honey market is not an appropriate comparison market for establishing normal value," dated October 6, 2010 (Particular Market Situation Memorandum). *See also* the discussion of "Selection of Comparison Market" under "Normal Value" below.

Below is the company-specific background information with respect to Patagonik, CIPSA, and TransHoney.

Patagonik

On April 6, 2010, Patagonik filed its response to the Department's section A questionnaire (Patagonik AQR). On May 7, 2010, Patagonik filed its response to sections B and C of the Department's questionnaire. Between April 2010 and November 2010, the Department issued supplemental questionnaires to Patagonik, to which it filed timely responses.

In accordance with section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we automatically initiated a cost investigation in this segment of the proceeding with respect to Patagonik because we disregarded sales by Patagonik that were below the cost of production (COP) in the most recently completed segment of this proceeding.[3] On June 22, 2010, the Department selected the two largest beekeeper suppliers (by volume) of honey to Patagonik as cost respondents. *See* Memorandum to Richard Weible, "Selection of Cost of Production Respondents," dated June 22, 2010 (Cost Respondents Selection Memorandum). We also recommended examining Patagonik's affiliated middleman, Azul Agronegocios S.A. (Azul).[4]

On July 1, 2010, the Department revised its selection of the cost respondents in response to Patagonik's July 1, 2010 letter noting that Azul had incorrectly identified one of the selected cost respondents. *See* "Revision of Cost of Production Respondent Selection: Addendum to Memorandum of June 22, 2010," dated July 1, 2010 (Revision of Cost Respondent Selection Memorandum).

On July 14, 2010, the Department issued its cost questionnaire to the selected beekeepers and middleman to which Patagonik's suppliers responded on August 25, 2010. The Department issued a supplemental cost questionnaire to Patagonik's suppliers in November 2010 and December 2010, to which they timely responded.

[1] In accordance with 19 CFR 351.213(c), the Department deferred for one year the initiation of the administrative review with respect to ACA. *See Honey From Argentina: Notice of Extension of Time Limit for Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 55741, 55741 n.1 (September 14, 2010) (*Honey Extension Notice*).

[2] The withdrawal of the request for review was submitted by ACA based on the Department's notification in the **Federal Register** revoking the antidumping duty order with respect to honey exported by ACA effective December 1, 2008. Because the order covering honey from Argentina is revoked with respect to ACA, all entries of subject merchandise exported by ACA will be liquidated without regard to antidumping duties. Accordingly, there will be no relevant entries that might be subject to an antidumping review. *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part,* 75 FR 23674 (May 4, 2010).

[3] *See Honey from Argentina: Final Results of Antidumping Duty Administrative Review and Determination to Revoke Order in Part,* 74 FR 32107, 32108–09 (July 7, 2009) (*06–07 Final Results*).

[4] For a detailed discussion of Patagonik's relationship with Azul, *see* the "Affiliation" section below.

CIPSA

On May 24, 2010, CIPSA filed its response to section A of the Department's questionnaire (CIPSA AQR). On June 9, 2010, CIPSA filed its response to sections B and C of the Department's questionnaire. Between July 2010 and October 2010, the Department issued supplemental questionnaires to CIPSA, to which it filed timely responses.

TransHoney

On April 26, 2010, TransHoney filed its response to the Department's section A questionnaire (TransHoney AQR). On May 7, 2010, TransHoney filed its response to sections B and C of the Department's questionnaire (TransHoney BQR and TransHoney CQR). Between May 2010 and October 2010, the Department issued supplemental questionnaires to TransHoney, to which it filed timely responses. On June 8, 2010, TransHoney also filed comments regarding the identification of organic honey versus standard honey.

Period of Review

The POR is December 1, 2008, through November 30, 2009.

Tolling of Deadlines

As explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the federal government from February 5, 2010 through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

On September 14, 2010, the Department published in the **Federal Register** a notice extending the time limits for the preliminary results of this review. *See Honey Extension Notice,* 75 FR at 55741. This extension established the deadline for these preliminary results as January 7, 2011. *Id.* at 55742.

Scope of the Order

The merchandise covered by the order is honey from Argentina. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise covered by the order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under the order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all sales of honey covered by the description in the "Scope of the Order" section of this notice, *supra,* which were sold in the appropriate third-country markets during the POR to be the foreign like product for the purpose of determining appropriate product comparisons to honey sold in the United States. For our discussion of market viability and selection of comparison markets, *see* the "Normal Value" section of this notice, *infra.* We matched products based on the physical characteristics reported by CIPSA, Patagonik, and TransHoney. Where there were no sales of identical merchandise in the third-country market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value (CV), as appropriate.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as export price (EP) or the constructed export price (CEP). The NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. *See also* 19 CFR 351.412(c)(1)(iii). For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act. *See* 19 CFR 351.412(c)(1)(ii). For EP, it is the starting price. *See* 19 CFR 351.412(c)(1)(i). In this review, all mandatory respondents claimed only EP sales.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR 351.412(c)(2). If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

CIPSA reported that all of its third-country and U.S. market sales were made to importers/packers at essentially the same LOT. *See* CIPSA AQR at A–10 to A–11. Patagonik also reported that all of its third-country and U.S. market sales were made to importers/packers at essentially the same LOT. *See* Patagonik AQR at A–11 to A–13. TransHoney reported a single LOT for all U.S. and third-country market sales and the same channel of distribution. *See* TransHoney AQR at A–13.

The Department has determined that differing channels of distribution, alone, do not qualify as separate LOTs when selling functions performed for each customer class are sufficiently similar. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 71 FR 45017, 45022 (August 8, 2006) (unchanged in *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy,* 72 FR 7011 (February 14, 2007)); *see also* 19 CFR 351.412(c)(2). Patagonik and CIPSA reported a single LOT for all U.S. and third-country sales. Patagonik and CIPSA claimed that their selling activities in both markets are essentially identical, and nothing on the record appears to suggest otherwise. TransHoney also reported a single LOT for all its U.S. and third-country market sales. Therefore, for TransHoney, Patagonik and CIPSA, we preliminarily determine that all reported sales are made at the same LOT, and have not made a LOT adjustment. *See* Patagonik AQR at A–11 to A–13, and CIPSA AQR at A–10 to A–12. For a further discussion of LOT, *see* Memorandum to the File, "Analysis Memorandum for Preliminary Results of the Antidumping Duty Review on Honey from Argentina for Patagonik S.A., dated January 7, 2011 (Patagonik Preliminary Analysis Memorandum); Memorandum to the File, "Analysis Memorandum for

Preliminary Results of the Antidumping Duty Review on Honey from Argentina for Compania Inversora Platense S.A., dated January 7, 2011 (CIPSA Preliminary Analysis Memorandum); and Memorandum to the File, "Analysis Memorandum for Preliminary Results of the Antidumping Duty Review on Honey from Argentina for TransHoney S.A., dated January 7, 2011 (TransHoney Preliminary Analysis Memorandum).

Date of Sale

Pursuant to 19 CFR 351.401(i), the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which the material terms of sale are established. For Patagonik and CIPSA, the Department used the invoice date as the date of sale for both its comparison and U.S. market sales for these preliminary results. Patagonik and CIPSA assert that changes in ordered terms have occurred in the past and their customers know they can request changes to an order prior to shipment. *See* Patagonik's June 14, 2010, supplemental questionnaire response at BC–5 and 6, and CIPSA's August 2, 2010, supplemental questionnaire response at 14, 22, and 23. As in past segments of this proceeding, we determine that there is potential for change to the essential terms of sale between the contract date and invoice date and therefore invoice date continues to be the appropriate date of sale with respect to Patagonik's sales in the U.S. and comparison markets. Additionally, we preliminarily determine that invoice date is the appropriate date of sale with respect to CIPSA's sales in the U.S. and third-country markets because of the potential for change to the essential terms of sale between the order date and invoice date. However, in some instances for Patagonik's sales, shipment occurred prior to invoice and, consistent with past segments of this proceeding and the Department's practice, we used the shipment date as the date of sale for those sales.

For TransHoney, the Department, consistent with its practice, used the reported date of invoice as the date of sale for both the third-country and U.S. markets. We thoroughly examined the date of sale issue for TransHoney and found that changes to the essential terms of sale can and did occur between the order date and invoice date, which is coincident with the date of actual shipment. *See* TransHoney BQR at B–12 and TransHoney CQR at C–11; *see also* TransHoney AQR at A–16 and TransHoney July 26, 2010, supplemental questionnaire response at 5–6. Consequently, we preliminarily find that invoice date is the appropriate date of sale with respect to TransHoney's and its affiliated entity's [5] sales in the U.S. and comparison markets.

Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under {section 772(c) of the Act}." Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d). For purposes of this administrative review, CIPSA, Patagonik and TransHoney classified their U.S. sales as EP because all of their sales were made before the date of importation directly to unaffiliated purchasers in the U.S. market. For purposes of these preliminary results, we have accepted these classifications. We based EP on prices to unaffiliated customers in the United States and made adjustments for movement expenses.

Normal Value

1. Selection of Comparison Market

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared Patagonik, CIPSA, and TransHoney's respective aggregate volume of home market sales of the foreign like product to their respective aggregate volume of U.S. sales of subject merchandise. Patagonik and CIPSA's volume of home market sales were both greater than five percent of the aggregate volume of U.S. sales; however, TransHoney had no home market sales during the POR. As a result, we preliminarily find that TransHoney's home market does not provide a viable basis for calculating NV.

With respect to CIPSA and Patagonik, section 773(a)(1)(c)(iii) of the Act provides that the Department may determine that home market sales are inappropriate as a basis for determining NV if the particular market situation would not permit a proper comparison with EP and CEP. In its supplemental questionnaires dated April 16, 2010, and July 8, 2010, the Department asked Patagonik and CIPSA to provide further information in order to evaluate the market situation in Argentina with respect to honey, to which responses were filed on May 18, 2010, and August 2, 2010, respectively.

On October 6, 2010, the Department determined that a particular market situation does, in fact, exist with respect to CIPSA's and Patagonik's sales of honey in Argentina, rendering the Argentine market inappropriate for purposes of determining NV.[6] *See* Particular Market Situation Memorandum.

When sales in the home market are not suitable to serve as the basis for NV, section 773(a)(1)(B)(ii) of the Act provides that sales to a third-country market may be utilized if: (i) The prices in such market are representative; (ii) the aggregate quantity of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and (iii) the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the EP or CEP. In terms of volume of sales (and with five percent or more of sales by quantity to the United States), TransHoney reported Germany as its largest third country market, CIPSA reported Italy as its third-country market during the POR, and Patagonik reported the United Kingdom as its third-country market during the POR.

The record shows the aggregate quantity of TransHoney's and its affiliate [7] Einsof Trade S.A. (Einsof)'s sales to Germany is greater than five percent of TransHoney's sales to the United States. In addition, the Department preliminarily determines there is no evidence on the record to demonstrate that these prices in Germany are not representative. *See* TransHoney AQR at Exhibit A.1. Nor is

[5] *See* "Affiliation" discussion section below.

[6] As noted above, TransHoney reported that it had no domestic sales during the POR.

[7] *See* "Affiliation" section, *infra.*

there evidence that any other third country market to which TransHoney sells would offer greater similarity of product to that sold to the United States. Further, we find there is no particular market situation in Germany with respect to TransHoney or Einsof that would prevent a proper comparison to EP. As a result, we preliminarily find TransHoney's and its affiliate's sales to Germany serve as the most appropriate basis for NV.

In addition to looking at volume, we also examined product similarity for Patagonik and CIPSA, and found that the product sold to the largest third country market was similar to that sold to the United States. *See* Patagonik's May 18, 2010, supplemental section A questionnaire response at A–1 to A–3, CIPSA AQR at A–17, and CIPSA's June 9, 2010, section B questionnaire response at Exhibit B.3. Thus, the Department determines to select Italy as the appropriate comparison market for CIPSA and the United Kingdom as the appropriate comparison market for Patagonik.

Therefore, NV for all companies is based on its third-country sales to unaffiliated purchasers made in commercial quantities and in the ordinary course of trade. For NV, we used the prices at which the foreign like product was first sold for consumption in the usual commercial quantities, in the ordinary course of trade, and at the same LOT as the EP. We calculated NV as noted in the "Price-to-Price Comparisons" section of this notice, *infra.*

2. Cost of Production

In the previous segment of this proceeding, the Department disregarded sales made by Patagonik that were found to be below its COP. *See 06–07 Final Results.* Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that the respondent made sales of the foreign like product in the home market at prices below the COP within the meaning of section 773(b) of the Act, as below cost sales made by Patagonik were disregarded in the most recently completed investigation. *Id.* On June 22, 2010, the Department selected the two largest beekeeper suppliers (by volume) of honey to Patagonik as cost respondents. *See* Cost Respondents Selection Memorandum and Revision of Cost Respondent Selection Memorandum. Accordingly, on July 14, 2010, the Department requested that Patagonik's beekeepers and middleman respond to section D (Cost of Production/Constructed Value) of the Department's antidumping duty questionnaire.

A. Cost of Production Analysis

To calculate a COP and CV for the merchandise under consideration, the Department selected the two largest beekeepers by volume and the largest middleman, all of whom provided honey to Patagonik during the POR. *See* Cost Respondents Selection Memorandum and Revision of Cost Respondent Selection Memorandum.

B. Calculation of COP

We relied on the COP data submitted by the two beekeeper respondents and the middleman in their questionnaire responses. For additional details, *see* Memorandum to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Patagonik S.A.'s Beekeeper Respondents/Collector of Honey," dated January 7, 2011.

C. Test of Third-Country Prices and Results of the Cost of Production Test

We calculated a simple average COP using the COP of Patagonik's two respondent suppliers (Beekeeper 1 and Beekeeper 2) and the costs of the middleman supplier. This average COP was applied to these beekeepers as well as to all other beekeeper suppliers from whom information was not requested. In determining whether to disregard third-country market sales made at prices below the COP, in accordance with sections 773(b)(1)(A) and (B) of the Act, we examined: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of the respondent's third-country market sales of a given model (*i.e.,* control number, or CONNUM) were at prices below the COP during the POR, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of the respondent's third-country market sales of a given model were at prices less than COP during the POR, we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the COP for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found Patagonik did not have any models for which 20 percent or more of sales volume (by weight) were below cost during the POR. Therefore we did not disregard any of Patagonik's third-country sales and included all such sales in our calculation of NV.

Affiliation

According to section 771(33) of the Act, the Department determines affiliation using a variety of criteria. TransHoney submitted, as part of its sales database, the third-country market sales made by another Argentine exporter, Einsof, a company with which TransHoney claims to be affiliated. To determine affiliation between companies, the Department analyzed TransHoney's responses and found that, pursuant to section 771(33)(F) of the Act, TransHoney and Einsof are affiliated because they are under common control. Specific matters related to the common control are proprietary in nature. For further details, *see* Memorandum to Richard Weible, "Antidumping Duty Administrative Review of Honey from Argentina: Analysis of the Relationship Between TransHoney S.A. (TransHoney) and Einsof Trade S.A. (Einsof)," dated January 7, 2011 (TransHoney/Einsof Affliation Memorandum).

Furthermore, in certain circumstances the Department will treat two or more affiliated producers as a single entity and determine a single weighted-average margin for that entity, in order to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law. *See* 19 CFR 351.401(f).

While 19 CFR 351.401(f) applies only to producers, the Department has found it to be instructive in determining whether non-producers should be collapsed and has used the criteria in the regulation in its analysis. *See* TransHoney/Einsof Affliation Memorandum; *see e.g., Honey from Argentina: Final Results of Antidumping Duty Administrative Review,* 70 FR 19926, 19926 (April 15, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil,* 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5. The U.S. Court of International Trade (CIT) has found that collapsing exporters is consistent with a "reasonable

interpretation of the {antidumping duty} statute." *See Hontex Enterprises, Inc.* v. *United States,* 248 F. Supp. 2d. 1323, 1338 (CIT 2003) (*Hontex*). The CIT further noted that "to the extent that Commerce has followed its market economy collapsing regulations the {non-market economy (NME)} exporter collapsing methodology is necessarily permissible." *See Hontex,* 248 F. Supp. 2d at 1342.

During the POR, TransHoney and Einsof collectively purchased honey for export sales from beekeepers and other collectors. *See* TransHoney AQR at A–3, A–8, and A–9. As a result, none of the affiliated parties possess production facilities that manufacture subject merchandise. Rather, they act as resellers of the product. In addition, TransHoney and Einsof did not operate independently as evidenced by shared facilities, employees and management, *See* TransHoney AQR at A–10 and TransHoney's June 8, 2010, supplemental questionnaire response at SA–5. Given these factors, the Department preliminarily concludes that the factors laid out in 19 CFR 351.401(f)(2)(ii) and (iii) are relevant to the issue of whether TransHoney and Einsof are affiliated exporters/resellers that should be treated as a single entity for purposes of establishing dumping duties. The Department preliminarily finds that, based on management overlap and intertwined relations, the relationship between these companies is such that both should be treated as a single entity for purposes of this administrative review and should receive a single antidumping duty rate. For further details, *see* TransHoney/Einsof Affiliation Memorandum.

With respect to Patagonik, Patagonik reported that under the Department's rules, Patagonik is considered to be affiliated with Azul, a honey collector, warehouser, processor, and reseller. *See* Patagonik's AQR at A–4. Patagonik cites Azul's 2008 acquisition of the assets of Colmenares Santa Rosa, the affiliated company from which Patagonik previously obtained warehousing and inventory management services. *Id.* Patagonik notes that during the POR, Azul only supplied Patagonik with honey although Patagonik did purchase honey from other unaffiliated beekeepers during the POR. *Id.* at A–3 and A–5. In addition, the testing and classification of the honey is carried out by a laboratory owned by Patagonik, which is located at Azul's warehouse. *Id.* at A–5. Patagonik also reported that Azul was granted an export license in November 2009. *See* Patagonik's November 29, 2010, supplemental questionnaire response at 1.

In terms of ownership, Patagonik states Azul is owned by six equal partners, one of whom, Mauricio Bigñe, is both president of Azul and Patagonik, and manages certain operations of Azul. *Id.* at A–6. In terms of Patagonik, the company states that Patagonik is owned by two equal shareholders, but that Mauricio Bigñe served as president of Patagonik and that the other investor had no day-to-day management responsibilities during the POR. *Id.* at A–4 and 6.

The Department has analyzed Patagonik's responses and, pursuant to section 771(33)(F) of the Act, determines that Patagonik and Azul are affiliated. The Department analyzed whether to determine to treat Patagonik and Azul as a single entity for purposes of this administrative review and whether Patagonik and Azul should receive a single antidumping duty rate. The Department preliminarily concludes that the factors laid out in 19 CFR 351.401(f)(2)(ii) and (iii) are relevant to the issue of whether Patagonik and Azul are affiliated exporters/resellers that should be treated as a single entity. The Department preliminarily finds, based on management overlap and intertwined operations, as well as the fact that Azul also has an export license and thus has the ability to export on its own account, that these companies should be treated as a single entity for purposes of this administrative review and should receive a single antidumping duty rate. For further details, *see* Memorandum to Richard Weible, "Antidumping Duty Administrative Review of Honey from Argentina: Analysis of the Relationship Between Patagonik S.A. (Patagonik) and Azul Agronegocios S.A. (Azul)," dated January 7, 2011.

Price-to-Price Comparisons

Patagonik

We based NV on the third-country prices to unaffiliated purchasers. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. Where appropriate, we made circumstance-of-sale adjustments for credit pursuant to section 773(a)(6)(C) of the Act. We also made adjustments, where applicable, for other direct selling expenses, in accordance with section 773(a)(6)(C) of the Act. Additionally, we adjusted gross unit price for billing adjustments and freight reveune, where applicable. *See* 19 CFR 351.401(c).

We preliminarily reclassified some of Patagonik's reported direct selling expenses (namely, certain testing expenses) as indirect selling expenses, consistent with our treatment of testing expenses in prior reviews with respect to Patagonik. *See, e.g., Honey From Argentina: Preliminary Results of New Shipper Review,* 71 FR 67850, 67853 (November 24, 2006) (*New Shipper Preliminary Results*) [8] (unchanged in *Honey from Argentina: Final Results of New Shipper Review,* 72 FR 19177 (April 17, 2007)). Thus, we have not included certain of Patagonik's testing expenses among the direct selling expenses for which we made adjustments in these preliminary results. For more information, *see* Patagonik Preliminary Analysis Memorandum.

CIPSA

We calculated NV based on prices to unaffiliated purchasers in the third-country market and matched U.S. sales to NV. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. Where appropriate, we made circumstances-of-sale adjustments for credit and other direct selling expenses (*e.g.,* certain Argentine government-requested testing expenses) in accordance with section 773(a)(6)(C) of the Act. Additionally, we reclassified one of CIPSA's reported direct selling expenses (*e.g.,* certain customer-requested testing expenses) as an indirect selling expense. We also disregarded a certain claimed direct selling expense (*i.e.,* blending), which we determined in prior decisions is more appropriately treated as a COP expense. *See, e.g., New Shipper Preliminary Results,* 71 FR at 67853; *see also* CIPSA Preliminary Analysis Memorandum.

TransHoney

We calculated NV based on prices to unaffiliated purchasers on the third-country market and matched U.S. sales to NV. We made adjustments, where applicable, for movement expenses in accordance with section 773(a)(6)(B) of the Act. Where appropriate, we made circumstances-of-sale adjustments for credit and other direct selling expenses (*e.g.,* certain Argentine government-requested testing expenses) in accordance with section 773(a)(6)(C) of the Act. Additionally, we reclassified one of TransHoney's reported direct selling expenses (namely, certain customer-requested testing expenses) as an indirect selling expense. We also

[8] Where we note "that certain claimed direct expenses in the third-country market are being re-classified as either indirect selling expenses or as part of the cost of production, for the reasons outlined in the accompanying Analysis Memoranda."

disregarded a certain claimed direct selling expenses (*i.e.,* blending), which we determined in prior decisions is more appropriately treated as a COP expense. *See, e.g., New Shipper Preliminary Results,* 71 FR at 67853; *see also* TransHoney Preliminary Analysis Memorandum.

With respect to TransHoney's request to incorporate organic honey as a model match criterion, the Department preliminarily determines not to consider organic source as a criterion for matching honey sold in the third-country and U.S. markets because TransHoney did not provide sufficient evidence (*i.e.,* quantitative and qualitative features, *etc.*) to support its claim that there is a physical difference reflected in a cost differential between organic and non-organic honey. Therefore, we found an insufficient basis to consider the request for purposes of our product matching criteria. Accordingly, we have preliminarily disregarded the field ORGANICT/U and are relying solely on the product characteristics specified in the Department's questionnaire (*i.e.,* type, color, and form).

Currency Conversions

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. *See Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France,* 68 FR 47049, 47055 (August 7, 2003) (unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France,* 68 FR 69379 (December 12, 2003)). However, the Federal Reserve Bank does not track or publish exchange rates for the Argentine peso. Therefore, we made currency conversions from Argentine pesos to U.S. dollars based on the daily exchange rates from Factiva, a Dow Jones retrieval service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margins exists for the period December 1, 2008, through November 30, 2009:

Exporter	Weighted-Average margin (percentage)
Compania Inversora Platense S.A.	0.00.
Patagonik S.A. and Azul Agronegocios S.A.	0.27 (*de minimis*).
TransHoney S.A. and Einsof Trade S.A.	0.00.

Disclosure and Request for Public Hearing and Comments

The Department will disclose the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting case briefs, rebuttal briefs, and written comments should provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), where entered values were reported, we calculated importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. Where entered values were not reported, we calculated importer- or customer- (where the importer was unknown) specific per-unit assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity of the sales used to calculate those duties. These rates will be assessed uniformly on all of Patagonik's, CIPSA's, and TransHoney's entries made during the POR. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of honey from Argentina entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for any previously-reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the less-than-fair-value 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 (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate from the investigation (30.24 percent). *See Notice of Antidumping Duty Order; Honey From Argentina,* 66 FR at 63673. These cash deposit requirements, when

imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 7, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–790 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

National Advisory Council for Minority Business Enterprise; Meeting

AGENCY: Minority Business Development Agency (MBDA), Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council for Minority Business Enterprise (NACMBE) will hold its inaugural meeting to provide an orientation of new committee members, discuss administrative procedures and future work products to fulfill the NACMBE's charter mandate.

DATES: The meeting will be held on Wednesday, February 2, 2011, from 10 a.m. to 5 p.m. Eastern Standard Time (EST).

ADDRESSES: This meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Bria Bailey, Office of Legislative, Education and Intergovernmental Affairs, Minority Business Development Agency, U.S. Department of Commerce at (202) 482–2943; *e-mail: bbailey@mbda.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the NACMBE pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) on April 28, 2010. The NACMBE is to provide the Secretary of Commerce with consensus advice from the private sector on a broad range of policy issues that affect minority businesses and their ability to successfully access the domestic and global marketplace.

Topics to be considered: The agenda for the February 2, 2011, NACMBE meeting is as follows:

1. Welcome and introduction of council members.
2. Council orientation and Ethics Briefing.
3. Discussion of NACMBE priorities.
4. Establish working groups.
5. Public comment period.

Public Participation: The meeting is open to the public from 1 p.m.–5 p.m. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Bria Bailey at the contact information above by 5 p.m. EST on Thursday, January 27, 2011, in order to preregister for clearance into the building. Please specify any requests for reasonable accommodation at least five (5) business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill. A limited amount of time, from 4:15 p.m.–4:45 p.m. will be available for pertinent brief oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the NACMBE's affairs at any time before or after the meeting. Comments may be submitted to the National Advisory Council on Minority Business Enterprises Office of Legislative, Education and Intergovernmental Affairs, Minority Business Development Agency, Room 5065, 1401 Constitution Avenue, NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. EST on Thursday, January 27, 2011, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bria Bailey, at (202) 482–2943, or *bbailey@mbda.gov,* at least five (5) days before the meeting date.

Copies of the NACMBE open meeting minutes will be available to the public upon request.

Dated: January 11, 2011.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2011–757 Filed 1–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: The Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, February 1, 2011, from 8:30 a.m. to 5 p.m. and Wednesday, February 2, 2011, from 8:30 a.m. to 2 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

DATES: The VCAT will meet on Tuesday, February 1, 2011, from 8:30 a.m. to 5 p.m. and Wednesday, February 2, 2011, from 8:30 a.m. to 2 p.m. The portion of the meeting that is closed to the public will take place on Wednesday, February 2, 2011, from 8:30 a.m. to 10:45 a.m.

ADDRESSES: The meeting will be held in the Portrait Room, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1060, telephone number (301) 975–2667. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov.*

SUPPLEMENTARY INFORMATION:

Authority: 15 U.S.C. 278.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress.

The first day's agenda will include an update on NIST, including presentations on operational and management issues covering changes to the Congressional landscape and their likely priorities and impact to NIST, the final report of the Blue Ribbon Commission on Management and Safety II, and policy changes for Foreign National Guest Researchers, as well as updates on new NIST activities and programs related to the National Strategy for Trusted Identities in Cyberspace, Cloud Computing, Public Safety Communications and the 700 Megahertz Testbed, and the National Advisory Council on Innovation and Entrepreneurship. The first day will conclude with a discussion of the VCAT focus for 2011 and a session for the VCAT to begin to draft its initial observations, findings, and recommendations for its 2010 Annual Report. During a closed session on February 2 from 8:30 a.m. until 10:45 a.m., the VCAT will discuss sensitive internal planning information about NIST programs. During the open session on February 2, the VCAT will continue its preparation of the 2010 Annual Report followed by a presentation of the initial observations, findings and recommendations. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm.*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 2011, that portions of the meeting of the VCAT that involve discussions regarding information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action may be closed in accordance with 5 U.S.C. 552b(c)(9)(B). The closed portion of the meeting is scheduled to begin at 8:30 a.m. and to end at 10:45 a.m. on February 2, 2011. All other portions of the meeting will be open to the public.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On February 1, 2011, approximately one-half hour will be reserved in the afternoon for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the VCAT, National Institute of Standards and Technology, 100 Bureau Drive, MS 1060, Gaithersburg, Maryland 20899, via fax at 301–216–0529 or electronically by e-mail to *gail.ehrlich@nist.gov.*

All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Stephanie Shaw no later than Friday, January 28, 2011, and she will provide you with instructions for admittance. Ms. Shaw's e-mail address is *stephanie.shaw@nist.gov* and her phone number is (301) 975–2667.

Dated: January 7, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–817 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA135

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of issuance of permits.

SUMMARY: NMFS has issued permit 13675 to Fishery Foundation of California [Responsible Party: Karen L. Burr], 8698 Elk Grove Blvd., Suite #3, Elk Grove, CA 95624; and permits 14685 and 14688 to Natural Resource Scientists, Incorporated [Responsible Party: Dave A. Vogel], P.O. Box 1210, Red Bluff, CA 96080; for purposes of scientific research.

ADDRESSES: Permits and related documents are available for review upon written request or by appointment in the following office(s): Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 13415 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and NMFS, Protected Resources Division, 650 Capitol Mall, Suite 5–100, Sacramento, CA 958914–4706; phone (916) 930–3600; fax (916) 930–3629.

FOR FURTHER INFORMATION CONTACT: Shirley Witalis at phone number (916) 930–3606, or e-mail *shirley.witalis@noaa.gov.*

SUPPLEMENTARY INFORMATION: This notice is relevant to federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*). Permits 13675, 14685, and 14688 have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permits

Permit 13675 was issued to Fishery Foundation of California on December 28, 2010, authorizing the capture (by fyke net and beach seine), handling (species identification and enumeration, taking of length measurements), and release of ESA-listed natural and hatchery juvenile Chinook salmon and steelhead, and natural juvenile green sturgeon while carrying out a study measuring fish response to restoration actions, and initial and successional habitat conditions at the Fremont Landing Conservation Bank on the Sacramento River in the Central Valley, California. Permit 13675 authorizes indirect mortality associated with research activities not to exceed 2 percent of captured ESA-listed Chinook salmon and steelhead species annually. No indirect mortality has been authorized for green sturgeon. Permit 13675 expires on October 31, 2015.

Permit 14685 was issued to Natural Resource Scientists, Incorporated on August 24, 2010, authorizing the observation (snorkel surveys), capture (by rotary screw trap and beach seine), handling (application of anesthesia, species identification and enumeration, taking of weight and length measurements), and release of adult and juvenile steelhead associated with monitoring and research on anadromous salmonid spawning and rearing habitats, migration timing and survival in the lower Merced River. Permit 14685 authorizes indirect mortality associated with research activities not to exceed 2 adult and 5 juvenile ESA-listed

steelhead annually. Permit 14685 expires on December 31, 2015.

Permit 14688 was issued to Natural Resource Scientists, Incorporated on September 21, 2010, authorizing the capture (by fyke net), handling (identification and enumeration of species, taking of length measurements), tissue sampling, release of moribund fish or fish carcasses back into irrigation diversion canals, and release of live fish on the riverside of the canals of ESA-listed juvenile salmonids and sturgeon. Permit 14688 authorizes non-lethal take during the collection of physical, hydraulic, and habitat data at five irrigation diversion canals; the research of fish entrainiment in relation to diverted river flows; and the development of prioritization criteria for fish screening projects. Permit 14688 expires on December 31, 2011.

NMFS has determined that take levels authorized in the described permits will not jeopardize listed Chinook salmon, steelhead, and green sturgeon nor result in the destruction or adverse modification of critical habitat where described. NMFS' conditions in the permits will ensure that the take of ESA-listed anadromous fish will not jeopardize the continued existence of the listed species. Issuance of each permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith; (2) will not operate to the disadvantage of any endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 10, 2011.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–795 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA134

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Correction notice.

SUMMARY: On June 3, 2009, NMFS published a 30-day public comment period notice in the **Federal Register** for the receipt of applications for scientific research permits 13791 (applicant: Fishery Foundation of California) and 14092 (applicant: California Department of Fish and Game). In that notice, the permit application numbers were misidentified. This document corrects the June 3, 2009, document by providing the correct permit numbers.

FOR FURTHER INFORMATION CONTACT: Shirley Witalis at phone number (916) 930–3606, or e-mail *shirley.witalis@noaa.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** document of June 3, 2009 (74 FR 26651; Fr Doc. E9–12946) under the heading Applications Received (page 26651, column 3), permit 13675 was misidentified as permit 13791, and permit 14240 was misidentified as permit 14092. The first paragraph under the heading Applications Received (page 26651, column 3, sentence 1) should read as follows: "FFC requests a 5-year permit (13675) for take of juvenile Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and juvenile North American green sturgeon associated with conducting surveys measuring fish response to initial and successional habitat conditions at a restored conservation bank site on the Sacramento River in the Central Valley, California."

The second paragraph under the heading Applications Received (page 26651, column 3, sentence 1) should read as follows: "CDFG requests a 5-year permit (14240) for take of threatened Central Valley spring-run Chinook salmon, threatened Central Valley steelhead, and threatened Southern DPS of North American green sturgeon in the lower Feather River, associated with monitoring and research activities conducted in the Feather River basin, Central Valley, California."

There are no changes to the remainder of the document.

Dated: January 10, 2011.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–796 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA132

Fisheries in the Western Pacific; American Samoa Pelagic Longline Limited Entry Program

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

ACTION: Notice; availability of permits.

SUMMARY: NMFS is soliciting applications for American Samoa pelagic longline limited entry permits. At least seven permits of various class sizes will be available for 2011. This notice announces the availability of permits and solicits applications for the permits.

DATES: Completed permit applications must be received by NMFS by May 16, 2011.

ADDRESSES: Request blank application forms from NMFS Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4733, or the PIR Web site *http://www.fpir.noaa.gov.*

Mail completed applications and payment to NMFS PIR, ATTN: ASLE Permits, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4733.

FOR FURTHER INFORMATION CONTACT: Walter Ikehara, Sustainable Fisheries, NMFS PIR, tel 808–944–2275, fax 808–973–2940, or e-mail *PIRO-permits@noaa.gov.*

SUPPLEMENTARY INFORMATION: Federal regulations at 50 CFR 665.816 allow NMFS to issue new permits for the American Samoa pelagic longline limited entry program if the number of permits in a size class falls below the maximum allowed. At least seven permits are available for issuance (note that the number of available permits may change before the application period closes): four in Class A (vessels less than or equal to 40 ft (12.2 m)), and three in Class B (over 40 ft (12.2 m) through 50 ft (15.2 m)).

Persons with the earliest documented participation in the fishery on a Class A sized vessel will receive the highest priority for obtaining permits in any size class, followed by persons with the earliest documented participation in Classes B, C, and D, in that order. If there is a tie in priority, the person with the second earliest documented participation will be ranked higher in priority.

Complete applications must include the completed and signed application

form, legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment for the non-refundable application processing fee, in accordance with the regulations at 50 CFR 665.13. Applications must be received by NMFS (*see* **ADDRESSES**) by May 16, 2011 to be considered for a permit; applications will not be accepted if received after that date. Authoritative additional information on the American Samoa limited entry program may be found in 50 CFR part 665.

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

Dated: January 10, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–797 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA107]

New England Fishery Management Council; Public Meeting; Cancellation

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

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The New England Fishery Management Council has cancelled the public meeting of its Herring Oversight Committee that was scheduled for Thursday, January 20, 2011.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The initial notice was published on December 29, 2010, (75 FR 81972) and the meeting will be rescheduled at a later date and announced in the Federal Register.

Dated: January 10, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–688 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA146

Caribbean Fishery Management Council; Scoping Meetings

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

ACTION: Notice of Scoping Meetings.

SUMMARY: The Caribbean Fishery Management Council will hold scoping meetings to obtain input from fishers, the general public, and the local agencies representatives on the Options Paper for the Comprehensive Annual Catch Limit (ACL) Amendment for the U.S. Caribbean including Amendment 6 to the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands; Amendment 2 to the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands; Amendment 5 to the Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands; Amendment 3 to the Fishery Management Plan for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands

DATES AND ADDRESSES: The scoping meetings will be held on the following dates and locations:

For Puerto Rico,

- February 7, 2011, DoubleTree by Hilton San Juan, De Diego Avenue, San Juan, Puerto Rico
- February 9, 2011, Mayagüez Holiday Inn, 2701 Hostos Avenue, Mayagüez, Puerto Rico
- February 10, 2011, Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico

For the U.S. Virgin Islands,

- February 16, 2011, The Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.
- February 17, 2011, Holiday Inn (Windward Passage Hotel) Charlotte Amalie, St. Thomas, U.S. Virgin Islands

All meetings will be held from 7 p.m. to 10 p.m.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The Caribbean Fishery Management Council will hold Scoping meetings to receive public input on the following management options. The complete Options Paper is available at: *http://caribbeanfmc.com/pdfs/2011%20ACL%20Amendment%20Options%20Paper%20December%2022%202010.pdf:*

Management Options

Action 1. Management Reference Points

Action 1a: Establish a year sequence for determining average annual landings that can be applied to each island group for both the commercial and recreational sectors.

Option 1: No action. Retain current management reference points or proxies for species/species groups within the reef fish, queen conch, lobster, and corals FMUs.

Option 2: Establish a year sequence for determining average annual landings for each species or species group within Puerto Rico.

Sub-option A: Establish a start year for the year sequence.

Sub-sub-option i: Use 1983 as the start date for determining average annual landings for each species or species group within Puerto Rico.

Sub-sub-option ii: Use 1998 as the start date for determining average annual landings for each species or species group within Puerto Rico.

Sub-sub-option iii: Use 1999 as the start date for determining average annual landings for each species or species group within Puerto Rico.

Sub-sub-option iv: Use 2000 as the start date for determining average annual landings for each species or species group within Puerto Rico.

Sub-sub-option v: Use 2003 as the start date for determining average annual landings for each species or species group within Puerto Rico.

Sub-sub-option vi: Use 2004 as the start date for determining average annual landings for each species or species group within Puerto Rico.

Sub-option B: Establish an end year for the year sequence.

Sub-sub-option i: Use 2005 as the end date for determining average annual landings for each species or species group within Puerto Rico.

Sub-sub-option ii: Use 2007 as the end date for determining average annual landings for each species or species group within Puerto Rico.

Sub-sub-option iii: Use 2008 as the end date for determining average annual landings for each species or species group within Puerto Rico.

Option 3: Establish a year sequence for determining average annual landings for each species or species group within St. Thomas and St. John.

Sub-option A: Establish a start year for the year sequence.

Sub-sub-option i: Use 2000 as the start date for determining average annual landings for each species or species group within St. Thomas and St. John.

Sub-sub-option ii: Use 2003 as the start date for determining average annual landings for each species or species group within St. Thomas and St. John.

Sub-option B: Establish an end year for the year sequence.

Sub-sub-option i: Use 2005 as the end date for determining average annual landings for each species or species group within St. Thomas and St. John.

Sub-sub-option ii: Use 2007 as the end date for determining average annual landings for each species or species group within St. Thomas and St. John.

Option 4: Establish a year sequence for determining average annual landings for each species or species group within St. Croix.

Sub-option A: Establish a start year for the year sequence.

Sub-sub-option i: Use 1998 as the start date for determining average annual landings for each species or species group within St. Croix.

Sub-sub-option ii: Use 1999 as the start date for determining average annual landings for each species or species group within St. Croix.

Sub-sub-option iii: Use 2000 as the start date for determining average annual landings for each species or species group within St. Croix.

Sub-sub-option iv: Use 2003 as the start date for determining average annual landings for each species or species group within St. Croix.

Sub-option B: Establish an end year for the year sequence.

Sub-sub-option i: Use 2005 as the end date for determining average annual landings for each species or species group within St. Croix.

Sub-sub-option ii: Use 2007 as the end date for determining average annual landings for each species or species group within St. Croix.

Action 1b. Establish MSY proxy.

The MSA requires that FMPs specify a number of reference points for managed fish stocks, including:

- Maximum Sustainable Yield (MSY)—The greatest amount or yield that can be sustainably harvested under prevailing environmental conditions.
- Overfishing Threshold—The maximum rate of fishing a stock can withstand (MFMT) or maximum yield a stock can produce (OFL), annually, while still providing MSY on a continuing basis.
- Overfished Threshold (MSST)—The biomass level below which a stock would not be capable of producing MSY.
- Annual Catch Limit (ACL)—The annual level to which catch is limited in order to prevent overfishing from occurring.
- Optimum Yield (OY)—The amount or yield that provides the greatest overall benefit to the Nation, taking into account food production, recreational opportunities and the protection of marine ecosystems.

Together, these parameters are intended to provide the means to measure the status and performance of fisheries relative to established goals. Available data in the U.S. Caribbean are not sufficient to support direct estimation of MSY and other key parameters. In such cases, the National Standard 1 (NS1) guidelines direct regional fishery management councils to adopt other measures of productive capacity, including long-term average catch, which can serve as reasonable proxies.

Option 1: No action. Retain current management reference points or proxies for species/species groups.

Discussion: This alternative would retain the present MSY proxy, OY, and overfishing threshold definitions specified in the Comprehensive SFA Amendment for species/species groups. These definitions are detailed in Table 6.

The current MSY proxy is based on average catch (C) and on estimates of where stock biomass and fishing mortality rates are in relation to MSY levels during the period over which catches are averaged. The overfishing threshold (MFMT) is defined as a rate of fishing which exceeds that which would produce MSY. And OY is defined as the amount of fish produced by fishing at a rate equal to 75% of that which would produce MSY. The numerical values associated with these parameters are provided in Table 6.

TABLE 6—CURRENT MSY PROXY, OY AND OVERFISHING THRESHOLD DEFINITIONS FOR SPECIES/SPECIES GROUPS

Reference point	Status quo definition
Maximum Sustainable Yield.	MSY proxy = $C/[(F_{CURR}/F_{MSY}) \times (B_{CURR}/B_{MSY})]$; where C is calculated based on commercial landings for the years 1997–2001 for Puerto Rico and 1994–2002 for the USVI, and on recreational landings for the years 2000–2001.

TABLE 6—CURRENT MSY PROXY, OY AND OVERFISHING THRESHOLD DEFINITIONS FOR SPECIES/SPECIES GROUPS—Continued

Reference point	Status quo definition
Overfishing Threshold.	MFMT = F_{MSY}.
Optimum Yield	OY = average yield associated with fishing on a continuing basis at F_{OY}; where $F_{OY} = 0.75F_{MSY}$.

The Comprehensive SFA Amendment in which these reference points were established pre-dated the MSRA provisions requiring FMPs to specify ACLs; consequently, the Comprehensive SFA Amendment did not explicitly specify this parameter for managed species/species groups. However, the ABC estimates derived from the Council's MSY control rule could be considered to represent the ACLs if no additional action were taken to revise management reference points in this amendment.

Option 2: Redefine management reference points or proxies based on the time series of catch data that is considered to be consistently reliable across all islands as defined in Action 1a.

Discussion: Option 2 would define aggregate management reference points or proxies based on what the Council considers to be the longest time series of catch data that is consistently reliable across all islands. Specific definitions are detailed in Table 7.

The MSY proxy specified by Option 2 would equate to average catch, calculated using commercial landings data and recreational landings data defined in Action 1a. Commercial data would be derived from trip ticket reports collected by the state governments. Recreational data would be derived from the MRFSS.

The overfishing threshold (OFL) would be defined as the amount of catch corresponding to the MSY proxy, and overfishing would be determined to occur if annual catches exceeded the overfishing threshold (Option 2(a)) or if annual catches exceeded the overfishing threshold and scientists (in consultation with managers) attributed the overage to increased catches versus improved data collection and monitoring (Option 2(b)).

TABLE 7—MANAGEMENT REFERENCE POINTS OR PROXIES PROPOSED UNDER ALTERNATIVE 2

Reference point	Option 2
Maximum Sustainable Yield	MSY proxy = average annual commercial catch selected by Council in Action 1a.
Overfishing Threshold:	
Option 2(a)	OFL = MSY proxy; overfishing occurs when annual catches exceed the OFL.
Option 2(b)	OFL = MSY proxy; overfishing occurs when annual catches exceed the OFL, unless NMFS' Southeast Fisheries Science Center (in consultation with the Caribbean Fishery Management Council and its Scientific and Statistical Committee) determines the overage occurred because data collection/monitoring improved, rather than because catches actually increased.
Optimum Yield/Annual Catch Limit:	
Option 2(c)	OY = ACL = OFL.
Option 2(d)	OY = ACL = OFL × (0.85).
Option 2(e)	OY = ACL = OFL × (0.75).
Option 2(f)	OY = ACL = OFL × (0.50).
Option 2(g)	OY = ACL = ABC specified by Scientific and Statistical Committee.
Option 2(h)	OY = ACL = 0.

The OY and ACL would be equal values, and the same socioeconomic and ecological tradeoffs would be considered in the determination of where to set both of these parameters. Most of the alternative ACL definitions considered here are more restrictive than the current OY definition and would prevent the fishery from achieving OY as currently defined. ACL (= OY) Options 2(c) through 2(f) would set those parameters equal to some proportion (100–50%) of the OFL to take into account uncertainty, ecological factors, and other concerns. Option 2(g) would set the ACL (= OY) equal to the ABC recommended by the Council's Scientific and Statistical Committee. Option 2(h) would set the ACL (= OY) equal to zero for surgeonfish.

Maximum Sustainable Yield (MSY)

The MSY proxy defined by no action Option 1 averages catches over the longest time period during which data were considered to be relatively stable at the time the Council approved the Comprehensive SFA Amendment. Because the Council had fewer years of catch data to work with at that time, that proxy incorporated Puerto Rico and USVI catch data prior to 1999. The MSY proxies evaluated in Option 2 does not use pre-1999 data in average catch calculations because those data were collected by gear type rather than by family group. The Council instead prefers to use data from more recent years, when the data were collected by family group and therefore provide a relatively consistent baseline among all of the islands.

Additionally, in contrast to the no action Option 1, Option 2 does not attempt to incorporate information on recreational catches in the USVI because the MRFSS does not provide this information and no alternative data are available to reliably estimate these landings. As a result, the MSYs specified by these alternative proxies are expected to be underestimated to some unknown degree. In general, underestimating MSY can result in foregone yield, whereas overestimating MSY can lead to overfishing.

Overfishing Threshold (MFMT/OFL)

The overfishing threshold defined by Option 1 is a maximum fishing mortality threshold (MFMT) equal to the fishing mortality rate at MSY. Because this fishing mortality rate is unknown for U.S. Caribbean species, the Comprehensive SFA Amendment adopted natural mortality rate as a proxy for this parameter. However, data are insufficient to evaluate the sustainability of current fishing mortality rates relative to this proxy and make a determination as to whether overfishing is or is not occurring. To remedy this, Option 2 proposes to specify a catch-based, rather than fishing mortality-based, overfishing threshold, called the overfishing limit (OFL). Annual catches would be evaluated relative to the OFL to determine whether overfishing is or is not occurring. This approach is consistent with the NS1 guidelines, which provide fishery managers the flexibility to determine if overfishing occurs based on either fishing mortality rates or actual annual catch.

Option 2 would essentially maintain the same relationship as the no action alternative between the overfishing threshold and MSY. MSY represents the maximum yield a species complex can provide in the long term, while OFL estimates the amount of annual catch above which overfishing is occurring. In theory, the annual OFL would vary above and below the MSY level depending on fluctuations in stock size. Since both MSY and OFL are related to the highest fishing mortality rate that will not result in overfishing, the long-term average of OFLs would be expected to equate to MSY, provided that stock abundance is high enough to support MSY. But, in practice, the annual OFL proposed in Option 2 would remain constant at the MSY level until stock biomass can be estimated.

Sub-option (a) would result in an automatic overfishing determination if annual catch exceeded the OFL in any given year, whereas Option (b) would provide scientists (in consultation with managers) the flexibility to evaluate the cause of the reported catch increase prior to making a determination that a species complex is undergoing overfishing. Specifically, they would consider whether the reported increase represents an actual increase in landings or just improved data collection and monitoring. The intent of this sub-option is to eliminate any incentive for fishermen to under-report or misreport catches to avoid exceeding ACLs and triggering associated AMs.

Optimum Yield (OY) and Annual Catch Limits (ACLs)

The current OY defined by no action Option 1 is derived from the technical guidance provided by Restrepo *et al.* (1998), which recommends the target fishing mortality rate be set equal to the average yield available on a continuing basis from fishing at 75% of the fishing mortality rate that would produce MSY. The authors of that guidance indicate that fishing at this level adds precaution and maintains stocks at higher biomass levels, while sacrificing only a small amount (~ 6.25%) of catch. Because data are insufficient to estimate the fishing mortality rate that would produce MSY, the Comprehensive SFA Amendment estimated the OY of each species/species group to equal 93.75% of MSY.

While the no action Option 1 does not explicitly define ACLs for the target

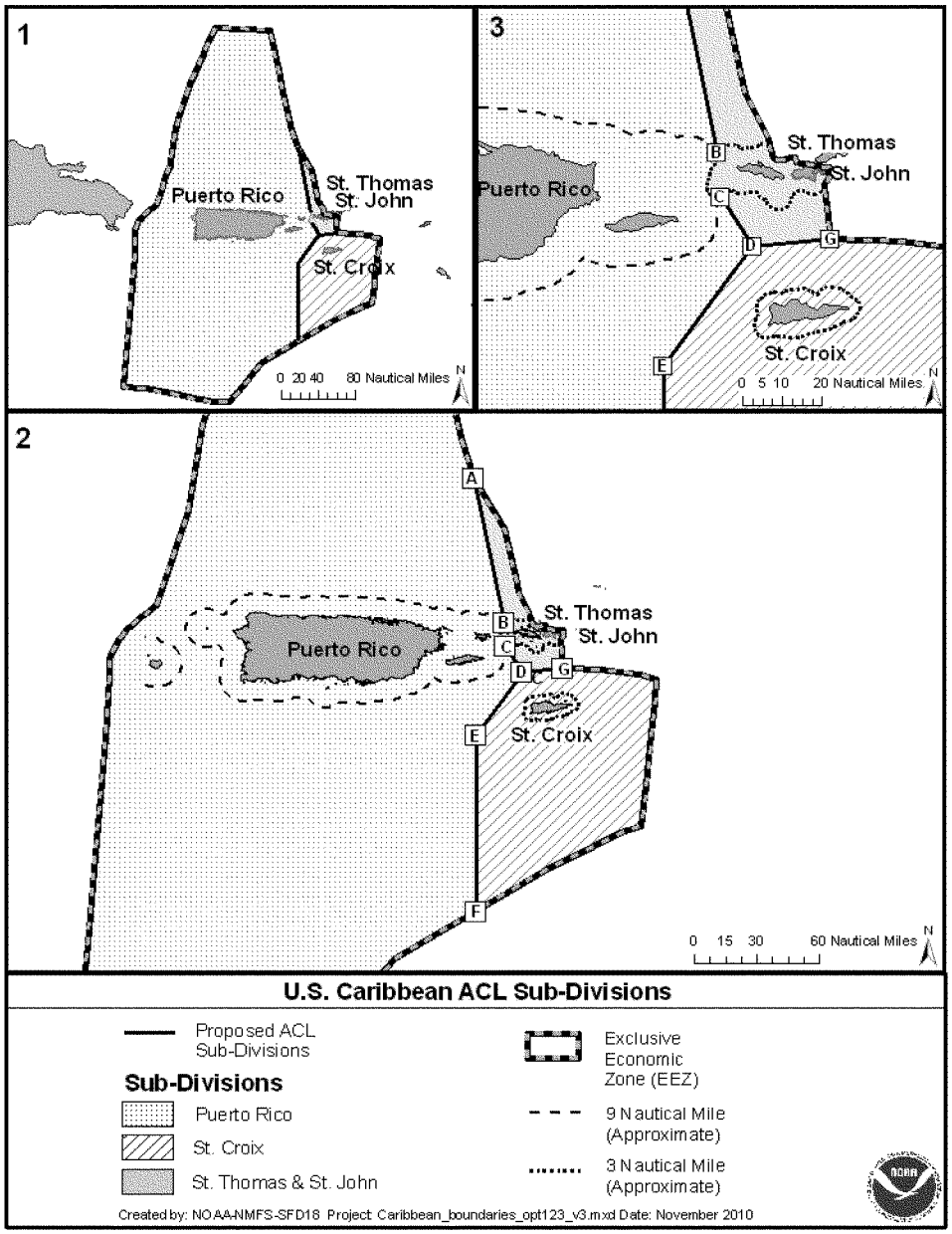
species, the ABC estimates specified by the Council's MSY control rule could be considered to represent the ACLs of these species/species groups if no additional action were taken through this amendment to revise management reference points. However, these ABC values are very uncertain as they were calculated using natural mortality rate as a proxy for the fishing mortality rate that would produce MSY and informed judgment regarding stock biomass. And, because these values were set well below MSY values to address SFA Working Group determinations regarding overfishing, they would prevent the fishery from achieving OY; even though recent landings data indicate that, in most cases, management controls appear to have effectively reduced catch rates below the overfishing threshold.

To remedy this, Option 2 would set the OY and ACL as equal values, requiring the Council to consider the socioeconomic and ecological components of OY when determining how far ACLs should be reduced below the overfishing threshold to account for scientific uncertainty in estimating the OFL and management uncertainty in effectively constraining harvest over time. This approach leads to OY estimates for the target species that are below those estimated in the Comprehensive SFA Amendment, regardless of the OY (= ACL) alternative selected. In contrast, most of the OY alternatives would result in larger OY estimates for the grouper and parrotfish complexes relative to the no action alternative.

Action 1c. Allocation of ACLs among island groups.

Option 1: No Action. Maintain U.S. Caribbean-wide reference points.

BILLING CODE 3510–22–P



Reference Point	Latitude	Longitude	Comments
A	19° 37' 29"	65° 20' 57"	Intersects with the International/EEZ boundary
B	18° 25' 46.3015"	65° 06' 31.866"	Intersects with the EEZ/Territorial boundary
C	18° 13' 59.0606"	65° 05' 33.058"	Intersects with the EEZ/Territorial boundary
D	18° 01' 16.9636"	64° 57' 38.817"	
E	17° 30' 00.000"	65° 20' 00.1716"	
F	16° 02' 53.5812"	65° 20' 00.1716"	
G	18° 03' 03"	64° 38' 03"	

Figure 5. Detailed boundaries, including coordinates, for subdividing the U.S. Caribbean Exclusive Economic Zone by island group as described for Option 2 of Alternative 1(c).

Option 2: Divide and manage annual catch limits by island group (i.e., Puerto Rico, STT/STJ, STX) based on the preferred management reference point time series determined in Action 1(a).

BILLING CODE 3510–22–C

Action 2: Management of Aquarium Trade Species

Option 1: No action. Do not re-evaluate and revise management of aquarium trade species.

Option 2: Consolidate all aquarium trade species listed in the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands and Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands into a single Fishery Management Plan.

Sub-option A: Move all aquarium trade species listed in the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands into the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands.

Sub-option B: Move all of the aquarium trade species listed in the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands into the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands.

Sub-option C: Move all of the aquarium trade species listed in both the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands, and in the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands, into a separate Fishery Management Plan specific to aquarium trade species.

Option 3: Remove aquarium trade species from both the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands and the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands.

Sub-option A: Remove all aquarium trade species from the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands and from the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands and no longer track their landings.

Sub-option B: Move all aquarium trade species listed in the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands and the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands into the 'data collection only' category.

Sub-option C: Move only those aquarium trade species listed in either the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands or the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands, and for which landings data are available during the year sequence chosen in Action 1 above, into the 'data collection only' category. Remove all remaining aquarium trade species from either the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands or the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands and no longer track their landings.

Option 4: Transfer management authority, for all aquarium trade species listed in either the Fishery Management Plan for Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the U.S. Virgin Islands or the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands, to the jurisdiction of the appropriate commonwealth or territory as defined by Action 3(c) of Amendment 2 to the Fishery Management Plan for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands and Amendment 5 to the Reef Fish Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands.

Table 8. List of all species included in the Aquarium Trade category in both the Reef Fish and Coral FMPs. Table contents are extracted from Table 8 of the Comprehensive Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean to Address Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act (a.k.a. the Comprehensive Sustainable Fisheries Act Amendment).

Reef Fish FMP

Clepticus parrae, Creole wrasse
Halichoeres garnoti, Yellowhead wrasse
Halichoeres cyanocephalus, Yellowcheek wrasse
Halichoeres maculipinna, Clown wrasse
Thalassoma bifasciatum, Bluehead wrasse
Liopropoma rubre, Swissguard basslet
Gramma loreto, Royal gramma
Microspathodon chrysurus, Yellowtail damselfish
Stegastes adustus, Dusky damselfish
Stegastes partitus, Bicolor damselfish
Stegastes planifrons, Threespot damselfish
Stegastes leucostictus, Beaugregory
Chaetodon capistratus, Foureye butterflyfish
Chaetodon aculeatus, Longsnout butterflyfish
Chaetodon ocellatus, Spotfin butterflyfish
Chaetodon striatus, Banded butterflyfish
Serranus baldwini, Lantern bass
Serranus annularis, Orangeback bass
Serranus tabacarius, Tobaccofish
Serranus tigrinus, Harlequin bass
Serranus tortugarum, Chalk bass
Opistognathus aurifrons, Yellowhead jawfish
Opistognathus whitehursti, Dusky jawfish
Xyrichtys novacula, Pearly razorfish
Xyrichtys splendens, Green razorfish
Echidna catenata, Chain moray
Gymnothorax funebris, Green moray
Gymnothorax *miliaris,* Goldentail moray
Elacatinus oceanops, Neon goby
Priolepis hipoliti, Rusty goby
Equetus lanceolatus, Jackknife-fish
Equetus punctatus, Spotted drum
Chromis cyanea, Blue chromis
Chromis insolata, Sunshinefish
Abudefduf saxatilis, Sergeant major
Astrapogon stellatus, Conchfish
Apogon maculatua, Flamefish
Amblycirrhitus pinos, Redspotted hawkfish
Antennarius spp., Frogfish
Bothus lunatus, Peacock flounder
Chaetodipterus *faber,* Atlantic spadefish
Canthigaster rostrata, Sharpnose puffer
Centropyge argi, Cherubfish
Diodon hystrix, Porcupinefish
Dactylopterus volitans, Flying gurnard
Heteropriacanthus cruentatus, Glasseye snapper
Hypoplectrus unicolor, Butter hamlet
Holocanthus tricolor, Rock beauty
Myrichthys ocellatus, Goldspotted eel
Ophioblennius macclurei, Redlip blenny
Pareques *acuminatus,* High-hat
Rypticus saponaceus, Greater sopafish
Synodus intermedius, Sand diver
Symphurus diomedianus, Caribbean tonguefish
Family Syngnathidae, Pipefishes and Seahorses
Family Ogcocephalidae, Batfish
Family Scorpaenidae, Scorpionfish

Table 8 (continued). List of all species included in the Aquarium Trade category in both the Reef Fish and Coral FMPs. Table contents are extracted from Table 8 of the Comprehensive Amendment to the Fishery Management Plans (FMPs) of the U.S. Caribbean to Address Required Provisions of the Magnuson-Stevens Fishery Conservation and Management Act (a.k.a. the Comprehensive Sustainable Fisheries Act Amendment).

Coral FMP

Aphimedon compressa, Erect rope sponge
Astrophyton muricatum, Giant basket star

Alpheaus *armatus,* Snapping shrimp
Aiptasia tagetes, Pale anemone
Astropecten spp., Sand stars
Analcidometra armata, Swimming crinoid
Bartholomea *annulata,* Corkscrew anemone
Cynachirella alloclada, sponge (no common name)
Condylactis gigantea, Giant pink-tipped anemone
Cyphoma *gibbosum,* Flamingo tongue
Chondrilla nucula, Chicken liver sponge
Diadema antillarum, Long-spined urchin
Davidaster spp., Crinoids
Discosoma spp., False coral
Echinometra spp., Purple urchin
Eucidaris tribuloides, Pencil urchin
Gonodactylus (*Neogonodactylus*) spp., Smashing mantis shrimp
Geodia *neptuni,* Potato sponge
Haliclona sp., Finger sponge
Holothuria spp., Sea cucumbers
Hereractis lucida, Knobby anemone
Lima spp., Fileclams
Lima scabra, Rough fileclam
Lytechinus spp., Pin cushion urchin
Lysmata spp., Peppermint shrimp
Linckia guildingii, Common comet star
Lysiosquilla spp., Spearing mantis shrimp
Lebrunia spp., Staghorn anemone
Mithrax spp., Clinging crabs
Mithrax cinctimanus, Banded clinging crab
Mithrax sculptus, Green clinging crab
Myriastra sp., sponge (no common name)
Niphates digitalis, Pink vase sponge
Niphates *erecta,* Lavender rope sponge
Nemaster spp., Crinoids
Ophiocoma spp., Brittlestars
Ophioderma spp., Brittlestars
Ophioderma rubicundum, Ruby brittlestar
Oreaster reticulatus, Cushion sea star
Ophidiaster guildingii, Comet star
Oliva reticularis, Netted olive
Octopus spp. (except the Common octopus, *O. vulgaris*)
Paguristes spp., Hermit crabs
Paguristes cadenati, Red reef hermit crab
Percnon gibbesi, Nimble spray crab
Periclimenes spp., Cleaner shrimp
Ricordia florida, Florida false coral
Stichodactyla helianthus, Sun anemone
Spirobranchus giganteus, Christmas tree worm
Sabellastarte magnifica, Magnificent duster
Sabellastarte spp., Tube worms
Stenopus scutellatus, Golden shrimp
Stenopus hispidus, Banded shrimp
Stenorhynchus seticornis, Yellowline arrow crab
Spondylus americanus, Atlantic thorny oyster
Spinosella plicifera, Iridescent tube sponge
Spinosella *vaginalis,* Lavendar tube sponge
Tripneustes ventricosus, Sea egg urchin
Thor amboinensis, Anemone shrimp
Tectitethya (*Tethya*) *crypta,* sponge (no common name)
Subphylum Urochordata, Tunicates
Tridachia crispata, Lettuce sea slug
Zoanthus spp., Sea mat

Action 3. Recreational fishery management.

Action 3a. Separation of recreational and commercial sectors.

Option 1: No action. Do not specify sector-specific annual catch limits.

Option 2: Specify separate commercial and recreational annual catch limits based on the preferred management reference point time series.

Action 3b. Recreational Bag Limits

Option 1: No action. Do not establish bag limit restrictions on recreational harvest.

Option 2: Specify a 5-fish aggregate bag limit per person (would not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the USVI).

Option 3: Specify a 2-fish aggregate bag limit per person (would not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the USVI).

Option 4: Establish a 0-fish aggregate bag limit per person (would not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the USVI) for species in the surgeonfish FMU.

Option 5: Establish an aggregate bag limit of: 10 per fisher including not more than two surgeonfish per fisher or six surgeonfish per boat, and 30 aggregate fish per boat on a fishing day (would not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the USVI).

Option 6: Establish an aggregate bag limit of: Five per fisher including not more than two surgeonfish per fisher or six surgeonfish per boat, and 15 aggregate fish per boat on a fishing day (would not apply to a fisherman who has a valid commercial fishing license issued by Puerto Rico or the USVI).

Action 4: Accountability Measures.

Action 4a: Triggering Accountability Measures.

Option 1: No Action. Do not trigger AMs.

Option 2: Trigger AMs if the Annual Catch Limit is exceeded based upon:

Sub-option A: A single year of landings beginning with landings from 2011.

Sub-option B: A single year of landings beginning with landings from 2011, then a 2-year running average of landings in 2012 (average of 2011+2012) and thereafter (i.e., 2011, 2011–2012, 2012–2013, etc.).

Sub-option C: A single year of landings beginning with landings from 2011, a 2-year average of landings in 2012 (average of 2011+2012), then a 3-year running average of landings in 2013 (average of 2011+2012+2013) and thereafter (i.e., 2011, 2011–2012, 2011–2013, 2012–2014, etc.).

Option 3: Trigger AMs if the annual catch limit is exceeded as defined below and NMFS' SEFSC (in consultation with the Caribbean Fishery Management Council and its Scientific and Statistical Committee) determines the overage occurred because catches increased versus data collection/monitoring improved:

Sub-option A: A single year of landings effective beginning 2011.

Sub-option B: A single year of landings effective beginning 2011, then a 2-year running average of landings effective 2012 and thereafter (i.e., 2011, 2011–2012, 2012–2013, etc.).

Sub-option C: A single year of landings effective beginning 2011, a 2-year running average of landings effective 2012, then a 3-year running average of landings effective 2013 and thereafter (i.e., 2011, 2011–2012, 2011–2013, 2012–2014, etc.).

Action 4b: Apply Accountability Measures.

Option 1: No Action. Do not apply AMs.

Option 2: If AMs are triggered, then reduce the length of the fishing season for that species or species group the year following the trigger determination by the amount needed to prevent such an overage from occurring again. The needed changes will remain in effect until modified.

Option 3: If AMs are triggered, then reduce the length of the fishing season for that species or species group the year following the trigger determination by the amount needed to prevent such an overage from occurring again and to pay back the overage. The needed changes will remain in effect until modified.

Action 5: Framework Measures.

Action 5a: Establish Framework Measures for the Spiny Lobster FMP.

Option 1: No Action. Do not amend the framework measures for the Spiny Lobster FMP.

Option 2: Amend the framework procedures for the Spiny Lobster FMP to provide a mechanism to expeditiously adjust the following reference points and management measures through framework action:

a. Quota Requirements

b. Seasonal Closures
c. Area Closures
d. Fishing Year
e. Trip/Bag Limit
f. Size Limits
g. Gear Restrictions or Prohibitions
h. Total Allowable Catch (TAC)
i. Annual Catch Limits (ACLs)
j. Accountability Measures (AMs)
k. Annual Catch Targets (ACTs)
l. Maximum Sustainable Yield (MSY)
m. Optimum Yield (OY)
n. Minimum Stock Size Threshold (MSST)
o. Maximum Fishing Mortality Threshold (MFMT)
p. Overfishing Limit (OFL)
q. Acceptable Biological Catch (ABC) control rules
r. Actions to Minimize the Interaction of Fishing Gear with Endangered Species or Marine Mammals

Option 3: Amend the framework procedures for the Spiny Lobster FMP to provide the Council with a mechanism to expeditiously adjust a subset of management measures outlined in Option 2.

Action 5b: Establish Framework Measures for the Corals and Reef Associated Plants and Invertebrates FMP.

Option 1: No Action. Do not amend the framework measures for the Corals and Reef Associated Plants and Invertebrates FMP.

Option 2: Amend the framework procedures for the Corals and Reef Associated Plants and Invertebrates FMP to provide a mechanism to expeditiously adjust the following reference points and management measures through framework action:

a. Quota Requirements
b. Seasonal Closures
c. Area Closures
d. Fishing Year
e. Trip/Bag Limit
f. Size Limits
g. Gear Restrictions or Prohibitions
h. Fishery Management Units (FMUs)
i. Total Allowable Catch (TAC)
j. Annual Catch Limits (ACLs)
k. Accountability Measures (AMs)
l. Annual Catch Targets (ACTs)
m. Maximum Sustainable Yield (MSY)
n. Optimum Yield (OY)
o. Minimum Stock Size Threshold (MSST)
p. Maximum Fishing Mortality Threshold (MFMT)
q. Overfishing Limit (OFL)
r. Acceptable Biological Catch (ABC) control rules
s. Actions to Minimize the Interaction of Fishing Gear with Endangered Species or Marine Mammals

Option 3: Amend the framework procedures for the Corals and Reef Associated Plants and Invertebrates FMP to provide the Council with a mechanism to expeditiously adjust a subset of management measures outlined in Option 2.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone (787) 766–5926, at least five days prior to the meeting date.

Dated: January 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–712 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board Meeting

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the NOAA Science Advisory Board. The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for: Monday, January 31 from 10–11 a.m. Eastern Time.

ADDRESSES: Conference call. Public access is available at: NOAA, SSMC 3, Room 11836, 1315 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (*Phone:* 301–734–1156, *Fax:* 301–713–1459, *E-mail: Cynthia.Decker@noaa.gov*)

SUPPLEMENTARY INFORMATION: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Matters To Be Considered: The agenda for the meeting is as follows:

Date and Time: Monday, January 31 from 10–11 a.m. Eastern Time.

Status: The meeting will be open to public participation at NOAA, SSMC 3, Room 11836, 1315 East-West Highway, Silver Spring, Md. with a 5-minute public comment period from 10:55–11 a.m. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of one minute. Written comments should be received in the SAB Executive Director's Office by January 28, 2011 to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after January 28, 2011, will be distributed to the SAB, but may not be reviewed prior to the meeting date.

Agenda

1. Revised proposal from the Working Group Subcommittee on alignment of SAB Working Groups.
2. Process of SAB comments on NOAA Responses to SAB products.

Dated: January 10, 2011.

Mark E. Brown,

Chief Financial Officer/Chief Administrator Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011–755 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 068–XA145

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council (Council) in partnership with the Fisheries Leadership and Sustainability Forum

(FLSF) will conduct an educational workshop, "Exploring Tools for Improving Management of Data Poor Stocks." The intent of this workshop is to discuss tools that the region may find useful in advancing data collection and management of data poor stocks and provide a venue to discuss the best ways to move forward.

DATES: The workshop will be held Wednesday and Thursday, February 23–24, 2011.

ADDRESSES: The workshop will be held at La Concha Resort, 1077 Ashford Avenue, San Juan, Puerto Rico 00907; *telephone:* (787) 721–7500.

Council address: Caribbean Fishery Management Council, 268 Munoz Rivera Ave., Suite 1108, San Juan, Puerto Rico 00918; *telephone:* (787) 766–5926.

FOR FURTHER INFORMATION CONTACT: Miguel Rolon, Executive Director, Caribbean Fishery Management Council; telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The workshop will begin with participants' registration at 2 p.m. on Tuesday, February 22, 2011 and recess at 5:30 p.m. or when business is completed; reconvene at 8:30 a.m. on Wednesday, February 23, 2011 and recess at 5:45 p.m. or when business is completed; and, reconvene at 8:30 a.m. on Thursday, February 24, 2011 and recess at 5:45 p.m. or when business is completed. An agenda and briefing materials will be posted to the Council Web site (*http://www.caribbeanfmc.com*) as they become available.

The workshop will be an educational forum to discuss data collection and management for data poor stocks. The 2006 reauthorization of the Magnuson-Stevens Act (MSRA) requires the Council to establish annual catch limits (ACLs) for all managed stocks by 2011. For data poor stocks where scientific information is either lacking or insufficient, establishing ACLs is particularly challenging. Given the approaching deadlines for establishing ACLs and the recent work undertaken by the Southeast Fisheries Science Center (SEFSC) and Marine Resource Assessment Group (MRAG Americas) to develop recommendations on how the region could improve data collection, the Council concluded that an educational workshop dedicated to data poor issues would be beneficial for its members and partners.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Diana Martino, (787) 766–5926, at least 5 days prior to the meeting date.

Dated: January 11, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–718 Filed 1–13–11; 8:45 am]

BILLING CODE 3510–22–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 services to the Procurement List that will be provided by nonprofit agencies employing persons who are blind or have other severe disabilities and to delete products previously furnished by such agency.

Comments Must Be Received on or Before: 2/14/2011.

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 services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. If approved, the action will result in authorizing small entities provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

SERVICES

Service Type/Locations: Administrative Support Service, Keystone Bldg., 530 Davis Dr., Research Triangle Park, NC, South Campus, 111 T.W. Alexander Drive, Research Triangle Park, NC.

NPA: OE Enterprises, Inc., Hillsborough, NC.

Contracting Activity: Dept. of Health and Human Services, National Institutes of Health, Research Triangle Park, NC.

Service Type/Location: Operations Support Service, Federal Energy Regulatory Commission (FERC), 888 First Street, NE., Washington, DC.

NPA(s): ServiceSource, Inc., Alexandria, VA (Prime), SOC Enterprises, Arlington, VA (Subcontractor), Able Forces, Front Royal, VA (Subcontractor).

Contracting Activity: Federal Energy Regulatory Commission, 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: Shim.

NSN: 5365–00–159–3781
NSN: 5365–00–159–3792
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: Defense Logistics Agency, Aviation, Richmond, VA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–715 Filed 1–13–11; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF EDUCATION

Committee on Measures of Student Success

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Committee on Measures of Student Success (Committee). The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

DATES: February 9–10, 2011.

Time: February 9, 2011: 9:00 a.m. to 4:30 p.m.; February 10, 2011: 9:00 a.m. to 4:30 p.m.

ADDRESSES: The Committee will meet in Washington, DC at 1990 K Street, NW., Washington, DC 20006, 8th Floor Conference Center.

FOR FURTHER INFORMATION CONTACT: Archie Cubarrubia, Designated Federal Official, Committee on Measures of Student Success, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006. *E-mail: Archie.Cubarrubia@ed.gov. Telephone:* (202) 502–7601.

SUPPLEMENTARY INFORMATION: The Committee is established to advise the Secretary of Education in assisting two-year degree-granting institutions of higher education in meeting the completion or graduation rate disclosure requirements outlined in section 485 of the Higher Education Act of 1965, as amended. Specifically, the Committee shall develop recommendations regarding the accurate calculation and reporting of completion or graduation rates of entering certificate/degree-seeking, full-time, undergraduate students by two-year degree granting institutions of higher education. The Committee may also recommend additional or alternative measures of student success that are comparable alternatives to the completion or graduation rates of entering degree-seeking full-time undergraduate students and that consider the mission and role of two-year degree granting higher education institutions. These recommendations shall be provided to the Secretary no later than April 2012.

The agenda for the Committee's second meeting will include presentations by Committee working groups regarding the topics of progression, completion, and alternative measures. The agenda will also include Committee member discussions of potential findings and recommendations related to these topics.

Individuals interested in attending the meeting must register in advance because of limited space issues. To register, please send an e-mail request to *studentsuccess@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or materials in alternative format) should notify Archie Cubarrubia at (202) 502–7601 no later than February 2, 2011. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Opportunities for public comment are available through the Committee's Web site at *http://www2.ed.gov/about/bdscomm/list/acmss.html.* Records are kept of all Committee proceedings and are available for public inspection on the Web site and at the National Center for Education Statistics, 1990 K Street, NW., Washington, DC 20006 from the hours of 9 a.m. to 5 p.m. E.S.T.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fed-register/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2011–800 Filed 1–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Proposed Waiver and Extension of Project Period

AGENCY: Office of Innovation and Improvement, Education.

ACTION: Notice of proposed waiver and extension of project period.

SUMMARY: The Secretary proposes to waive the requirements in 34 CFR 75.250 and 75.261(c)(2) of the Education Department General Administrative Regulations (EDGAR) that, respectively, generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The FY 2010 appropriation provided the fifth year of funding for 60 of the 62 Parental Information and Resource Center (PIRC) grants that were funded in FY 2006, and the fourth year of funding for the remaining two grants that were funded in FY 2007. The proposed waivers would enable 60 of the 62 current grantees under the PIRC program to continue to receive Federal funding beyond the five-year limitation contained in 34 CFR 75.250 and enable the Department to obligate an additional year of Federal funds for all 62 current eligible grantees notwithstanding the limitation in 34 CFR 75.261(c)(2), which prohibits the extension of a project period if it involves the obligation of additional Federal funds. This additional year of Federal funds would be contingent on final Congressional action on the FY 2011 budget.

DATES: We must receive your comments on or before February 14, 2011.

ADDRESSES: Address all comments about this proposed waiver and extension of project period to Monique Toussaint, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W243, Washington, DC 20202–5970. *Telephone:* (202) 260–0964.

If you prefer to send your comments by e-mail, use the following address: *pirc@ed.gov.* You must include the phrase "proposed waiver and extension of project period" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Monique Toussaint at the address listed in the **ADDRESSES** section of this notice. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION: *Invitation to Comment:*

We invite you to submit comments regarding this notice of proposed waiver and extension of project period. During and after the comment period, you may inspect all public comments about this notice of proposed waiver and extension of project period in room 4W335, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record:

On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed waiver and extension of project period. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background:

Under the PIRC program, the Department supports grants to help implement successful and effective parental involvement policies and activities that lead to improvements in student academic achievement and help partnerships among parents, teachers, principals, administrators, and other school personnel meet the educational needs of children. Section 5563(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), describes project requirements for the recipients of PIRC grants, including requirements to serve both rural and urban areas; to use at least one-half of the funds awarded to a project to serve areas with high concentrations of low-income families; and to use at least 30 percent of the funds awarded to a project to establish, expand, or operate early childhood parent education programs.

During the first year of implementation, each PIRC received targeted technical assistance to conduct a five-year, high-quality evaluation in order to assess the impact of its services on families, communities, and schools. However, in order to begin the evaluation, each PIRC had to ensure that its services were fully implemented. For many projects, due to the nature of the services provided, this was not the case, causing significant delays in collecting baseline data during the first year of the project. Additionally, PIRCs conducting experimental design studies experienced logistical challenges associated with establishing treatment and control groups. An additional year of funding would give the PIRCs an opportunity not only to assess the impact of their services on families, communities, and schools, but to also collect additional data that could result in more valid and reliable findings on effective family engagement. This information is of particular interest to the Department, as some of these findings could inform policies for engaging families in transforming low-performing schools.

Therefore, the Secretary proposes this waiver and extension of project period in order to enable each of the current grantees to strengthen the quality of its evaluation. We believe the additional time and resources will provide information that can be used to inform best practices regarding supporting and engaging families and communities in their children's education.

The additional budget period will provide resources and time for each grantee to: (1) Conduct an additional round of grant activities in FY 2011; and, (2) collect additional information to evaluate its grant activities.

For these reasons, we believe it is preferable to review requests for continuation awards from the current grantees and extend currently funded projects rather than to hold a new competition in FY 2011. Authorizing current grantees to request additional funds would be a more appropriate and effective means of facilitating the work of the PIRC program and would result in a more cost-effective use of Federal funds.

Therefore, the Secretary proposes to waive the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(c)(2), which limit the extension of a project period if the extension involves the obligation of additional Federal funds. With these waivers: (1) Current PIRC grantees would receive FY 2011 funds and continue to operate through FY 2012; and, (2) we would not announce a new competition or make new awards under the PIRC program in FY 2011.

The proposed waivers of 34 CFR 75.250 and 75.261(c)(2) would not affect the applicability of the requirements in 34 CFR 75.253 (continuation of a multi-year project after the first budget period) to any continuation awards sought by eligible current PIRC grantees as a result of the waivers.

In addition, these proposed waivers would not exempt current PIRC grantees from the account-closing provisions in 31 U.S.C. 1552(a), nor would they extend the availability of funds previously awarded to current PIRC grantees. Under 31 U.S.C. 1552(a), appropriated funds may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds must be canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose. The waivers proposed in this notice would not change this requirement.

We will announce the final waivers, if any, in a notice in the **Federal Register**. We will determine the final waivers after considering responses to this notice and other information available to the Department.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed waiver and extension of project period would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed waivers are:

(a) The FY 2006 and FY 2007 PIRC grantees currently receiving Federal funds; and

(b) The entities that are eligible for an award under the PIRC program (*i.e.,* nonprofit organizations, or consortia of nonprofit organizations and local educational agencies (LEAs); and faith-based and community organizations if such organizations are nonprofit organizations, as defined in the notice of final priorities and eligibility requirements published in the **Federal Register** on March 27, 2006 (71 FR 15308)).

The Secretary certifies that the proposed waivers would not have a significant economic impact on these entities because the proposed waivers and the activities required to support the additional years of funding would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed waivers would impose minimal requirements to

ensure the proper expenditure of program funds, including requirements that are standard for continuation awards.

Paperwork Reduction Act of 1995

This notice of proposed waiver and extension of project period does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You can view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.310A, Parental Information and Resource Center Program).

Program Authority: 20 U.S.C. 7273 *et seq.*

Dated: January 10, 2011.

James H. Shelton III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2011–805 Filed 1–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–492–000]

Columbia Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Line 1278–Line K Expansion Project

January 7, 2011.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) for the Line 1278–Line K Expansion Project proposed by Columbia Gas Transmission, LLC (Columbia) in the above-referenced docket. Columbia requests authorization to abandon and replace natural gas pipeline facilities in Pike County, Pennsylvania and Orange County, New York.

The EA assesses the potential environmental effects of the construction and operation of the Line 1278–Line K Expansion Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers elected to act as a cooperating agency in the preparation of this EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resource potentially affected by Columbia's proposal and participate in the NEPA analysis.

The proposed project would remove and replace approximately 17 miles of Columbia's existing pipelines and related facilities, mainly within the same ditch or right-of-way of the existing pipeline. Columbia's existing pipelines extend in a northeasterly direction towards Millennium Pipeline Company's existing Wagoner Compressor Station in Sparrowbush, New York.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to lessen or avoid environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that we receive your comments in Washington, DC on or before February 7, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP10–492–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located at *http://www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing;" or

(3) You may file a paper copy of your comments at the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR

385.214).[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion of filing comments electronically. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*http://www.ferc.gov)* using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the docket number field (*i.e.,* CP10–492). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notifications of these filings, document summaries, and direct links to the documents. Go to (*http://www.ferc.gov/esubscribenow.htm*).

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–700 Filed 1–13–11; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–477–000]

Southern LNG Company, LLC; Notice of Public Scoping Meeting for the Proposed LNG Truck Loading Project

January 7, 2011.

On February 2, 2011, the Office of Energy Projects staff will hold a public scoping meeting to obtain public input related to the environmental analysis of Southern LNG Company, LLC's (Southern) LNG Truck Loading Project. We scheduled this meeting to provide stakeholders an opportunity to voice comments on the additional information Southern has submitted to the Commission since the scoping meeting held on September 29, 2010. The previous scoping meeting was noticed in our September 13, 2010 *Notice of Intent to Prepare an Environmental Assessment for the Proposed LNG Truck Loading Project and Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting (NOI).*

The public scoping meeting is scheduled as follows: LNG Truck Loading Project, February 2, 2011, 7 p.m., Savannah Civic Center Ball Room, 301 West Oglethorpe Avenue, Savannah, GA, Savannah, Georgia 31405.

This notice is being sent to the Commission's current environmental mailing list for this project. The NOI and additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP10–477). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–701 Filed 1–13–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–TRI–2010–1022; FRL–9251–2]

Request Facilities To Report Toxics Release Inventory Information Electronically or Complete Fill-and-Print Reporting Forms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: With this document, the Environmental Protection Agency (EPA) strongly recommends facilities use the Toxics Release Inventory-Made Easy Web application (TRI-MEweb) to report and submit Toxics Release Information (TRI) data to EPA. TRI-MEweb provides useful features to facilitate the submission process and validates data to help ensure accuracy. Recognizing that some facilities are still using paper forms rather than TRI-MEweb, EPA is providing a new electronically fillable version of Form R, Form R Schedule 1, and Form A to make it easier for respondents to complete these forms and for EPA to read and process the submitted forms. The use of TRI-MEweb (the preferred method) or, alternatively, the Fill-and-Print TRI Forms will help ensure data accuracy, while also reducing the amount of time it takes for EPA to process TRI submissions and make valuable toxic chemical release and other waste management data available to the public.

FOR FURTHER INFORMATION CONTACT: For general information on TRI, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/.* For specific information on this notice, contact David Turk, Toxics Release Inventory Program Division, Mailcode 2844T, OEI, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *Telephone:* (202) 566–1527; *E-mail: Turk.David@epa.gov.*

SUPPLEMENTARY INFORMATION:

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A. Does this notice apply to me?

This notice applies to facilities that submit annual reports under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act (PPA). To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B, of Title 40 of the Code of Federal Regulations. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes. Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): • 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); • 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); • 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); • 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); • 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); • 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); and • 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (correspond to SIC 4953, Refuse Systems).
Federal Government	Federal facilities.

If you have questions regarding the applicability of this notice to a particular entity, consult the individual listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. This notice may also be of interest to those who utilize EPA's TRI information and have an interest in the public availability of high-quality, timely TRI data and information, including State agencies, local governments, communities, environmental groups and other non-governmental organizations, as well as members of the general public.

B. How can I get copies of this document and other related information?

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2010–1022; FRL–9251–2]. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

C. What is EPA requesting?

EPA strongly recommends that facilities that are required to report to the TRI program *use TRI-MEweb* to prepare and submit their TRI reporting forms to the Agency. TRI-MEweb offers facilities useful features and data validation tools that facilitate the submission process and help ensure the submission of accurate and complete information. Facilities have increasingly recognized the benefits of using TRI-MEweb, as reflected by the generally increasing percentage of facilities that submit TRI reporting forms electronically. Most recently, for Reporting Year (RY) 2009, the TRI program received 82,485 electronic submissions, including revisions, out of a total of 87,158 submissions. In other words, 94.6% of the RY 2009 submissions were electronic. Because such a large portion of TRI reporters already use TRI-MEweb, this request largely recognizes and applauds those facilities that already use the application and encourages the remainder of facilities to use TRI-MEweb as well. More information on how to use TRI-MEweb is accessible online at the TRI Web page (*http://www.epa.gov/tri*).

However, EPA recognizes that some facilities will elect not to use TRI-MEweb for RY 2010. For these facilities, EPA will facilitate the reporting and submittal process by providing electronically fillable versions (Fill-and-Print TRI Forms) of the Form R (including Schedule 1) and Form A reporting forms. These Fill-and-Print TRI Forms are accessible online (*http://www.epa.gov/tri*) and will allow facilities to complete forms on a computer by tabbing or clicking to each field within a form, thereby providing a quick and easy method to complete the TRI forms while making the completed forms highly readable.

To reiterate, EPA strongly recommends and requests that facilities use TRI-MEweb to report TRI data; however, if a facility elects not to use TRI-MEweb, EPA requests that the facility complete the appropriate Fill-and-Print TRI Form, obtain the signature of the facility's certifying official, and then mail the form to EPA. Similarly, if a facility prints a blank TRI reporting form instead of completing the form prior to printing it, EPA requests that the facility complete the form by using a typewriter. Facilities that elect to submit paper forms must still ultimately have their respective certifying officials sign their TRI forms by hand.

Facilities that submit trade secret information will continue to submit two versions of the substantiation form and two versions of Form R or Form A —sanitized versions that include the generic chemical name and unsanitized versions that include the trade secret chemical name. Facilities may not use TRI-MEweb to submit trade secret information. However, EPA strongly recommends that facilities that are submitting TRI trade secret information use a computer or typewriter to prepare the sanitized and unsanitized versions of Form R or Form A and use a typewriter to complete the sanitized and unsanitized versions of the substantiation form. Please consult the TRI Web site (*http://www.epa.gov/tri*) and the most recent version of the Toxic Chemical Release Inventory Reporting Forms, and Instructions (RFI), which is accessible at the TRI Web site, for detailed information concerning the submission of trade secret information.

D. Why is EPA making this request?

TRI-MEweb provides useful features that make it easier and quicker for facilities to provide TRI information to EPA. This online application provides validation tools to help ensure facilities provide accurate data and enables EPA to process and release the data faster than when the data are submitted on hard-copy forms. In light of the features and tools TRI-MEweb provides and the prevalence and availability of the Internet, EPA is considering issuing a proposed rule within the next year that would take comment on requiring facilities to utilize electronic reporting for future reporting years (*i.e.,* not before RY 2011).

For facilities that elect not to use TRI-MEweb for RY 2010, EPA is providing, as an interim measure, electronically fillable versions of Form A, Form R, and Form R Schedule 1. The use of these Fill-and-Print TRI Forms should expedite the processing of submittals and prevent some inadvertent transcription errors from entering the TRI database. Specifically, to incorporate paper submissions into the TRI National Database, EPA must first manually transcribe paper submissions into an electronic database. Transcription errors can inadvertently occur during this process; and, because it can be difficult to read handwritten submissions, reports prepared by hand further increase the potential for errors to occur. Requesting facilities to complete electronically fillable TRI reporting forms prior to printing, certifying/signing, and submitting them should facilitate the completion and processing of paper submissions and prevent the introduction of errors arising from unclear handwriting.

E. Does this request address revisions?

Yes, this request also addresses the relatively few facilities who wish to revise TRI data. *EPA strongly encourages facilities to use TRI-MEweb to revise TRI information* associated with a prior reporting year. TRI-MEweb allows a facility to access and revise reports submitted for the five prior years, regardless of whether the facility has previously used TRI-MEweb to submit this information. However, at this point, a facility may still file revision requests using hard-copy forms if desired by using either (1) a photocopy of the original submission or (2) a blank copy of the current year's or applicable year's reporting form.

If a facility wishes to file a revision request by paper, EPA recommends that the facility use the appropriate 2010 TRI reporting form (Form R, Form R Schedule 1, or Form A), since these forms are now available in fill-and-print versions. However, EPA will also accept revisions on the applicable year's reporting form. TRI forms for reporting years prior to RY 2010 are not available in fill-and-print versions; however, if using such forms, EPA strongly encourages facilities to use a typewriter to complete the forms, rather than completing them by hand.

Please consult the most recent version of the RFI, which is accessible at the TRI Web site (*http://www.epa.gov/tri*), for detailed information concerning revisions.

F. Does this request address withdrawals?

Yes, the EPA strongly recommends facilities use TRI-MEweb if requesting the withdrawal of a previous TRI submission. TRI-MEweb allows a facility to access and withdraw reports submitted for the five prior years, regardless of whether the facility has previously used TRI-MEweb to submit this information. Alternatively, a facility may submit a withdrawal request by paper. For detailed instructions concerning withdrawals, please consult the most recent version of the RFI on the TRI Web site (*http://www.epa.gov/tri*).

G. What benefits does TRI-MEweb provide?

EPA requests that facilities use TRI-MEweb because the use of this application should provide benefits by expediting the processing of TRI reports, maximizing data accuracy, and reducing the amount of time it takes EPA to process and make the data available to the public. Achieving these benefits will enhance the public's knowledge about toxic chemical releases and other waste management information covered by the TRI program by helping ensure the timely public availability of accurate TRI data and information.

Appropriately, TRI-MEweb provides useful features and data validation tools that make it easy to submit accurate TRI information to EPA. Benefits include:

- Validation assistance, which prevents facilities from submitting incomplete or invalid information;
- Facility and chemical quick lists feature, which allows users to skip sections of the TRI Form R if they do not apply to the facility;
- Access to the five prior years of reporting data, which enables facilities to check past reporting submissions and revise or withdraw previously submitted information;
- The ability to submit valid chemical data files from third party software using eXtensible Markup Language (XML), which expedites multi-chemical reporting;
- The option to search for publicly owned treatment works (POTWs) and sites that report to EPA under the Resource Conservation and Recovery Act (RCRA) using location parameter data, which facilitates the completion of the off-site transfer location field on the TRI Form R and Form R Schedule 1;
- Preloaded parent company data, which assists facilities in identifying their parent company and helps ensure a facility is accurately matched with its parent company;
- Automatic calculation of Section 8 data on Form R and Form R Schedule 1 based on what a facility enters in Sections 5 and 6, which saves facilities time and prevents inadvertent mistakes;
- Trend reports, which compare current and prior year data to help facilities identify potential errors in reporting; and
- The automatic population of certain data fields based on the facility's TRI submissions from the previous reporting year, thereby expediting the submittal process and minimizing opportunities for inadvertent errors to enter the database.

H. What benefits do electronically fillable forms provide?

For facilities that decline to use TRI-MEweb, EPA believes the use of electronically fillable reporting forms will increase data accuracy and shorten the time it takes the Agency to process TRI reports. Completing forms using a computer before printing the forms or using a typewriter to complete blank forms should reduce the likelihood that inadvertent mistakes could occur while transcribing the data into an electronic database.

I. What benefits should these recommendations produce?

If facilities adhere to this request to use TRI-MEweb, or, alternatively, Fill-and-Print TRI Forms, the likelihood of inadvertent errors occurring during TRI form preparation or processing should be reduced. With the use of these tools, the Agency will be able to more effectively provide the public with access to the latest TRI data on toxic chemical releases and other waste management within communities.

Dated: January 4, 2011.

Robin Gonzalez,

Acting Director, Office of Information Analysis and Access.

[FR Doc. 2011–493 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8994–6]

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 01/03/2011 Through 01/07/2011

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 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 included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register.**

EIS No. 20110000, Final EIS, USFS, CA, Concow Hazardous Fuels Reduction Project, Propose to Reduce Hazardous Forest Fuels, Plus Establish and Maintain Spaces—Defensible Fuel Profile Zones (DFPZs), Feather River Ranger District, Plumas National Forest, Towns of Paradise, Magalia, Concow, Butte County, CA, Wait Period Ends: 02/14/2011, Contact: Carol Spinos 503–532–8932.

EIS No. 20110001, Draft Supplement, APHIS, NY, Bird Hazard Reduction Program, John F. Kennedy International Airport, Gateway National Recreation Area, Jamaica Bay National Wildlife Refudge, Queens County, NY, Comment Period Ends: 02/28/2011, Contact: Martin S. Lowney 518–477–4837.

EIS No. 20110002, Draft EIS, FHWA, PR, Cidra Corridor Study Project, Construction and Operation from Cidra Industrial Street to PR–52, Municipality of Cidra and Cayey, PR, Comment Period Ends: 02/28/2011, Contact: John Simkins 804–775–3342.

EIS No. 20110003, Final EIS, FHWA, UT, Tooele County Midvalley Highway Project, To Address Traffic Congestion on UT–36 and at the I–80/Lake Point interchange through the Year 2030, Funding, Tooele County, UT, Wait Period Ends: 02/14/2011, Contact: Edward Woolford 801–963–0182.

EIS No. 20110004, Draft EIS, NPS, CA, Golden Gate National Recreation Area Project, Proposed Dog Management Plan, Implementation, San Francisco, CA, Comment Period Ends: 04/13/2011, Contact: Shirwin Smith 415–561–4947.

EIS No. 20110005, Final EIS, FHWA, MO, First Tier—Future I–70 Kansas City Metro Project, Proposing to Improve I–70 Corridor from East of the Missouri and Kansas State Line to East of I–470 Interchange, Downtown Central Business Freeway Loop, Kansas City, Jackson County, MO, Wait Period Ends: 02/18/2011, Contact: Peggy Casey 573–636–7104.

EIS No. 20110006, Draft EIS, TVA, AL, Muscle Shoals Reservation Redevelopment, Disposal and Potential Redevelopment Approximately 1, 400 Acres of its Muscle Shoals Reservation, Muscle Shoals, Colbert County, AL, Comment Period Ends: 02/28/2011, Contact: Standford E. Davis 865–632–2915.

EIS No. 20110007, Final Supplement, BLM, NV, Cortez Hills Expansion Project, Updated Information to Refine the Analysis of Specific Air Quality Effects and Dewatering Mitigation Effectiveness, Proposes to Construct and Operate a New Facilities and Expansion of the Existing Open-Pit Gold Mining and Processing Operations, Crescent Valley, Lander and Eureka Counties, NV, Wait Period Ends: 02/14/2011, Contact: Christopher Worthington 775–635–4000.

EIS No. 20110008, Draft EIS, BIA, CA, Big Sandy Rancheria and Casino and Resort Project, Proposing Construct a Gaming and Entertainment Facility, Approval of Lease Agreement Grant, Big Sandy Rancheria Band of Western Mono Indians, East of Friant, Fresno County, CA, Comment Period Ends: 03/28/2011, Contact: Marvin Keller 703–390–6470.

EIS No. 20110009, Final EIS, GSA, DC, Nebraska Avenue Complex Master Plan, Propose to Consolidate Over 28,000 DHS Employees, Location 3801 Nebraska Ave., NW., Washington, DC, Wait Period Ends: 03/01/2011, Contact: Suzanne Hill 202–205–5821.

EIS No. 20110010, Final EIS, USN, CA, Silver Strand Training Complex (SSTC) Project, Proposed Naval Training Activities, Cities of Coronado and Imperial Beach, San Diego County, CA, Wait Period Ends: 02/14/2011, Contact: Amy P. Kelley 619–532–2799.

Amended Notices

EIS No. 20100453, Draft EIS, USACE, 00, Savannah Harbor Expansion Project, Navigation Improvement to the Federal Navigation Channel, Chatham County, GA and Jasper County, SC, Comment Period Ends: 01/25/2011, Contact: William G. Bailey 912–652–5781. Revision to FR Notice 11/26/2010: Extending Comment Period from 01/10/2011 to 01/25/2011.

EIS No. 20100468, Draft EIS, USACE, MS, Mississippi River Gulf Outlet (MRGO) Ecosystem Restoration Study, To Develop a Comprehensive Ecosystem Restoration Plan to Restore the Lake Borgne, Implementation, MS, Comment Period Ends: 02/14/2011, Contact: Tammy Gilmore 504–862–1002. Revision to FR Notice 12/17/2010: Extending Comment Period from 01/31/2011 to 02/14/2011.

EIS No. 20100481, Draft EIS, FERC, CA, Eagle Mountain Pumped Storage Hydroelectric Project, Licensing Application for Eagle Mountain Mine, near the town of Desert Center, Riverside County, CA, Comment Period Ends: 02/14/2011, Contact: Kenneth Hogan 202–502–8434. Revision to FR Notice 12/30/2010: Extending Comment Period from 02/14/2011 to 02/28/2011.

EIS No. 20100485, Final EIS, USFS, CA, Hi-Grouse Project, Proposes to Treat Ponderosa Pine and Mixed Conifer Stands to Improve Long-Term Forest Health and Reduce Fuels within the Goosenest Adaptive Management Area, Goosenest Ranger District, Klamath National Forest, Siskiyou Co, CA, Wait Period Ends: 02/07/2011, Contact: Wendy Coats 530–841–4470 Revision to FR Notice 01/07/2011: Correction to Wait Period from 02/02/2011 to 02/07/2011.

Dated: January 11, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–767 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8994–7]

Amended Environmental Impact Statement Filing System Guidance for Implementing 40 CFR 1506.9 and 1506.10 of the Council on Environmental Quality's Regulations Implementing the National Environmental Policy Act

1. Introduction

On October 7, 1977, the Council of Environmental Quality (CEQ) and the Environmental Protection Agency (EPA) signed a Memorandum of Agreement (MOA) that allocated the responsibilities of the two agencies for assuring the government-wide implementation of the National Environmental Policy Act of 1969 (NEPA). Specifically, the MOA transferred to EPA the administrative aspects of the environmental impact statement (ElS) filing process. Within EPA, the Office of Federal Activities has been designated the official recipient in EPA of all EISs. These responsibilities have been codified in CEQ's NEPA Implementing Regulations (40 CFR Parts 1500–1508), and are totally separate from the substantive EPA reviews performed pursuant to both NEPA and Section 309 of the Clean Air Act.

Under 40 CFR 1506.9, EPA can issue guidelines to implement its EIS filing responsibilities. The purpose of the EPA Filing System Guidelines is to provide guidance to Federal agencies on filing EISs, including draft, final, and supplemental EISs. Information is provided on: (1) Where to file EISs; (2) the number of copies required; (3) the steps to follow when a Federal agency is adopting an EIS, or when an EIS is withdrawn, delayed or reopened; (4) public review periods; (5) issuance of notices of availability in the **Federal Register**; and (6) retention of filed EISs. EPA's current EIS filing guidelines were published in the **Federal Register** on March 7, 1989.

The guidelines published today update the previous guidelines, modify the number and format of the EISs to be filed, and provide specific guidelines for EIS filing during Continuity of Operations Plan (COOP) events. Additionally, we are soliciting input from federal agencies, other stakeholders, and the public on a series of questions that will be used to make further modifications to the EIS filing process in the future.

2. Purpose

Pursuant to 40 CFR 1506.9 and 1506.10, EPA is responsible for administering the EIS filing process, and can issue guidelines to implement those responsibilities. The process of EIS filing includes the following: (1) Receiving and recording of the EISs, so that information in them can be incorporated into EPA's computerized data base; (2) establishing the beginning and ending dates for comment and review periods for draft and final EISs, respectively; (3) publishing these dates in a weekly Notice of Availability (NOA) in the **Federal Register**; (4) retaining the EISs in a central repository; and (5) determining whether time periods can be lengthened or shortened for "compelling reasons of national policy."

Under 40 CFR 1506.9, lead agencies are responsible for distributing EISs, and for providing additional copies of already distributed EISs, to the interested public for review. However, EPA will assist the public and other Federal agencies by providing agency contacts on, and information about, EISs.

3. Filing Draft, Final, and Supplemental EISs

Federal agencies are required to prepare EISs in accordance with 40 CFR part 1502, and to file the EISs with EPA as specified in 40 CFR 1506.9. Federal agencies file an EIS by providing EPA with four copies of the complete EIS, including appendices. At least one copy of the entire EIS must be a paper copy; the remaining three (3) copies can be on appropriate electronic storage devices—*e.g.,* compact discs (CDs), USB flash drives, or memory cards. Please note that if a Federal agency prepares an abbreviated Final EIS (as described in 40 CFR 1503.4(c)), it should include copies of the Draft EIS when filing the Final EIS.

To file an EIS by using the U.S. Postal Service (including USPS Express Mail), please use the following address:

U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Mail Code 2252A, Ariel Rios Building (South Oval Lobby), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

To file an EIS in person or by commercial express service (including Federal Express or UPS), please use the following address:

(If the documents are to be hand-delivered, you will need to ask the security guards to phone our office at (202) 564–5400, so you can be escorted to the EIS Filing Section.)

U.S. Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Room 7220, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

Telephone inquiries can also be made to: (202) 564–1399 or (202) 564–7146.

EPA encourages Federal agencies to make their EISs available on the internet. Those that do should send EPA a copy of the Web address (*i.e.,* URL) for the document. The appropriate information should be e-mailed to: *EIS–Filing@epa.gov* concurrent with filing the EIS as required above.

The EISs must be filed no earlier than they are transmitted to commenting agencies and made available to the public (40 CFR 1506.9). This will assure that the EIS is received by all interested parties by the time EPA's NOA appears in the **Federal Register**, and, therefore, allows for the full minimum comment and review periods.

If EPA receives a request to file an EIS and transmittal of that EIS is not complete, it will not publish a NOA in the **Federal Register** until assurances have been given that the transmittal process is complete. Similarly, if EPA discovers that a filed EIS has not been transmitted, EPA will issue a notice with the weekly Notices of Availability retracting the EIS from public review of the EIS until the transmittal process is completed. Once the agency has fulfilled the requirements of 40 CFR 1506.9, and has completed the transmittal process, EPA will reestablish the filing date and the minimum time period, and will publish this information in the next NOA.

Requirements for circulation of EISs appear in 40 CFR 1502.19. Please note that the four EISs submitted to the Office of Federal Activities are only for filing purposes; agencies will need to send a copy(s) of the EIS directly to the appropriate EPA Regional Office for review and comment in accordance with EPA's responsibilities under Section 309 of the Clean Air Act.

EPA must be notified (by letter or email) when a Federal agency adopts an EIS in order to commence the appropriate comment or review period. If a Federal agency chooses to adopt an EIS written by another agency, and it was not a cooperating agency in the preparation of the original EIS, the EIS must be re-circulated and filed with EPA according to the requirements set forth in 40 CFR 1506.3(b). In turn, EPA will publish a NOA in the **Federal Register** announcing that the document will have an appropriate comment or review period. When an agency adopts

an EIS on which it served as a cooperating agency, the document does not need to be circulated for public comment or review; it is not necessary to file the EIS again with EPA. However, EPA should be notified in order to ensure that the official EIS record is accurate. EPA will publish an amended NOA in the **Federal Register** that states that an adoption has occurred. This will not establish a comment period, but will complete the public record.

EPA should also be notified of all situations where an agency has decided to withdraw, delay, or reopen a review period on an EIS. All such notices to EPA will be reflected in EPA's weekly Notices of Availability published in the **Federal Register**. In the case of reopening EIS review periods, the lead agency should notify EPA as to what measures will be taken to ensure that the EIS is available to all interested parties. This is especially important for EIS reviews that are being reopened after a substantial amount of time has passed since the original review period closed.

Once received by EPA, each EIS is stamped with an official filing date and checked for completeness and compliance with 40 CFR 1502.10. If the EIS is not "complete" (*i.e.,* if the documents do not contain the required components), EPA will contact the lead agency to obtain the omitted information or to resolve any questions prior to publishing the NOA in the **Federal Register**.

Agencies often publish (either in their EISs or individual notices to the public) a date by which all comments on an EIS are to be received; such actions are encouraged. However, agencies should ensure that the date they use is based on the date of publication of the NOA in the **Federal Register**. If the published date gives reviewers less than the minimum review time computed by EPA, EPA will send the agency contact a letter explaining how the review period is calculated and the correct date by which comments are due back to the lead agency. This letter also encourages agencies to notify all reviewers and interested parties of the corrected review periods.

4. EIS Filing Procedure for COOP Events

In order to ensure official filing of EISs in the event of a COOP event, when EISs cannot be physically delivered to EPA, Federal agencies will need to send EPA a copy of the EIS cover sheet to the email address identified above. In turn, EPA will use the cover sheet information to publish the weekly EIS NOA in the **Federal Register**.

During the COOP event, filing agencies should not submit the four copies of the EIS to the EPA. However, once the COOP event is over, filing agencies will have 14 days to submit the four copies of all EISs filed during the event to the EPA's Filing Section. If EPA does not receive the four copies of the EIS filed during the COOP event within 14 days, it will publish a notice in the **Federal Register** retracting the NOA for that EIS.

5. Notice in the *Federal Register*

EPA will prepare a weekly report of all EISs filed during the preceding week for publication each Friday under a NOA in the **Federal Register**. If the Friday is a Federal holiday the publication will be on Thursday. At the time EPA sends its weekly report for publication in the **Federal Register**, the report will also be sent to the CEQ. Amended notices may be added to the NOA to include corrections, changes in time periods of previously filed EISs, withdrawals of EISs by lead agencies, and retraction of EISs by EPA.

6. Time Periods

The minimum time periods set forth in 40 CFR 1506.10 (b), (c), and (d) are calculated from the date EPA publishes the NOA in the **Federal Register**. Comment periods for draft EISs, draft supplements, and revised draft EISs will end 45 calendar days after publication of the NOA in the **Federal Register**; review periods for final EISs and final supplements will end 30 calendar days after publication of the NOA in the **Federal Register**. If a calculated time period would end on a non-working day, the assigned time period will be the next working day (*i.e.,* time periods will not end on weekends or Federal holidays). While these time periods are minimum time periods, a lead agency may establish longer time periods. If the lead agency employs a longer time period, it must notify EPA of the extended time period when either filing the EIS or when the lead agency extends the time period.

It should be noted that 40 CFR 1506.10(b) allows for an exception to the rules of timing. An exception may be made in the case of an agency decision which is subject to a formal internal appeal. Agencies should assure that EPA is informed so that the situation is accurately reflected in the NOA.

Moreover, under 40 CFR 1506.10(d), EPA has the authority to both extend and reduce the time periods on draft and final EISs based on a demonstration of "compelling reasons of national policy." A lead agency request to EPA to reduce time periods or another Federal agency (not the lead agency) request to formally extend a time period should be submitted in writing to the Director, Office of Federal Activities, and outline the reasons for the request. EPA will accept telephone requests; however, agencies should follow up such requests in writing so that the documentation supporting the decision is complete. A meeting to discuss the consequences for the project and any decision to change time periods may be necessary. For this reason, EPA asks that it be made aware of any intent to submit requests of this type as early as possible in the NEPA process. This is to prevent the possibility of the time frame for the decision on the time period modification from interfering with the lead agency's schedule for the EIS. EPA will notify CEQ of any reduction or extension granted.

7. Retention

Filed EISs are retained in the EPA Office of Federal Activities for a period of two years and are made available to office staff only. After two years the EISs are sent to the National Records Center. After a total of twenty (20) years the EISs are transferred to the National Archives Records Administration (NARA).

8. Soliciting Comments on Future Updates of the EIS Filing Guidelines

In addition to the modifications to the filing guidelines outlined herein, EPA is considering additional modifications that may lead to the implementation of an electronic EIS filing process. With that in mind, EPA is soliciting comments from Federal agencies, other stakeholders and the public on the following questions.

For Federal Agencies

1. Does your agency make its Draft, Final, and Supplemental EISs available for public review on the Internet?
2. If so, how long do the Draft, Final, and Supplemental EISs remain available for review on the Internet?
3. In a related matter, does your agency mandate how long EISs must be available for public review?
4. If so, how long is that period?
5. Also, does your agency mandate how long its EISs must be retained as official agency records?
6. If so, how long is that period?

For Stakeholders and the Public

1. At some point in the future, CEQ and EPA may eliminate the publication of weekly Notices of Availability for EISs in the **Federal Register** in favor of a central repository on the Internet

(possibly on EPA's Web site). Would you find this approach more or less useful than the current process?

2. Do you foresee any problems/issues with reviewing EISs that are made available only on the Internet?

3. In your opinion, how long should EISs remain accessible to the public?

Please submit your responses to the above questions to: Robert Hargrove, Director, NEPA Compliance Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (2252A), Washington, DC 20460; or *hargrove.robert@epa.gov,* by COB February 28, 2011.

Dated: January 11, 2011.

Susan E. Bromm,

Director, Office of Federal Activities.

[FR Doc. 2011–758 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9252–9]

Notice of a Project Waiver of Section 1605: (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Inland Empire Utilities Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) (manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality) to the Inland Empire Utilities Agency (IEUA), a Clean Water State Revolving Fund (CWSRF)/ARRA loan recipient, for the purchase of Air Release Vacuum (ARV) Valves manufactured by A.R.I. in Israel, for Project #5176–140 funded by the California CWSRF/ARRA Loan #08–851. This is a different project than Project #5176–110/5176–130 which was previously issued a waiver for this same product. The IEUA indicates that the design for the Church Street lateral project includes A.R.I. valves, which are the standard air relief structures used within the regional pipeline system, and that currently there is not a comparable domestic equivalent that meets the IEUA specifications. This is a project-specific waiver and only applies to the use of the specified product for the ARRA funded project being proposed. Any other ARRA project that may wish to use the same product must apply for a separate waiver based on project-specific circumstances. The Assistant Administrator of the Office of Administration and Resources Management has concurred with this decision to make an exception under section 1605(b)(2) of ARRA.

DATES: *Effective Date:* November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Abimbola Odusoga, Environmental Engineer, Water Division, Infrastructure Office (WTR–4), (415) 972–3437, U.S. EPA Region 9.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Sections 1605(c) and 1605(b)(2), EPA hereby provides notice it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the IEUA for the acquisition of the ARV valves manufactured in Israel by A.R.I. The head of each federal agency is authorized to issue project waivers pursuant to Section 1605(b) of ARRA. Section 1605(a) of the ARRA requires that none of the funds appropriated or otherwise made available by the ARRA may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Pursuant to Section 1605(b), a waiver from this requirement may be provided if EPA determines: (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

A Delegation of Authority Memorandum was issued by the EPA Administrator on March 31, 2009 which provided EPA Regional Administrators with the authority to issue waivers to Section 1605(a) of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual recipients of ARRA financial assistance.

The IEUA provides drinking water and waste water treatment services to municipalities in the Chino Basin. The Church Street lateral project consists of approximately 4,200 linear feet of 12-inch diameter recycled water pipeline that will convey recycled water to serve customers in the 1430 and 1630 pressure zones. Project specifications provided by the applicant state that acceptable products are A.R.I. Flow Control Accessories, Ltd. (Model D–060) or an approved equal.

The functional justification for these specifications advanced by the IEUA was that the IEUA had, in years prior to the enactment of ARRA, made the ARI valves their standard air relief structures used within the regional pipeline system based on the IEUA's determination that these valves had a superior design, functionality, and ease of maintenance. Specifically:

- ARI combination valves (D–060's) have the air release on the top of the valve, whereas alternative valves have the air release on the side. A side release creates an internal air pocket on the valve, which allows the rubber seal for the vacuum component to dry out and leak over time.
- The 316SS float for the ARI vacuum component stops against a 316SS ring. The alternative valves have a float that stops against a flat rubber seal on the top of the valve, and constant pounding during closure tends to crack the seal and cause leaks.
- The ARI valves are half the weight and size of the alternative valves, which makes installation and maintenance easier. Also, as the valves are smaller, the enclosures for the valves are less expensive.

The consequences of finding the IEUA's specifications not justified would include the following:

- Additional design costs would be incurred to change all ARV valves, including re-calculating the size of the valves based on the competitors design criteria, modifying valve and enclosure details, and modifying the pipeline profiles to accommodate larger valves. Alternative ARV valves that must be buried would require lowering the pipeline depth several feet on each side of the valves to accommodate a deeper valve vault.
- Construction costs would be higher due to the increase in valve sizes, larger enclosures, and a deeper pipeline. The pricing through the change order process would be significantly higher than prices for a competitive bid. The cost for the material and installation of the valves is approximately $198,708. If the ARI valves are replaced with alternative valves, the estimated cost for the material and installation would be approximately $100,000 more.
- IEUA staff would have to be trained on the different types of valves installed and additional spare parts would need to be ordered and stocked. Since the IEUA has moved forward with implementing the ARI valves as the

standard air relief structure, all valves that do not meet this standard would need to be replaced.

Use of alternative valves that do not meet the IEUA's specifications would thus require a substantial redesign of, delay in, and higher costs for the project. Because of the IEUA's current, extensive installations of ARI valves, the use of alternative, incompatible valves would impose continuing high costs into the future to change spare parts and staff training in operations and maintenance, as well as in inferior performance of the alternative valves. Procurement of alternative valves would be inconsistent with basic principles of sustainable infrastructure and effective asset management that EPA has consistently promoted. For all these reasons, EPA finds that the IEUA's specifications for these ARV valves were justified.

EPA also conducted research to find potential domestic manufacturers who can supply ARV valves that meet IEUA's technical specifications. Five domestic manufacturers of ARV valves were identified by the applicant. EPA's national contractor contacted the domestic manufacturers and inquired as to whether their products could meet the IEUA's specifications. All five manufacturers indicated that they could provide similar products, but could not meet all of the IEUA's specifications, particularly with regard to manufacturing materials and product design.

Based on these findings, EPA concludes the IEUA's claim that there are no known American manufacturers of ARV valves meeting the IEUA's specifications is supported by the available information.

The April 28, 2009 EPA Memorandum for implementation of the ARRA Buy American provisions of P.L. 111–5, states the quantity of iron, steel, or relevant manufactured good is "reasonably available" if it is available at the time and place needed, and in the proper form or specification as specified in the project plans and design. The IEUA's waiver request articulates a reasonable and appropriate basis for choosing the type of technology it chose for this project in environmental objectives and performance specifications. Further, it provides sufficient documentation to conclude the relevant manufactured goods are not produced in the United States of a satisfactory quality to meet its technical specifications. The IEUA has incorporated specific technical design specifications for the proposed project based on their needs and provided information to the EPA indicating there are currently no ARV valves manufactured in the United States that have equivalent product specifications. The IEUA has also provided certification indicating there are no systems of comparable quality available from a domestic manufacturer to meet its specifications. Based on additional inquiry by EPA's national contractor, there do not appear to be other ARV valves available to meet the IEUA's specifications.

EPA has also evaluated IEUA's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver *is* reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says "the award official *may* deny the request." For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet IEUA's project specification for these ARV valves. The waiver request was submitted after the contract date due to a realignment of a portion of the project which was discovered in April, 2010. This realignment led to a project redesign which wasn't completed until May 26, 2010, thus leading to the waiver request on July 15, 2010. Although it was known that ARV valves would be needed for this project, it was unknown how many would be needed and the associated cost until after the realignment. There is no indication that IEUA failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider IEUA's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by IEUA and no loss to the government due to the late request.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay shovel ready projects by requiring entities, like the IEUA, to revise their design and potentially choose a more costly and less efficient project. The imposition of ARRA Buy American requirements on such projects eligible for CWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. Further delay of this project would contravene the most fundamental economic purposes of the ARRA: To create or preserve jobs in the United States.

The EPA Region 9 Water Division, Office of Regional Counsel, EPA's Buy American consultant, and EPA's Office of Administration and Resource Management have reviewed this waiver request and have determined the supporting documentation provided by the IEUA is sufficient to meet the criteria listed under ARRA Section 1605(b) (2) and the EPA April 28, 2009, memorandum for implementation of ARRA Buy American provisions of Public Law 111–5.

Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the IEUA is hereby granted a waiver from the Buy American requirements of Sections 1605(a) of Public Law 111–5, for the purchase of the A.R.I. valves, specified in the IEUA's request of July 21, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under Section 1605(b)(2).

Authority: Public Law 111–5, Section 1605.

Dated: November 30, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Pacific Southwest, Region 9.

[FR Doc. 2011–754 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9252–8]

Notice of a Project Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the Lake County Special Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA is hereby granting a project waiver of the Buy American

requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) (manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality) to the Lake County Special Districts (Lake County), California for the Kelseyville Wastewater Treatment Plant project. Lake County indicates that the design for the Kelseyville project (Project #4593–110 funded by the California Clean Water State Revolving Fund (CWSRF) ARRA Loan #08–821) requires check valves capable of performing under high pressure at a wastewater effluent pump station. Lake County is receiving this waiver to purchase Noreva V625 non-slam check valves for this purpose. This waiver applies only to this project. Other ARRA projects that wish to use the same product must apply for a separate waiver based on their project-specific circumstances. The Assistant Administrator of the Office of Administration and Resources Management has concurred with this decision to make an exception under section 1605(b)(2) of ARRA.

DATES: *Effective Date:* November 30, 2010.

FOR FURTHER INFORMATION CONTACT: Abimbola Odusoga, Environmental Engineer, U.S. EPA Region 9, Water Division (WTR–4), (415) 972–3437.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Sections 1605(c) and 1605(b)(2), EPA hereby provides notice it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to Lake County for the acquisition of V625 non-slam check valves by foreign manufacturer, Noreva. Section 1605(a) of the ARRA requires that none of the funds appropriated or otherwise made available by the ARRA may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Pursuant to Section 1605(b), the head of each federal agency is authorized to issue a waiver from the requirements of Section 1605(a) for a specific project (project waiver) provided the agency determines: (1) Applying these requirements would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron, steel, and the relevant manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The EPA Administrator signed a memorandum, dated March 31, 2009, delegating authority to Regional Administrators to issue project waivers within the geographic boundaries of their respective regions and with respect to requests by individual recipients of ARRA financial assistance.

The Kelseyville wastewater treatment project will enhance the reliability of the wastewater treatment process to better serve the Kelseyville community, which has been classified as a disadvantaged community. According to the applicant, the valves will be installed on a 15,000 foot, 6-inch effluent line under high pressure (515 feet of static head). Check valve failure could result in thousands of gallons of backflow at high velocities causing flooding in the pump station, overflowing and spilling of effluent. As the project site is located in a remote location, an operator will not be present at all times, thus increasing the need for high quality, reliable check valves. According to Lake County, they require a product without external adjustments or devices such as levers, weights, springs, shock absorbers, or speed controls. The absence of these features reduces concerns of accidental operator error or vandalism in the remote location.

The applicant included the following specifications in its contract documents:

- Type V625 non-slam check valves;
- Axial-flow, quick-closing, non-slam design, spring-loaded annular or circular and hardened metal-to-metal seat;
- ANSI Class 300, wafer body to fit between ANSI B16.5 flanges, rated working pressure 720 psig at 100 degrees F;
- Cast CF8M stainless steel body and disc, type 316 stainless steel trim;
- Maximum pressure loss of 1 psi at 900 gpm; and
- Valves to be used in combination with a hydropneumatic surge tank.

Upon review, two manufacturers appeared to have products that met most of the project specification requirements. One of these manufacturers was contacted by Lake County and provided a written statement indicating that the use of the hydropneumatic surge tank would preclude the use of their valves in this installation. The second manufacturer was contacted by the review team. The second manufacturer failed to meet the project specification requirements for the following reasons:

- The specification lists a maximum pressure loss of 1 psi at 900 gpm, whereas the head loss on the domestic valves is 3 psi; and
- The specification lists a hardened metal-to-metal seat. The domestic products were unable to fulfill this requirement.

Based on these findings, EPA concurs with Lake County's claim that no known domestic manufacturers of V625 non-slam check valves are available to satisfy Lake County's specifications.

The April 28, 2009, EPA memorandum for implementation of the ARRA Buy American provisions of Public Law 111–5 states the quantity of iron, steel, or relevant manufactured good is "reasonably available" if it is available at the time and place needed, and in the proper form or specification as specified in the project plans and design. Lake County's waiver request articulates a reasonable and appropriate basis for selecting the type of technology it chose for this project in environmental objectives and performance specifications. Further, it provides sufficient documentation to conclude the relevant manufactured goods are not produced in the United States of a satisfactory quality to meet its technical specifications. Lake County has incorporated specific technical design specifications for the proposed project based on their needs and has provided information to the EPA indicating there are currently no V625 non-slam check valves manufactured in the United States that have equivalent product specifications. Based on inquiry by EPA's national contractor, there do not appear to be other V625 non-slam check valves available to meet Lake County's specifications.

EPA has also evaluated Lake County's request to determine if its submission is considered late or if it could be considered timely, as per the OMB Guidance at 2 CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contract as "late" if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver *is* reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says "the award official *may* deny the request." For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by

the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet Lake County's project specification for these check valves capable of performing under high pressure. Due to a delay in the construction of this project, Lake County was not made aware that there are no domestic equivalents for the valves in question until well after the contract was signed. There is no indication that Lake County failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products available that meet the project specifications. EPA will consider Lake County's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by Lake County and no loss by the government due to the late request.

Furthermore, the purpose of the ARRA is to stimulate economic recovery by funding current infrastructure construction, not to delay shovel ready projects by requiring entities, like Lake County, to revise their design and potentially choose a more costly and less efficient project. The imposition of ARRA Buy American requirements on such projects eligible for CWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. Further delay of this project would contravene the most fundamental economic purposes of the ARRA: To create or preserve jobs in the United States.

EPA Region 9's Water Division and Office of Regional Counsel, EPA's Buy American consultant, and EPA's Office of Administration and Resource Management have reviewed this waiver request and have determined the supporting documentation provided by Lake County is sufficient to meet the criteria listed under ARRA Section 1605(b)(2) and the EPA April 28, 2009, memorandum for implementation of ARRA Buy American provisions of Public Law 111–5.

Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, Lake County is hereby granted a waiver from the Buy American requirements of Sections 1605(a) of Public Law 111–5, for the purchase of Noreva V625 non-slam check valves, specified in Lake County's request of June 8, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under Section 1605(b)(2).

Authority: Public Law 111–5, Section 1605.

Dated: November 30, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Pacific Southwest, Region 9.

[FR Doc. 2011–752 Filed 1–13–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 10–2320]

Video Programming and Emergency Access Advisory Committee; Announcement of Establishment and Members; and Announcement of Date of First Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the establishment and appointment of members of the Video Programming and Emergency Access Advisory Committee ("Committee" or "VPEAAC") of the Federal Communications Commission ("Commission"). This document also announces the change of the Committee's popular name to the Video Programming Accessibility Advisory Committee ("VPAAC"). The Commission further announces the date of the Committee's first meeting.

DATES: The Committee was established on December 7, 2010. The first meeting of the Committee will take place on Thursday, January 13, 2011, 9 a.m. to 5 p.m., at Commission Headquarters.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Pam Gregory, Consumer and Governmental Affairs Bureau, 202–418–2498 (voice), 202–418–1169 (TTY), or Pam.Gregory@fcc.gov (e-mail); or Alison Neplokh, Media Bureau, 202–418–1083, *Alison.Neplokh@fcc.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA–2320, Chairman Julius Genachowski announced the establishment and appointment of members of the VPEAAC, following a nominations period that closed on November 1, 2010. This Committee is established in accordance with the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260 ("Communications and Video Accessibility Act" or "CVAA"). To avoid confusion with the Emergency Access Advisory Committee (a second committee created under the CVAA), the Video Programming and Emergency Access Advisory Committee will commonly be referred to as the Video Programming Accessibility Advisory Committee (VPAAC). All meetings of the VPAAC shall be open to the public. Its purpose is to develop recommendations on closed captioning of Internet programming previously captioned on television; the compatibility between video programming delivered using Internet protocol and devices capable of receiving and displaying such programming in order to facilitate access to captioning, video description and emergency information; video description and accessible emergency information on television programming delivered using Internet protocol or digital broadcast television; accessible user interfaces on video programming devices; and accessible programming guides and menus. Within six (6) months of its first meeting, the VPAAC shall submit recommendations concerning the provision of closed captions for Internet-delivered video programming and the ability of video devices to pass through closed captions contained on Internet-based video programming. By April 8, 2012, the VPAAC shall submit recommendations on the remaining issues listed above. At the VPAAC's first meeting, the Committee will be divided into four working groups, each of which will be assigned specific tasks related to the Committee's purposes.

The Chairman of the Commission is appointing forty-five (45) members of the VPAAC. Of this number, ten (10) represent interests of persons with disabilities; six (6) represent interests of closed captioning and video description providers; eleven (11) represent device manufacturers; four (4) represent Internet and software companies; two (2) represent broadcasters; and twelve (12) represent video programming distributors and providers. The VPAAC's membership meets the CVAA's goals of assembling a Committee that has the technical knowledge and engineering experience needed to meet the tasks assigned. All appointments are effective immediately and shall terminate December 7, 2012, or when the Committee is terminated, whichever is earlier.

The membership of the VPAAC, designated by organization or affiliation, as appropriate, is as follows:

- Adobe, Inc.—Andrew Kirkpatrick
- Alliance for Telecommunications Industry Solutions—Phyllis Anderson

- American Council of the Blind—Melanie Brunson
  - Marlaina Lieberg, Pratik Patel—Alternates
- American Foundation for the Blind—Bradley Hodges
- American Institute for the Prevention of Blindness—Louis Herrera
- AT&T—Leonardo Velazquez
- Audio Description Associates—Joel Snyder
- Bright House Networks—Jeffrey Cantrell
- Broadcast Interactive Media—Timur Yarnall
- Caption Colorado—Gary Rulh
  - Chris Crosgrove—Alternate
- CBS—Mark Turits
- Center for Hearing and Communication—Joseph Gordon
- Chicago Lighthouse Service—Bill Jurek
- Comcast Cable—Charlie Kennamer
- Computer Prompting and Captioning—Sidney Hoffman
- Consumer Electronics Association—Brian Markwalter
- Cox Communications—Steve Watkins
- Digital Media Association—Lee Knife
- DirecTV—Robert Gabrielli
- Disney ABC Cable Networks—Vince Roberts
- EchoStar Technologies—John Card
- Google—Naomi Black
  - Ken Harrenstein—Alternate
- Hearing Loss Association of America—Lise Hamlin
- IDEAL Group—Steve Jacobs
- Iowa Radio Reading Service—Mary Evans
- LG Electronics/Zenith Electronics—Wayne Luplow
  - Tim Laud—Alternate
- Microsoft—Ann Marie Rohaly
  - Laura Ruby—Alternate
- Modulation Sciences, Inc.—Eric Small
- Motion Picture Association of America—Van Stevenson
- Motorola—Jeffrey Newdeck
- National Association of Broadcasters—Kelly Williams
- National Association of the Deaf—Shane Feldman
  - Jeff Rosen, Kelby Brick—Alternates
- National Cable and Telecommunications Association—Andy Scott
  - Diane Burstein, Jill Luckett—Alternates
- National Captioning Institute—Beth Nubbe
- Northern Virginia Resource Center for Deaf and Hard of Hearing Persons—Cheryl Heppner
- Research in Motion—Greg Fields
- Rovi Corporation—Adam Powers
  - Adam Goldberg—Alternate
- Sony Electronics—Paul Hearty
  - Mark Eyer—Alternate
- Telecommunications for the Deaf and Hard of Hearing, Inc.—Claude Stout
- Turner Broadcasting System—Clyde Smith
- Verizon Technology Organization—Samuel Olu Akiwimi-Assani
  - Jimmy Ho—Alternate
- Viacom—Glenn Goldstein
  - Christopher Heaton—Alternate
- VITAC—Tim Taylor
  - Bob Beyer, Heather York—Alternates
- WGBH National Center on Accessible Media—Larry Goldberg
- World Wide Web Consortium—Judy Brewer

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–821 Filed 1–13–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 3:30 p.m. on Tuesday, January 18, 2011, to consider the following matters:

SUMMARY AGENDA: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule to Amend FDIC Deposit Insurance Regulations to Include Interest on Lawyers Trust Accounts in Temporary Coverage for Noninterest-bearing Transaction Accounts.

Memorandum and resolution re: Proposed Budget Reduction.

DISCUSSION AGENDA:

Enhanced Compensation Structure Reporting § 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Memorandum and resolution re: Final Rule Implementing Certain Orderly Liquidation Authority Provisions of the Dodd-Frank Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: January 11, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–833 Filed 1–12–11; 11:15 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the Federal Register) may be relied upon as "of record" notice that the Corporation has been appointed receiver

for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: January 10, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10325	First Commercial Bank of Florida	Orlando	FL	1/7/2011
10326	Legacy Bank	Scottsdale	AZ	1/7/2011

[FR Doc. 2011–761 Filed 1–13–11; 8:45 am]

BILLING CODE P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

TIME AND DATE: 10 a.m., Thursday, January 20, 2011.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Ames Construction, Inc.,* Docket No. WEST 2009–0693–M. (Issues include whether a non-production operator may be strictly liable for a violation occurring in an area which the operator allegedly controls or supervises.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 2011–896 Filed 1–12–11; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 1, 2011.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *The Coffey Family Control Group, which consists of Avery Coffey; Carla Coffey; Briley N. Coffey; James Coffey; Harold P. Coffey, Jr.; Jill Coffey; Brooke Coffey; James Benjamin Coffey; Jentrie Coffey; and Sue Werner, all in Hickman, Kentucky; and Patsy Campbell,* Fulton, Kentucky; to retain control of Citizens Bancorp of Hickman, Inc., and thereby indirectly retain control of The Citizens Bank, both in Hickman, Kentucky.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Noah W. Wilcox, as an individual and as trustee of The Noah W. Wilcox Trust,* both in Grand Rapids, Minnesota, and both as members of The Wilcox Family Control Group; to acquire control of Wilcox Bancshares, Inc., and thereby indirectly acquire control of Grand Rapids State Bank, both in Grand Rapids, Minnesota.

Board of Governors of the Federal Reserve System, January 11, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–751 Filed 1–13–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2011.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *M&T Bank Corporation, Buffalo, New York;* to acquire 100 percent of the voting shares of Wilmington Trust Corporation, and thereby indirectly acquire 100 percent of the voting shares

of Wilmington Trust Company, both of Wilmington, Delaware.

In connection with this application, M&T Bank Corporation has applied to acquire Camden Partners Holdings, LLC; Camden Partners Private Equity Advisors, LLC, both of Baltimore, Maryland; Cramer Rosenthal McGlynn, LLC, White Plains, New York; Grant Tani Barash & Altman, LLC, Beverly Hills, California; Rodney Square Management Corp., Wilmington, Delaware; Roxbury Capital Management, LLC, Santa Monica, California; Wilmington Family Office, Inc.; Wilmington Trust Conduit Services, LLC, both of Wilmington, Delaware; Wilmington Trust FSB, Baltimore, Maryland; Wilmington Trust Fiduciary Services Company, Weehawken, New Jersey; Wilmington Trust Investment Management, LLC, Wilmington, Delaware; and thereby engage in (1) operating a savings association; (2) operating a nondepository trust company; (3) extending credit and servicing loans; (4) activities related to extending credit; (5) providing trust, fiduciary, and custody services; (6) acting as an investment advisor; (7) providing tax planning services; (8) securities brokerage services; (9) providing management consulting and employee benefits consulting services; (10) financing and investing in community development projects; and (11) selling U.S. savings bonds and issuing and selling traveler's checks pursuant to sections 225.28(b)(1), (2), (4), (5), (6), (7), (9), (12) and (13) of Regulation Y.

Board of Governors of the Federal Reserve System, January 10, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–698 Filed 1–13–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10102, CMS–2088–92, CMS–10054, and CMS–10343]

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:* National Implementation of Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS); *Use:* The HCAHPS (Hospital Consumer Assessment of Healthcare Providers and Systems) survey is the first national, standardized, publicly reported survey of patients' perspectives of hospital care. Also known as the CAHPS® Hospital Survey, it is a survey instrument and data collection methodology for measuring patients' perceptions of their hospital experience. While many hospitals have collected information on patient satisfaction for their own internal use, until HCAHPS there was no national standard for collecting and publicly reporting information about patient experience of care that allowed valid comparisons to be made across hospitals locally, regionally and nationally.

Publicly reported HCAHPS results are based on four consecutive quarters of patient surveys. CMS publishes participating hospitals' HCAHPS results on the Hospital Compare Web site four times a year, with the oldest quarter of patient surveys rolling off as the most recent quarter rolls on. Three broad goals have shaped HCAHPS. First, the survey is designed to produce comparable data on the patient's perspective on care that allows objective and meaningful comparisons between hospitals on domains that are important to consumers. Second, public reporting of the survey results is designed to create incentives for hospitals to improve their quality of care. Third, public reporting serves to enhance public accountability in health care by increasing the transparency of the quality of hospital care provided in return for the public investment. With these goals in mind, the HCAHPS project has taken substantial steps to assure that the survey is credible, useful, and practical. This methodology and the information it generates are made available to the public. *Form Number:* CMS–10102 (OMB#: 0938–0981); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; and Individuals or households; *Number of Respondents:* 2,483,775; *Total Annual Responses:* 2,480,000; *Total Annual Hours:* 289,342. (For policy questions regarding this collection, contact William Lehman at 410–786–1037. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Outpatient Rehabilitation Provider Cost Report utilized by Community Mental Health Centers; *Use:* In accordance with sections 1815, 1833 and 1861 of the Social Security Act, providers of service in the Medicare program are required to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. In addition, 42 CFR 413.20(b) requires that cost reports will be required from providers on an annual basis. Such cost reports are required to be filed with the provider's Fiscal Intermediary (FI)/ Medicare Administrative Contractor (MAC).

The FI/MAC uses the cost report not only to make settlement with the provider for the fiscal period covered by the cost report, but also in deciding whether to audit the records of the provider. *Form Number:* CMS–2088–92 (OMB#: 0938–0037); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 596; *Total Annual Responses:* 596; *Total Annual Hours:* 59,600. (For policy questions regarding this collection, contact Jill Keplinger at 410–786–4550. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Recognition of Payment for New Technology Ambulatory Payment Classification (APC) Groups under the Outpatient Prospective Payment System and Supporting Regulations in 42 CFR, Part 419; *Use:* In the April 7, 2000 final rule first implementing the hospital outpatient prospective payment system (OPPS), we created a set of New Technology ambulatory payment classifications (APCs) to pay for certain new technology services under the OPPS. These APCs are intended to pay

for new technology services that were not covered by the transitional pass-through payments provisions authorized by the Balanced Budget Refinement Act (BBRA) of 1999. Both the New Technology APC provision and the transitional pass-through provisions provide ways for ensuring appropriate payment for new technologies for which the use and costs are not adequately represented in the base year claims data on which the outpatient PPS is constructed.

CMS needs to keep pace with emerging new technologies and make them accessible to Medicare beneficiaries in a timely manner. It is necessary that we continue to collect appropriate information from interested parties such as hospitals, medical device manufacturers, pharmaceutical companies and others that bring to our attention specific services that they wish us to evaluate for New Technology APC payment. We are making no changes to the information that we collect. The information that we seek to continue to collect is necessary to determine whether certain new services are eligible for payment in New Technology APCs, to determine appropriate coding and to set an appropriate payment rate for the new technology service. The intent of these provisions is to ensure timely beneficiary access to new and appropriate technologies. *Form Number:* CMS–10054 (OMB#: 0938–0860); *Frequency:* Annually; *Affected Public:* Private sector business or other for-profits; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 180. (For policy questions regarding this collection contact Christina Smith Ritter at 410–786–4636. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New collection; *Title of Information Collection:* State Plan Preprint for Medicaid Recovery Audit Contractors (RACs); *Use:* Under section 1902(a)(42)(B)(i) of the Social Security Act, States are required to establish programs to contract with one or more Medicaid RACs for the purpose of identifying underpayments and recouping overpayments under the State plan and any waiver of the State plan with respect to all services for which payment is made to any entity under such plan or waiver. Further, the statute requires States to establish programs to contract with Medicaid RACs in a manner consistent with State law, and generally in the same manner as the Secretary contracts with Medicare RACs. State programs contracted with Medicaid RACs are not required to be fully operational until after December 31, 2010. States may submit, to CMS, a State Plan Amendment (SPA) attesting that they will establish a Medicaid RAC program. States have broad discretion regarding the Medicaid RAC program design and the number of entities with which they elect to contract. Many States already have experience utilizing contingency-fee-based Third Party Liability recovery contractors; *Form Number:* CMS–10343 (OMB#: 0938–NEW); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 56. (For policy questions regarding this collection contact Mary Jo Cook at 410–786–3231 or Eva Tetteyfio at 410–786–3653. 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 *February 14, 2011.* OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov*.

Martique Jones,

Director, Regulations Development Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–736 Filed 1–13–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–268 and CMS–10328]

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:* CMS Survey Tool for *http://www.cms.gov* and *http://www.medicare.gov; Use:* The purpose of this submission is to continue to collect information from Internet users as they exit from the Web sites Medicare.gov and CMS.gov. To ensure that we gather information about user reactions to the Web sites, we have developed a survey tool that users can complete when they exit either site or by accessing a link on the bottom bar on the page. The responses on this survey tool will help CMS to make appropriate changes to the Web sites in the future. The survey tool contains questions about the information that visitors are seeking from the sites, the degree to which either site was useful to them, the improvements that they would like to see in the sites, and their general comments. *Form Number:* CMS–R–268 (OMB# 0938–0756); *Frequency:* Yearly; *Affected Public:* Individuals and households, Private sector—Business or other for-profit; *Number of Respondents:* 7,000; *Total Annual Responses:* 9,100; *Total Annual Hours:* 1,167. (For policy questions regarding this collection contact Matthew Aiken at 410–786–1029. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Medicare Self-Referral Disclosure Protocol; *Use:* Section 6409 of the ACA requires the Secretary to establish and post information on the CMS' public Internet Web site concerning a self-referral disclosure protocol (SRDP) that sets forth a process for providers of services and suppliers to self-disclose actual or potential violations of section 1877 of the Act. In addition, section 6409(b) of the ACA gives the Secretary authority to reduce

the amounts due and owing for the violations. This information collection request is necessary in order to inform the public of the process and the types of information needed to participate in the SRDP.

The SRDP is a voluntary self-disclosure instrument that will allow providers of services and suppliers to disclose actual or potential violations of section 1877 of the Act. CMS will analyze the disclosed conduct to determine compliance with section 1877 of the Act and the application of the exceptions to the physician self-referral prohibition. In addition, the authority granted to the Secretary under section 6409(b) of the ACA, and subsequently delegated to CMS, may be used to reduce the amount due and owing for violations. *Form Number:* CMS–10328 (OMB#: 0938–1106; *Frequency:* Once; *Affected Public:* Private Sector, Business and other for-profit and not-for-profit institutions; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 1,175. (For policy questions regarding this collection contact Ronke Fabayo at 410–786–4460. 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 *March 15, 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: January 7, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–737 Filed 1–13–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0021]

Prescription Drug Products Containing Acetaminophen; Actions To Reduce Liver Injury From Unintentional Overdose

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is taking steps to reduce the maximum dosage unit strength of acetaminophen in prescription drug products. This change will provide an increased margin of safety to help prevent liver damage due to acetaminophen overdosing, a serious public health problem. This notice explains the reasons for the reduction in dosage unit strength and describes how FDA is implementing it for approved prescription drug products that exceed the new maximum tablet or capsule strength. FDA is also requiring safety labeling changes, including a new boxed warning, for acetaminophen-containing prescription drug products to address new safety information about the risk of liver damage.

DATES: Sponsors of approved prescription drug products containing more than 325 milligrams (mg) of acetaminophen have until January 14, 2014 to request that FDA withdraw approval of the product's application, after which they may be subject to action by FDA.

FOR FURTHER INFORMATION CONTACT: Faith Dugan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6182, Silver Spring, MD 20993–0002, 301–796–3446.

SUPPLEMENTARY INFORMATION:

I. Acetaminophen Drug Products and Liver Injury

Acetaminophen is the generic name of a drug used in many over-the-counter (OTC) oral pain-relievers such as Tylenol, and in prescription combination drug products such as Vicodin and Percocet. Acetaminophen is one of the most widely used drugs in the United States in both prescription and OTC products. This notice applies only to acetaminophen-containing drug products that are labeled for prescription use and marketed under approved new drug applications (NDAs) or abbreviated new drug applications (ANDAs). OTC acetaminophen drug products are not affected by this notice.[1]

All acetaminophen-containing prescription products are combinations with other drug ingredients, primarily opioids in various strengths. These other drug ingredients include the opioids hydrocodone bitartrate (*e.g.,* Vicodin), oxycodone hydrochloride (*e.g.,* Percocet), codeine phosphate (*e.g.,* Tylenol with Codeine), dihydrocodeine, tramadol hydrocholoride, and pentazocine hydrochloride, as well as butalbital (a barbiturate) and caffeine (a stimulant).[2] General references to "acetaminophen combinations" or "acetaminophen combination products" in this notice refer to all such products. There are no prescription drug products that contain only acetaminophen.

Prescription combination drugs account for approximately 20 percent of the total acetaminophen drug market, and include some of the most widely prescribed and sold prescription drug products in the United States. (The remaining 80 percent of the acetaminophen drug market consists of OTC products.) Acetaminophen-hydrocodone combinations account for more than half of all prescriptions for acetaminophen combination drug products in the United States, and for many years, have also been the most-prescribed products in the U.S. retail market (Ref. 1). Unlike other drugs commonly used to reduce pain and fever (*e.g.,* nonsteroidal anti-inflammatory drugs (NSAIDS) such as aspirin, ibuprofen, and naproxen), at recommended doses acetaminophen

[1] FDA continues to monitor the occurrence of adverse events associated with both prescription and OTC acetaminophen products. Any action relating to additional safety measures for OTC acetaminophen products will be taken separately from this notice, through rulemaking as part of the ongoing OTC monograph proceeding for internal analgesic drug products.

[2] The opioid ingredient propoxyphene has also been widely used in combination with acetaminophen under the brand name Darvocet as well as in many generic products. On November 19, 2010, FDA announced that Darvocet was being voluntarily withdrawn from the market at FDA's request due to significant safety concerns about propoxyphene. FDA also requested that makers of generic propoxyphene-acetaminophen combination products withdraw their products from the market. Additional information about the status of propoxyphene-containing drug products can be found on FDA's Web site at *http://www.fda.gov/Drugs/DrugSafety/PostmarketDrugSafetyInformationforPatientsandProviders/ucm233800.htm.*

does not cause gastro-intestinal discomfort and/or bleeding. However, despite its wide use, long acceptance, and therapeutic utility, acetaminophen does pose risks. Acetaminophen overdose can cause liver damage (hepatotoxicity), ranging in severity from abnormalities in liver function to acute liver failure (ALF), and even death (Ref. 1). Acetaminophen overdose has become the leading cause of ALF as well as a leading cause of death from ALF in the United States (Refs. 2, 3, and 4). Based on extrapolation from regional results in the first population-based study of ALF conducted in the United States, an estimated national total of 1,600 cases of ALF may occur each year (Ref. 3).

Acetaminophen-induced liver injury is caused by the effects of a toxic metabolite of acetaminophen, N-acetyl-p-benzoquinone imine (NAPQI) that is produced when acetaminophen is broken down by the body (Ref. 5). With low doses of acetaminophen, the amount of NAPQI produced is low and an individual's body usually has sufficient intracellular glutathione levels to bind to the NAPQI and prevent toxicity (Ref. 6). With higher acetaminophen levels and greater NAPQI production, NAPQI binds to liver proteins, causing cellular injury that can lead to liver failure and death (Refs. 4 and 7).

The likelihood and severity of liver injury is influenced by the amount of acetaminophen that is ingested and the ability of an individual's liver to effectively remove it from the body. In most cases, glutathione levels are more than sufficient to conjugate the small amount of NAPQI produced by therapeutic doses of acetaminophen (Ref. 6). However, some people may have increased risk for liver injury following exposure to therapeutic doses or overdoses of acetaminophen due to reduced glutathione stores, induced cytochrome P450 enzymatic activity, or states of oxidative stress. Increased risk may be associated with a wide variety of conditions, such as Acquired Immune Deficiency Syndrome, chronic alcoholism, acute excess alcohol use, and use of anticonvulsant or antituberculosis medications (Refs. 8 and 9). Acetaminophen poisoning is treated with the drug N-acetylcysteine (NAC), which helps prevent toxicity by inactivating NAPQI. However, NAC does not reverse liver cell damage that has already occurred (Ref. 10).

The public health burden of acetaminophen-associated overdoses has been estimated using data from a variety of national databases and other resources.[3] A summary of data from four different surveillance systems indicates that there were an estimated 56,000 emergency room visits, 26,000 hospitalizations, and 458 deaths per year related to acetaminophen-associated overdoses during the 1990s (Ref. 10). Within these estimates, unintentional acetaminophen overdose accounted for nearly 25 percent of the emergency department visits, 10 percent of the hospitalizations, and 25 percent of the deaths (Ref. 10).

Prescription products contribute significantly to the toll of liver damage from both unintentional and intentional acetaminophen overdoses. For example, in the study of ALF patients by Larson *et al.,* 63 percent of the unintentionally overdosed subjects and 18 percent of intentionally overdosed subjects had taken prescription acetaminophen combination products prior to injury (Ref. 4). According to data from the Toxic Exposure Surveillance System (now named the National Poison Data System (NPDS)), 30 percent of all acetaminophen-associated calls to poison centers in 2005 involved prescription acetaminophen combination products (41,999 of 138,602 calls). Prescription acetaminophen combination products were involved in approximately 44 percent of acetaminophen-associated calls that resulted in serious injury (1,470 of 3,310 calls) and 48 percent (161 of 333 calls) of acetaminophen-associated calls that resulted in fatalities (Ref. 11).[4]

In addition, there is a high incidence of cases of unintentional acetaminophen overdose, which should be preventable. In a population-based study of ALF conducted in the United States, 45 percent of adult ALF cases were associated with acetaminophen use and 55 percent of those were related to unintentional overdose (Ref. 3). In another study, similarly, approximately half of the cases of acetaminophen-induced ALF were due to unintentional overdose (Ref. 4).

There is no single factor that accounts for the high incidence of unintentional acetaminophen overdose. Multiple distinct factors appear to contribute to the problem, including the following:

- Given the large number and wide array of OTC and prescription acetaminophen products and indications, consumers may unintentionally overdose by taking more than one acetaminophen product at the same time without realizing that acetaminophen is a common ingredient.
- Patients may be unaware that their prescription pain relief products contain acetaminophen because the ingredient is often identified on pharmacy drug containers only as "APAP," an acronym based on the chemical name of acetaminophen (N-acetyl-para-aminophenol), or by an abbreviation such as "ACET." Such terms are not generally understood by the public to mean that a product contains acetaminophen.
- Patients may take more than the maximum number of labeled or prescribed doses seeking additional therapeutic benefit, unaware that they are taking too much acetaminophen.
- Experts agree that taking a large amount of acetaminophen over a short period of time causes liver injury, but a specific threshold dose for toxicity has not been established and may not be the same for all persons. Based on available information, we cannot currently identify all of the factors that might increase an individual's risk of acetaminophen toxicity, particularly at doses near the current recommended total daily dose of 4,000 mg per day (Refs. 5 and 7).
- NAC, the antidote for acetaminophen poisoning, is most effective when given in the first 8 hours after an acute overdose and has been shown to have benefit up to 24 hours and possibly later (Ref. 10). Victims of unintentional acetaminophen overdose may not be treated within that time because the symptoms of liver damage can take several days to emerge, even in severe cases, and are not readily associated by patients or clinicians with acetaminophen poisoning (Ref. 5).
- Patients do not realize that acetaminophen can cause severe liver injury if the recommended dose is exceeded. In 2004, FDA launched a public education program to help inform consumers about the potential for acetaminophen to cause liver injury. Since that time, FDA has provided materials for use in a wide variety of media and tailored for users of both prescription and OTC acetaminophen products. The continued occurrence of liver injury associated with prescription acetaminophen combinations notwithstanding those efforts suggests

[3] These include, among others: Emergency department data from the National Electronic Injury Surveillance System All Injury Program and the National Hospital Ambulatory Medical Care Survey–Emergency Department; hospitalization data from the National Hospital Discharge Survey; and mortality data from the National Multiple Cause of Death File.

[4] The NPDS data include all acetaminophen-related calls, including calls relating to both prescription and OTC products, and calls that do not involve liver damage. "Serious injury" includes, but is not limited to, serious liver damage caused by acetaminophen.

that additional interventions are needed.

II. FDA's Acetaminophen Safety Initiatives

FDA has been working to reduce the incidence of acetaminophen-related liver injury since the early 1990s, when the scope of the problem began to become evident. In addition to the scientific activities described in section I of this document, we have been active in acetaminophen safety education for consumers and health care professionals. In particular, we are currently working with the National Association of State Boards of Pharmacy, to urge state authorities to adopt rules replacing the term "APAP" and other abbreviations with "acetaminophen" on pharmacy containers. Our dedicated Web page on acetaminophen safety provides access to educational information along with links to additional scientific and regulatory resources. This information can be viewed at *http://www.fda.gov/Drugs/DrugSafety/InformationbyDrugClass/ucm165107.htm.*

Most importantly, as the Federal Agency responsible for the science-based regulatory oversight of drug products, we have continued to identify and pursue additional regulatory measures to reduce the risk of acetaminophen-induced liver injury. Rulemaking initiatives to date have focused largely on OTC acetaminophen products under our ongoing monograph proceeding for OTC internal analgesic, anti-inflammatory and antipyretic drug products. In 2002, we conducted a comprehensive review of the available data on acetaminophen and liver injury. The data were presented for consideration by the Non-Prescription Drug Advisory Committee (2002 Advisory Committee) [5] whose members unanimously agreed that the evidence of risk associated with the unintentional overdose of acetaminophen warranted labeling changes.[6] The 2002 Advisory Committee also considered whether a lower dose that would be safe for alcohol users or other sensitive subpopulations could be identified, but concluded that current data were insufficient for this purpose.[7] Based in part on the 2002 Committee's recommendations, in 2009 the Agency issued a new final rule requiring specific liver injury warnings and related labeling for OTC acetaminophen drugs (final rule, 74 FR 19385, April 29, 2009; and technical amendment, 74 FR 61512, November 25, 2009).

In 2007, the Director of FDA's Center for Drug Evaluation and Research (CDER) convened a multidisciplinary working group in CDER to update, review, and report on the full range of medical data and to propose additional regulatory options for both prescription and OTC acetaminophen drug products. On June 29 and 30, 2009, FDA held a joint meeting of the Drug Safety and Risk Management Advisory Committee, the Nonprescription Drugs Advisory Committee, and the Anesthetic and Life Support Drugs Advisory Committee (2009 Advisory Committee) to consider the collected data and related public testimony and make recommendations concerning further regulatory options for both prescription and OTC acetaminophen drugs. Detailed information on the 2009 Advisory Committee's deliberations and the evidence it considered are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/Calendar/ucm143083.htm.* After reviewing and discussing the evidence presented, the 2009 Advisory Committee recommended a range of additional regulatory actions such as adding a boxed warning to prescription acetaminophen products, withdrawing prescription combination products from the market, or reducing the amount of acetaminophen in each dosage unit.[8]

FDA has determined that reducing the dosage unit strength of acetaminophen in prescription products is necessary to reduce the risk of liver injury associated with prescription acetaminophen combinations, and to ensure safe use of acetaminophen combinations. FDA is issuing this notice as the first step towards implementing this change. In deciding to take this step, we considered the 2009 Advisory Committee's recommendations and the Agency's evaluation of the available data on both prescription and OTC products. The data and the 2009 Advisory Committee's recommendations on OTC products are relevant to prescription acetaminophen combinations for several reasons. The mechanism of acetaminophen-related liver injury is the same for both OTC and prescription drug products. In addition, while the range of acetaminophen strengths is much greater for prescription than for OTC products, the most widely used acetaminophen dosage unit in both prescription and OTC products is 500 mg. All acetaminophen products likewise share the same maximum recommended daily dose (4,000 mg). As a result, our safety evaluation of prescription acetaminophen products draws on the common body of evidence and expert advice about all acetaminophen products, as well as important factors that are specific to the prescription products and how they are used.

III. FDA's New Safety Measures for Prescription Acetaminophen Drug Products

A. Safety Labeling Changes

Consistent with the advice of the 2009 Advisory Committee, FDA today is issuing letters to holders of approved NDAs and ANDAs (if the same drug approved under section 505(b) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(b)) is not currently marketed) for prescription acetaminophen drugs, notifying them of the need to modify the labeling of prescription acetaminophen drugs to reflect new safety information about acetaminophen and liver toxicity. Our authority for this action is section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), which was added to the FD&C Act by the Food and Drug Administration Amendments Act of 2007. This provision authorizes FDA to require certain holders of approved new drug applications to make safety-related labeling changes based on new

[5] Meeting of the Non-Prescription Drug Advisory Committee with members from the Anesthetic and Life Support Drugs Advisory Committee, Arthritis Advisory Committee, Drug Safety and Risk Management Advisory Committee, and Gastrointestinal Drugs Advisory Committee, September 19 and 20, 2002, (2002 Advisory Committee). Detailed information on this meeting can be viewed electronically at *http://www.fda.gov/ohrms/dockets/ac/cder02.htm#NonprescriptionDrugs.*

[6] 2002 Advisory Committee Transcript, September 19, 2002, discussion at 160–182.

[7] 2002 Advisory Committee Transcript, *supra* at 182–221.

[8] Among other recommendations, 24 of the 37 Advisory Committee members recommended reducing the amount of acetaminophen per single adult dose in OTC products to 650 milligrams per dose (*i.e.,* two 325 mg tablets or capsules). With respect to prescription products, the Advisory Committee overwhelmingly voted to require a boxed warning for prescription acetaminophen combinations, and slightly more than half favored eliminating prescription acetaminophen combinations entirely (with the option of prescribing single-entity opioids instead). While not offered as a voting option, the alternative of reducing the amount of acetaminophen per dosage unit in prescription combination products was recommended by a number of Advisory Committee members. See FDA, Joint Meeting of the Drug Safety and Risk Management Advisory Committee, Nonprescription Drugs Advisory Committee, and the Anesthetic and Life Support Drugs Advisory Committee to Address the Public Heath Problem of Liver Injury Related to the Use of Acetaminophen in Both Over-the-Counter and Prescription Drugs, June 30, 2009, at 658–672 (Vote on Question 2), 771–801 (Vote on Question 7), 802–842 (Vote on Question 9 and Discussion of Question 11).

safety information that becomes available after approval of the drug.[9]

The letters issued today propose that the sponsors of prescription acetaminophen drugs make various modifications to their drugs' approved labeling, including adding the following as a boxed warning:

Hepatotoxicity

[DRUG NAME] contains acetaminophen and [INGREDIENT]. Acetaminophen has been associated with cases of acute liver failure, at times resulting in liver transplant and death. Most of the cases of liver injury are associated with the use of acetaminophen at doses that exceed 4,000 milligrams per day, often in combination with other acetaminophen-containing products.

The safety labeling changes will be required for all prescription drug products containing acetaminophen. In accordance with section 505(o)(4)(B) of the FD&C Act, within 30 days of the date of the letters, the holders of approved applications for prescription acetaminophen drugs must submit to FDA a supplement proposing labeling changes that reflect the new safety information about acetaminophen and liver toxicity, or a statement detailing the reasons why such a change is not warranted.

However, we do not believe that these safety labeling changes alone will adequately address the ongoing problem of liver injury associated with prescription acetaminophen combinations. Accordingly, we are taking additional steps to reduce the amount of exposure to acetaminophen from these products, as described in the following discussion.

B. Limiting the Amount of Acetaminophen in Prescription Combination Products

1. How and Why We Are Limiting Acetaminophen Content

In light of the information described previously, we have re-evaluated the relative risks and benefits of prescription acetaminophen products and have concluded that acetaminophen prescription drugs containing more than 325 mg of acetaminophen per dosage unit (tablet or capsule) do not provide a sufficient margin of safety to protect the public against the serious risk of acetaminophen-induced liver injury. Accordingly, we are asking product sponsors to limit the maximum amount of acetaminophen per dosage unit of the combination product ("acetaminophen strength") to 325 mg. We are basing this change on multiple considerations, including the following:

- The significant contribution made by prescription products to the continued and unacceptably high incidence of acetaminophen-related liver injury;
- The need to establish an adequate margin of safety given the current inability to identify precise toxicity thresholds and/or specific populations for whom currently recommended dosages are not safe;
- The high potential for unintentional overdosing; and
- The lack of evidence from which to conclude that the benefit of increased pain relief or dosing convenience from higher acetaminophen strengths outweighs the risk of liver damage from unintentional overdose.

The intended effect of reducing the amount of acetaminophen to 325 mg per dosage unit is to reduce the potential for exceeding the toxic threshold of the drug that could cause liver injury. This change is intended to reduce the risk of unintentional acetaminophen overdose by providing an additional margin of safety for all users, including individuals who, for a variety of reasons (*e.g.,* existing liver disease, chronic alcohol use) are particularly susceptible to liver injury from acetaminophen. The change is consistent with the fundamental principle that the benefit-to-risk ratio of a drug must be considered in determining safety and effectiveness, and the safety of a drug can only be established if its benefits outweigh its known and potential risks. Additionally, as discussed in the following section, many acetaminophen combinations are already approved at the 325-mg acetaminophen strength and thus can provide a basis for further generic approvals at the new maximum dosage unit strength.

It is not possible, based on currently available information, to quantify precisely to what extent reducing the maximum acetaminophen strength of acetaminophen combination drugs will reduce the incidence of liver injury. However, data from Larson *et al.* (Ref. 4) suggest that the effect could be considerable. In that study, the median dose of acetaminophen taken by 77 people with an unintentional overdose was 7,500 mg per day. Assuming that they took 500 mg tablets (currently the most common prescription and OTC dosage strength), the total median dose for this group from taking the same number (15) of 325-mg tablets or capsules would have been only 4,875 mg, a level at which death or liver failure is unlikely to occur in most people.

2. How FDA Is Implementing the Limitation on Acetaminophen Strength

We have identified prescription acetaminophen drug products and product sponsors potentially affected by this notice based on information in the list of *Approved Drug Products With Therapeutic Equivalence Evaluations* (the Orange Book).[10] Table 1 of this document provides an overview of approved new drug applications for currently marketed acetaminophen combination products grouped according to their active ingredients and acetaminophen strengths.[11]

TABLE 1—OVERVIEW OF CURRENTLY MARKETED PRESCRIPTION ACETAMINOPHEN PRODUCTS

Ingredient combination	N*—All acetaminophen strengths	Acetaminophen strengths ≤325 mg	N*—Acetaminophen strengths ≤325 mg	Acetaminophen strengths >325 mg	N*—Acetaminophen strengths >325 mg
Acetaminophen; Butalbital.	4	325 mg; 50 mg Tablets	2	650 mg; 50 mg Tablets	1

[9] Section 505(o)(4) of the FD&C Act also establishes the procedures for implementing safety labeling changes. The procedures include an opportunity for application holders to question the need for or specific wording of the labeling changes.

[10] Detailed Orange Book listings, including specific application numbers and sponsors, can be viewed electronically by accessing FDA's Web site at *http://www.accessdata.fda.gov/scripts/cder/ob*, electing "Search by Active Ingredient," and entering "acetaminophen" in the search form.

[11] The figures in table 1 of this document do not include approved applications for combination products that are subject to the recently announced market withdrawal due to safety concerns related to propoxyphene. The table also excludes various approved combinations that are not currently marketed. These include: acetaminophen;butalbital;caffeine;codeine (1 approved application with acetaminophen strength ≤ 325 mg;) acetaminophen;caffeine;dihydrocodeine bitartrate (5 applications with acetaminophen strengths > 325 mg;) acetaminophen;codeine phosphate (1 application with acetaminophen strength over 325 mg); acetaminophen;hydrocodone in solution dosage form (3 applications with acetaminophen strengths ≤ 325 mg; 6 with acetaminophen strengths > 325 mg).

TABLE 1—OVERVIEW OF CURRENTLY MARKETED PRESCRIPTION ACETAMINOPHEN PRODUCTS—Continued

Ingredient combination	N*—All acetaminophen strengths	Acetaminophen strengths ≤325 mg	N*—Acetaminophen strengths ≤325 mg	Acetaminophen strengths >325 mg	N*—Acetaminophen strengths >325 mg
				650 mg; 50 mg Capsules	1
			Total: 2		Total: 2
Acetaminophen; Butalbital; Caffeine.	16	300 mg; 50 mg; 40 mg Capsules	1	500 mg; 50 mg; 40 mg Tablets	6
		325 mg; 50 mg; 40 mg Tablets	6	500 mg; 50 mg; 40 mg Capsules	1
		325 mg; 50 mg; 40 mg Capsules	1	750 mg; 50 mg; 40 mg Tablet	1
			Total: 8		Total: 8
Acetaminophen Codeine Phosphate.	24	300 mg; 15 mg Tablets	6	None	0
		300 mg; 30 mg Tablets	10		
		300 mg 60 mg Tablets	8		
			Total: 24		Total: 0
Acetaminophen; Hydrocodone.	88	300 mg; 5 mg Tablets	1	400 mg; 5 mg Tablets	1
		300 mg; 7.5 mg Tablets	1	400 mg; 7.5 mg Tablets	1
		300 mg; 10 mg Tablets	1	400 mg; 10 mg Tablets	1
		325 mg; 2.5 mg Tablets	1	500 mg; 2.5 mg Tablets	4
		325 mg; 5 mg Tablets		500 mg; 5 mg Tablets	12
		325 mg; 7.5 mg Tablets		500 mg; 7.5 mg Tablets	7
		325 mg; 10 mg Tablets	7	500 mg; 10 mg Tablets	7
			Total: 21		
				500 mg; 5 mg Capsules	2
				650 mg; 5 mg Tablets	1
				650 mg; 7.5 mg	7
					7
					6
					9
					2
					Total: 67
Acetaminophen; Hydrocodone.		300 mg; 5 mg Tablets	1	400 mg; 5 mg Tablets	1
		300 mg; 7.5 mg Tablets	1	400 mg; 7.5 mg Tablets	1
		300 mg; 10 mg Tablets	1	400 mg; 10 mg Tablets	1
		325 mg; 2.5 mg Tablets	1	500 mg; 2.5 mg Tablets	4
		325 mg; 5 mg Tablets	5	500 mg; 5 mg Tablets	12
		325 mg; 7.5 mg Tablets	5	500 mg; 7.5 mg Tablets	7
		325 mg; 10 mg Tablets	7	500 mg; 10 mg Tablets	7
			Total: 21		
				500 mg; 5 mg Capsules	2
				650 mg; 5 mg Tablets	1
				650 mg; 7.5 mg Tablets	7
				650 mg; 10 mg Tablets	7
				660 mg; 10 mg Tablets	6
				750 mg; 7.5 mg Tablets	9
				750 mg; 10 mg Tablets	2
					Total: 67
	49	300 mg; 2.5 mg Tablets	1	400 mg; 2.5 mg Tablets	1
Acetaminophen; Oxycodone HCl.		300 mg; 5 mg Tablets	1	400 mg; 5 mg Tablets	1
		300 mg; 7.5 mg Tablets	1	400 mg; 7.5 mg Tablets	1
		300 mg; 10 mg Tablets	1	400 mg; 10 mg Tablets	1
		325 mg; 2.5 mg Tablets	2	500 mg; 5 mg Tablets	1
		325 mg; 5 mg Tablets	8	500 mg; 75 mg Tablets	5
		325 mg; 7.5 mg Tablets	4	500 mg; 10 mg Tablets	1
		325 mg; 10 mg Tablets	5	500 mg; 5 mg Capsules	8
		325 mg/5 ml; 5 mg/5 ml Oral Solution.	2	650 mg; 5 mg Tablets	4
			Total: 25	650 mg; 10 mg Tablets	Total: 24
Acetaminophen; Pentazocine HCl.	2	None	0	650 mg; EQ 25 mg BASE Tablets.	2
					Total: 2
Acetaminophen; Tramadol HCL.	6	325 mg; 37.5 mg Tablets	6	None	0
			Total: 6		Total: 0
	GRAND TOTAL 189		TOTAL 86		TOTAL 103

*N = number of approved applications.

As shown in table 1 of this document, there are 7 different prescription acetaminophen combinations currently marketed under a total of 189 approved active applications. The applications are held by a total number of 26 sponsors. Products with approved acetaminophen strengths of 325 mg or less per dosage unit ("lower acetaminophen strengths") account for slightly fewer than half (86) of the approved applications but are much less widely marketed and prescribed than products with higher acetaminophen strengths.

We anticipate that drug sponsors who request that FDA withdraw approval of their higher acetaminophen strength applications under § 314.150(d) (21 CFR 314.150(d)) will wish to market the same combination of active ingredients with lower acetaminophen strength. For example, a sponsor that requests that FDA withdraw approval of its application for 500 mg of acetaminophen combined with 5 mg of hydrocodone in tablet dosage form presumably would want to remain on the market with a tablet product containing 5 mg of hydrocodone and no more than 325 mg of acetaminophen. Such a change will not require submission of an application by sponsors who already have approved applications for the lower strength product, as often is the case. However, sponsors who do not already have such approval would need to develop a new formulation with the lower acetaminophen strength, submit an appropriate application, and obtain FDA approval before marketing.

We anticipate that in virtually all cases the fastest and least burdensome route to approval for new lower acetaminophen strength versions of existing higher acetaminophen strength products will be through new ANDA submissions using another manufacturer's existing lower acetaminophen strength product as the reference listed drug (RLD).[12] For nearly all of the higher acetaminophen strength combinations, there is at least one appropriate RLD with an acetaminophen strength at or below 325 mg in the Orange Book. For a small minority of higher acetaminophen strength combinations, there is no approved lower acetaminophen strength product with the same active ingredients that could serve as the RLD. We believe that reformulations of these products, however, could be approved as ANDAs upon approval of an ANDA suitability petition (see section 505(j)(2)(C) of the FD&C Act and § 314.93 (21 CFR 314.93)) permitting the submission of an ANDA for a drug product that is not identical to the RLD in an active ingredient or unit dosage strength, or could be approved as NDAs following submission of applications with appropriate clinical studies.

We are establishing a timeframe for responding to this notice that takes into account the estimated time needed for sponsors to obtain necessary approvals and begin to market new products with lower acetaminophen strengths. We believe that a period of 3 years from publication of this notice in the **Federal Register** will provide adequate time for drug sponsors to prepare to withdraw existing products with higher acetaminophen strengths, and to develop and obtain approval for lower acetaminophen strength versions of those products. We also anticipate that this will provide sufficient time for drug sponsors with approved lower acetaminophen strength products to expand their production to meet the expected increase in demand for lower acetaminophen strength products when the higher strength products become unavailable.

We strongly encourage sponsors of combination prescription products with acetaminophen strengths greater than 325 mg to submit requests for withdrawal of those products' approved applications under § 314.150(d) within the 3-year period described previously. Sponsors who intend to seek approval of one or more new products with acetaminophen strengths of 325 mg or less are encouraged to submit appropriate applications for such products in time to obtain approval within the same period. To that end, we welcome inquiries and requests for consultation from sponsors relating to specific existing or proposed products in connection with this notice. Any such requests from sponsors of currently approved products affected by this notice should be made as correspondence under the affected application(s) and should reference this notice.

We are issuing this notice because we believe that voluntary action on the part of product sponsors to reduce the acetaminophen strengths of prescription acetaminophen combinations can achieve the needed increase in patient safety substantially sooner and with less burden on public and private resources than alternative regulatory measures. However, FDA has authority under section 505(e)(2) of the FD&C Act to withdraw approval of an NDA or ANDA if the Agency determines that the "* * * drug is not shown to be safe for use under the conditions of use upon the basis of which the drug was approved * * *" based on consideration of "* * * new evidence * * * together with the evidence available to [FDA] when the application was approved * * *." FDA regulations describe the procedures for withdrawing approval of an application. (*See* § 314.150 and 21 CFR 314.151, 314.200, 314.201, and 314.235). We intend to use our authority under section 505(e) of the FD&C Act to initiate withdrawal proceedings for any prescription acetaminophen combination products with acetaminophen strengths greater than 325 mg that remain on the market 3 years after the date of publication of this notice.

IV. References

1. FDA Center for Drug Evaluation and Research, Acetaminophen Overdose and Liver Injury—Background and Options for Reducing Injury, Available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/DrugSafetyandRiskManagementAdvisoryCommittee/ucm126014.htm*.
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3. Bower, W.A. *et al.,* "Population-Based Surveillance for Acute Liver Failure," *American Journal of Gastroenterology,* (102(11)):2459–63, 2007.
4. Larson, A.M. *et al.,* "Acetaminophen-Induced Acute Liver Failure: Results of a United States Multicenter, Prospective Study," *Hepatology,* 42:1364–72, 2005.
5. Larson, A.M., "Acetaminophen Hepatotoxicity," *Clinical Liver Disease,* 11:525–48, vi, 2007.
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7. James, LP *et al.,* "Pharmacokinetics of Acetaminophen—Protein Adducts in Adults With Acetaminophen Overdose and Acute Liver Failure," Drug Metabolism and Disposition 37: 1779–1784, 2009.
8. Lee W., Drug-Induced Hepatotoxicity, *New England Journal of Medicine,* 349:474–485, 2003.
9. Smilkstein, M.J. *et al.,* "Efficacy of Oral N-Acetylcysteine in the Treatment of Acetaminophen Overdose, Analysis of the National Multicenter Study (1976 to

[12] For historical reasons, virtually all currently approved applications for prescription acetaminophen combination products are ANDAs rather than NDAs. Unlike NDAs, which may be supplemented to reflect changes in unit dosage strength or other product characteristics, products marketed under an approved ANDA must maintain the same strength as the RLD. Accordingly, if the acetaminophen strength of such a product is reformulated from, e.g., 500 mg to 325 mg, a new ANDA listing either an appropriate RLD having the new lower strength or an appropriate approved suitability petition as described in § 314.94(a)(3)(iii), must be approved before the reformulated product may be marketed.

1985)," *New England Journal of Medicine,* 319:1557–62, 1988.
10. Nourjah P. *et al,* "Estimates of Acetaminophen (Paracetamol)-induced Overdoses in the United States," Pharacoepidemiological Drug Safety, 6: 406–409, 2006.
11. Lai, M.W. *et al.,* "2005 Annual Report of the American Association of Poison Control Centers' National Poisoning and Exposure Database," *Clinical Toxicology,* 44:803–932, 2006.

Dated: January 10, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–709 Filed 1–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Children's Hospitals Graduate Medical Education Payment Program (CHGME Payment Program) (OMB No. 0915–0247)—[Revision]

The CHGME Payment Program was enacted by Public Law 106–129 and reauthorized by Public Law 109–307 to provide federal support for graduate medical education (GME) to freestanding children's hospitals. This legislation attempts to provide support for GME comparable to the level of Medicare GME support received by other, non-children's hospitals. The legislation indicates that eligible children's hospitals will receive payments for both direct and indirect medical education. Direct payments are designed to offset the expenses associated with operating approved graduate medical residency training programs and indirect payments are designed to compensate hospitals for expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs. The CHGME Payment Program application forms received OMB clearance on June 30, 2010. Centers for Medicare and Medicaid Services (CMS) final rule regarding Sections 5503, 5504, 5505 and 5506 of the Affordable Care Act of 2010, Public Law 111–148, published in the **Federal Register** on Wednesday, November 24, 2010, requires some modification of the data collection within the CHGME Payment Program application. The CHGME Payment Program application forms have been adjusted to accommodate CMS policy and require OMB approval.

Data are collected on the number of full-time equivalent residents in applicant children's hospitals' training programs to determine the amount of direct and indirect medical education payments to be distributed to participating children's hospitals. Indirect medical education payments will also be derived from a formula that requires the reporting of discharges, beds, and case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application. Hospitals will also be requested to submit data on the number of full-time equivalent residents a second time during the federal fiscal year to participate in the reconciliation payment process.

The estimated annual burden is as follows:

Form	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
HRSA 99–1 (Initial Application)	60	1	60	26.5	1,590
HRSA 99–1 (Reconciliation Application)	60	1	60	6.5	390
HRSA 99–2 (Initial Application)	60	1	60	11.33	679.8
HRSA 99–2 (Reconciliation Application)	60	1	60	3.67	220.2
HRSA 99–3 (Initial Application)	60	1	60	0.5	30
HRSA 99–3 (Reconciliation Application)	60	1	60	0.5	30
HRSA 99–4 (Reconciliation Application)	60	1	60	12.5	750
HRSA 99–5 (Initial Application)	60	1	60	.33	19.8
HRSA 99–5 (Reconciliation Application)	60	1	60	.33	19.8
Total	60		60		3729.6

E-mail comments to *paperwork@hrsa.gov* or mail them to the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 10, 2011.

Robert Hendricks,

Director, Division of Policy and Information Coordination.

[FR Doc. 2011–713 Filed 1–13–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is

hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable 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 Advisory Council on Drug Abuse.

Date: February 2, 2011.

Closed: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Open: 12 p.m. to 2:45 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4243, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–89550, (301) 443–2755, *tlevitin.nida.nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 10, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–727 Filed 1–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at 240–276–1243.

Comments are invited on (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Disaster Technical Assistance Center Disaster Mental Health Needs Assessment and Customer Satisfaction Survey Supporting Statement—NEW

SAMHSA created the SAMHSA Disaster Technical Assistance Center (SAMHSA DTAC) in 2002. SAMHSA DTAC provides technical assistance (TA) to States, Territories, and Federally recognized tribes (hereafter referred to as 'States'), as well as any behavioral health worker, in response to, and in preparation for, behavioral health (mental health and substance abuse) needs associated with catastrophic events and emergencies, such as natural disasters, bioterrorism, mass criminal victimization, and environmental disasters. In the aftermath of a disaster or other traumatic event, State and local behavioral health agencies can contact SAMHSA DTAC for assistance with the resulting mental health and substance abuse needs. SAMHSA DTAC TA specialists respond by identifying suitable publications and other materials, arranging for the deployment of expert consultants, or coordinating other support services. For Presidentially declared disasters, SAMHSA DTAC assists States that are eligible for a Crisis Counseling Assistance and Training Program (CCP) grant by providing TA related to completing applications, developing a plan of services, and identifying staff needs for the CCP.

SAMHSA is proposing two new data collection efforts: The Disaster Behavioral Health Needs Assessment (DBHNA) and the Customer Satisfaction Survey. The DBHNA will assess the current gaps and needs at the State and local provider levels in disaster behavioral health (DBH) planning and response efforts. The Customer Satisfaction Survey is being conducted to ensure that the TA SAMHSA DTAC provides is on track, applicable, useful, and well received. Both of these proposed data collection efforts will provide feedback on the ongoing needs at the national, State, and local levels and identify areas in which State and local providers require enhanced TA services.

SAMHSA DTAC will be responsible for administering the two data collection instruments and analyzing the data. SAMHSA DTAC will use data from both instruments to inform current and future TA activities and to ensure these activities continue to align with State and local needs.

The components of the data collection are listed and described below, and a summary table of the number of respondents and respondent burden has also been included.

Disaster Behavior Health Needs Assessment. The DBHNA will assist SAMHSA DTAC in identifying jurisdictions that need assistance with integrating behavioral health (which includes both mental health and substance abuse services) into their preparedness plans. SAMHSA DTAC will use the DBHNA to identify gaps and trends in crisis counseling planning

across the country and to inform future TA and training for State and local behavioral health authorities so that these gaps can be addressed at the State and local levels. The DBHNA will be administered annually. The information collected will inform the DBH training and TA that SAMHSA DTAC provides. With improved training and TA, SAMHSA DTAC will be better positioned to support States, local providers, and other organizations in their efforts to integrate DBH into "all-hazards" disaster preparedness and response.

There are two versions of the DBHNA: The State/Territory Coordinator Disaster Behavioral Health Needs Assessment and the Local Provider Disaster Behavioral Health Needs Assessment. These DBHNAs will collect information on the current needs and challenges that State coordinators and local providers face when integrating DBH preparedness and response into all-hazards plans. Both versions of the survey will be administered online and will be programmed to include simplified screens and intuitive navigational controls, and both will use branching so that each respondent will be presented with only those questions relevant to his or her State or program.

The State/Territory Coordinator version will be administered to all disaster mental health coordinators, disaster substance abuse coordinators, and DBH coordinators (coordinators responsible for both mental health and substance abuse disaster services) in the 50 States, the U.S. Territories, and the District of Columbia, for a total of 77 participants. Coordinators from the 10 States that have experienced the most federally declared disasters and those from the 10 States that have experienced the fewest federally declared disasters will be asked to provide contact information for up to five local DBH service providers. The local providers from these 20 States will be invited to participate in the Local Provider version (up to a total of 100 local provider participants).

Customer Satisfaction Survey. The Customer Satisfaction Survey will collect data from SAMHSA DTAC customers to ensure that the assistance SAMHSA DTAC provides is effective. Specifically, the Customer Satisfaction Survey will collect the experiences and perspectives of (1) those who have requested TA (*e.g.,* behavioral health coordinators, project coordinators, local providers) and (2) those who subscribe to SAMHSA DTAC e-communications. The Customer Satisfaction Survey will assess the following: (1) General familiarity with SAMHSA DTAC services and resources; (2) usage of SAMHSA DTAC services and resources; (3) customer satisfaction with SAMHSA DTAC TA, the SAMHSA DTAC Web site, SAMHSA DBHIS resources, and SAMHSA DTAC e-communication resources; and (4) areas for improvement and enhancement of SAMHSA DTAC services and resources.

Participation in the Customer Satisfaction Survey will be solicited from all 50 States, the U.S. Territories, and the District of Columbia. The initial survey administration will include individuals who have contacted SAMHSA DTAC for TA from March 2006 through the month prior to the initial data collection initiation. In addition to identifying SAMHSA DTAC TA requestors from March 2006 to the present, SAMHSA DTAC will identify potential participants from the subscription lists for the e-communications *DTAC Bulletin and The Dialogue.* Respondents for subsequent administrations of the SAMHSA DTAC Customer Satisfaction Survey will include those who have requested TA in the 3 months prior to administration and those who are subscribed to the *DTAC Bulletin or The Dialogue* at the time of administration.

Internet-based technology will be used to collect data via Web-based surveys and for data entry and management. The average annual respondent burden is estimated below. The DBHNA is an annual data collection. The Customer Satisfaction Survey will be administered once initially, with subsequent quarterly administrations. Table 1 represents the initial data collection and the burden in the following years. These estimates reflect the average annual number of respondents, the average annual number of responses, the time required for each response, and the average annual burden in hours.

Table 1. Annualized Estimate of Respondent Burden

Type of respondent	Instrument	Number of respondents	Number of responses per respondent	Total number of responses	Hours per response per respondent	Total burden hours
State DBH Coordinator	DBHNA (State/Territory Version)	77	1	77	1.00	77.0
Local Provider	DBHNA (Local Provider Version)	100	1	100	0.50	50.0
TA Requestor	DTAC Customer Satisfaction Survey	250	1	250	0.25	62.5
e-Communications Recipient	DTAC Customer Satisfaction Survey	250	1	250	0.25	62.5
Total		677		677		252

Send comments to Summer King, SAMHSA Reports Clearance Officer; Room 8–1099; 1 Choke Cherry Road; Rockville, MD 20857, *and* e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: January 10, 2011.

Elaine Parry,

Director, Office of Management, Technology, and Operations.

[FR Doc. 2011–742 Filed 1–13–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2010–0081]

National Protection and Programs Directorate; National Emergency Communications Plan (NECP) Goal 2 Performance Report

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS)/National Protection and Programs Directorate (NPPD)/Office of Cybersecurity and Communications (CS&C)/Office of Emergency Communications (OEC) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning the NECP Goal 2 Performance Report.

DATES: Comments are encouraged and will be accepted until March 15, 2011. This process is conducted in accordance with 5 CFR Part 1320.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to NPPD/CS&C/OEC, *Attn.:* Ryan Oremland, *Ryan.Oremland@dhs.gov.* Written comments should reach the contact person listed no later than March 15, 2011. Comments must be identified by "DHS–2010–0081" and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: Ryan.Oremland@dhs.gov.* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ryan Oremland, NPPD/CS&C/OEC, *Ryan.Oremland@dhs.gov.*

SUPPLEMENTARY INFORMATION: OEC, formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* is required to develop the NECP, including identification of goals, timeframes, and appropriate measures to achieve interoperable communications capabilities. The NECP Performance Report is designed to meet these statutory requirements.

OEC will use the information gained through the reports to track progress that states are making in implementing milestones and demonstrating goals of the NECP. Information regarding demonstration of the NECP will measure the ability of counties or county-equivalents to demonstrate response-level emergency communications within one hour for routine events involving multiple jurisdictions.

Statewide Interoperability Coordinators or Statewide Communications Interoperability Planning points of contact (police, fire, emergency medical services, emergency managers, dispatchers, radio operators, government workers, etc.) will be responsible for collecting this information from their respective counties or county equivalents within their states. The report will be submitted electronically via e-mail.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: NECP Goal 2 Performance Report.

From: Not Applicable.

OMB Number: 1670–XXXX.

Frequency: Annually.

Affected Public: State and local governments.

Number of Respondents: 56.

Estimated Time per Respondent: 30 hours.

Total Burden Hours: 1,680 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Dated: January 5, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–695 Filed 1–13–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–04]

Notice of Submission of Proposed Information Collection to OMB; American Housing Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The American Housing Survey (AHS) provides a periodic measure of the size and composition of the country's housing inventory. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandate the collection of this information.

Like the previous surveys, the 2011 AHS collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, housing costs, the persons eligible for and beneficiaries of assisted housing, and the number and characteristics of vacancies. The 2011 AHS will collect additional data on potential health and safety hazards in the home and modifications made to assist occupants living with disabilities. Selected neighborhood and journey to work questions will not be collected in the 2011 survey and the mortgage questions will be redesigned. There is no AHS–Metropolitan Sample in the 2011 survey. But, a supplemental sample of housing units will be selected for 30 metropolitan areas. The supplemental sample will be combined with existing sample in these areas in order to produce metropolitan estimates using the National data.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and

legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

DATES: *Comments Due Date:* February 14, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0017) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806. *E-mail: OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Colette Pollard at *Colette.Pollard@hud.gov;* or 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 Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting 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 American Housing Survey.

OMB Approval Number: 2528–0017.

Form Numbers: Computerized Versions of AHS–21, AHS–22 and AHS–23.

Description of the Need for the Information and Its Proposed Use: The American Housing Survey (AHS) provides a periodic measure of the size and composition of the country's housing inventory. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandate the collection of this information.

Like the previous surveys, the 2011 AHS collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, housing costs, the persons eligible for and beneficiaries of assisted housing, and the number and characteristics of vacancies. The 2011 AHS will collect additional data on potential health and safety hazards in the home and modifications made to assist occupants living with disabilities. Selected neighborhood and journey to work questions will not be collected in the 2011 survey and the mortgage questions will be redesigned. There is no AHS–Metropolitan Sample in the 2011 survey. But, a supplemental sample of housing units will be selected for 30 metropolitan areas. The supplemental sample will be combined with existing sample in these areas in order to produce metropolitan estimates using the National data.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Members of Affected Public: Households.

Frequency of Submission: Biennially.

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION

Interview type		Total addresses	Respondent burden combined	
(A) Name	(B) Definition	(C) AHS	(D) Avg min per intv	(E) Total hours
Occupied	Sampled addresses with one or more residents	138,700	49	113,272
Vacant	Sampled addresses intended for occupancy but currently without residents.	22,800	20	7,600
Noninterview	Sampled addresses not intended for occupancy or occupants refuse to participate.	28,500	0	0
Total Addresses for Data Collection (DC)		190,000		
Reinterview	Second quality control check interview at 7 percent of the above sampled addresses.	13,300	10	2,217

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION—Continued

Interview type		Total addresses	Respondent burden combined	
(A) Name	(B) Definition	(C) AHS	(D) Avg min per intv	(E) Total hours
Total DC and Reinterview Addresses/Burden Hours		203,300	.....	123,088

Computations:
Total Hours = (Average Minutes per Case * Total Addresses)/60

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 10, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–820 Filed 1–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–02]

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: Juanita Perry, 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, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202; (703) 601–2545; *COAST GUARD:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *ENERGY:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, General Services Administration, Office of Property Disposal, 18th and F St., NW., Washington, DC 20405; (202) 501–0084; of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–

0084; *INTERIOR:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., Washington, DC 20240: (202) 208–5399; *NAVY:* Mr. Albert Johnson, Department of the Navy, Asset Management Division, 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: January 6, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 01/14/2011

Suitable/Available Properties

Building

Iowa

Prairie Ridge Pak
12766 200th
Moravia IA 52571
Landholding Agency: Army
Property Number: 21201110002
Status: Underutilized
Comments: 180 sp. ft., off site removal only, most recent use: fee booth, walls are contaminated w/mold—walls need to be replaced

Mississippi

James O. Eastland
245 East Capitol St.
Jackson MS 39201–2409
Landholding Agency: GSA
Property Number: 54201040020
Status: Excess
GSA Number: 4–G–MS–0567–AA
Directions: Federal Bldg. and Courthouse
Comments: 14,000 sq. ft., current/recent use: gov't offices and courtrooms, asbestos identified behind walls, and historic bldg. preservation covenants will be included in the Deed of Conveyance

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
Comments: Redetermination: 399,836 sq. ft., most recent use: office

Virginia

Tract 05–511, Qrts. 11
7941 Brock Rd.
Spotsylvania VA 22553
Landholding Agency: GSA
Property Number: 54201110001
Status: Excess
GSA Number: 4–I–VA–0756
Comments: 1642 sq. ft., off-site removal only, previously reported by Interior and published as suitable/available in the 10.22.2010 FR

Unsuitable Properties

Building

California

Bldg. 3521
Naval Base
San Diego CA
Landholding Agency: Navy
Property Number: 77201040019
Status: Excess
Reasons: Extensive deterioration, Secured Area

Maryland

24 Bldgs.
NSA S. Potomac
Indian Head MD 20640
Landholding Agency: Navy
Property Number: 77201040018
Status: Excess
Directions: 2SN, 582, 1062, 1063, 1064, 1150, 1155, 1156, 1202, 1373, 1547, 1548, 105, 166, 174, 183, 258, 259, 934, 935, 936, 937, 938, and 939
Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material

Missouri

Harry S. Truman Reservoir
15968 Truman Rd.
Warsaw MO 65355
Landholding Agency: Army
Property Number: 21201110001
Status: Underutilized
Directions: 07015 and L43002
Reasons: Extensive deterioration

New Mexico

5 Bldgs.
Los Alamos Nat'l Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201040004
Status: Unutilized
Directions: 18–0031, 18–0128, 18–0168, 18–0270, 53–0573
Reasons: Extensive deterioration, Secured Area

09–0272, 03–1462, 15–0456
Los Alamos Nat'l Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201040005
Status: Unutilized
Reasons: Extensive deterioration

New York

Bldg. 00001
U.S. Army Garrison
West Point NY 10996
Landholding Agency: Army
Property Number: 21201040041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

North Carolina

Barracks 61
Coast Guard Support Unit
Elizabeth NC 27909
Landholding Agency: Coast Guard
Property Number: 88201040007
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Oklahoma

Bldg. 00654
McAlester Army Ammo Plant
Pittsburg OK 74501
Landholding Agency: Army
Property Number: 21201040040
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

RS Kerr Lake
HC61
Sallisaw OK 74955
Landholding Agency: Army
Property Number: 21201040042
Status: Underutilized
Reasons: Extensive deterioration

Samoa

Bldg. 00644
Tree Top U.S. Army Reserve Ctr
Pago AQ
Landholding Agency: Army
Property Number: 21201040039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Wyoming

Bureau of Reclamation
Pathfinder Dam and Reservoir
Natrona WY 82604
Landholding Agency: Interior
Property Number: 61201040005
Status: Unutilized
Reasons: Extensive deterioration

Hawaii

Potable Wastewater Collection
Barbers Point NAS
Kalaeloa HI 96862
Landholding Agency: GSA
Property Number: 54201110002
Status: Excess
GSA Number: 9–N–HI–472–23–AO
Reasons: Extensive deterioration

Potable Water Distribution
Barbers Point NAS
Kalaeloa HI 96862
Landholding Agency: GSA
Property Number: 54201110003
Status: Excess
GSA Number: 9–N–HI–472–23–AN
Reasons: Extensive deterioration

[FR Doc. 2011–394 Filed 1–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Big Sandy Rancheria Band of Western Mono Indians' Proposed Casino and Resort Project, Fresno County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Big Sandy Rancheria Band of Western Mono Indians (Tribe) as a cooperating agency, intends to file a Draft Environmental

Impact Statement (DEIS) with the U.S. Environmental Protection Agency (EPA) for the Tribe's proposed lease agreement with an individual Indian trust land allotee and subsequent construction of a casino/resort project to be located near Friant, Fresno County, California. This notice also advises the public that the DEIS is now available for public review and comment and announces the availability of copies of the document and the date, time and location of a public hearing to receive comments on the DEIS. Details of the proposed action, location, and areas of environmental concern addressed in the DEIS are provided below in the **SUPPLEMENTARY INFORMATION** section. This notice provides a 75-day public comment period and thereby grants a 30-day extension to the normal 45-day public comment period.

DATES: The DEIS will be available for public comment beginning January 14, 2011. Written comments on the DEIS must arrive by March 28, 2011. A public hearing will be held on Wednesday, February 2, 2011, starting at 6 p.m. to 9 p.m. or until the last public comment is received.

ADDRESSES: A public hearing will be held in the multi-purpose room of the Foothill Middle School, 29147 Auberry Road, Prather, California. You may mail or hand-carry written comments to Amy Dutschke, Regional Director, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. *See* the **SUPPLEMENTARY INFORMATION** section of this notice for locations where the DEIS is available for review and for directions on submitting comments.

FOR FURTHER INFORMATION CONTACT: John Rydzik (916) 978–6051.

SUPPLEMENTARY INFORMATION: The Big Sandy Rancheria is a federally recognized Indian tribe with a land base near Auberry, California. The Tribe has approximately 450 members and is governed by a Tribal Council consisting of five members, under a federally approved constitution. The Big Sandy Rancheria currently has a federally approved tribal-state gaming compact with the State of California.

The Tribe is proposing to construct a gaming and entertainment facility that will include a gaming floor, restaurant and lounge facilities, an entertainment hall, a hotel and conference center, a multi-level parking garage, a water and wastewater treatment plant, a water supply system including water storage tanks, and an access driveway. The proposed buildings, not including the parking garage, would total approximately 532,000 square feet of floor space.

The proposed project will be located east of Friant in Fresno County, California, on undeveloped foothill property comprising approximately 48 acres of allotted Indian land currently held in trust by the United States for the beneficial interest of an individual member of the Tribe. The Tribe and the individual Indian allottee have executed and submitted for BIA approval a lease agreement granting use of the property to the Tribe for the development of a casino, resort hotel, and supporting facilities. The BIA's proposed Federal action is the approval of the lease agreement.

The BIA, serving as the lead agency for compliance with the National Environmental Policy Act (NEPA), published a Notice of Intent (NOI) to prepare the EIS for the proposed action in the **Federal Register** on October 3, 2008 (73 FR 57646). The National Indian Gaming Commission (NIGC) initiated the public scoping process, including a public scoping meeting on September 15, 2005, to determine the issues, concerns, and alternatives to be included in the EIS. From that scoping meeting, and from comments received following publication of the NOI, a range of project alternatives were developed and subsequently analyzed in the DEIS, including: (1) Proposed action—casino, resort hotel, multi-level parking structure, entertainment and convention facilities; (2) Reduced project with approximately 72 percent of the gaming capacity of the Proposed Action and similar reduction of the entertainment facility; (3) No hotel but otherwise the same as the Proposed Action; (4) Resort hotel with meeting facilities, a restaurant, a pool and spa and no gaming facilities; and (5) No action alternative. Environmental issues addressed in the DEIS include aesthetics and visual resources; agricultural resources; air quality; biological resources; cultural resources; geology, minerals, and paleontological resources; hazards and hazardous materials; hydrology, water quality, and water supply; land use and planning; noise; population and housing; public services; recreation; socioeconomics and environmental justice; traffic and transportation; utilities and service systems; cumulative effects; indirect effects; growth inducing effects; and mitigation measures.

Directions for Submitting Comments: Please include your name, return address, and the caption: "DEIS Comments, Big Sandy Rancheria Band of Western Mono Indians' Casino and Resort Project," on the first page of your written comments.

Locations where the DEIS is Available for Review: The DEIS will be available for review at the following locations:

- Auberry Branch Library, 33049 Auberry Road, Auberry, California 93602.
- Clovis Regional Library, 1155 Fifth Street, Clovis, California 93612.
- Fresno County Public Library Government Publications, 2420 Mariposa Street, Fresno, California 93721–2204.

Information for the Auberry Branch Library can be obtained by calling (559) 855–8523. Hours of operation for the Clovis Regional library can be obtained by calling (559) 299–9531. For information on the Fresno County Public Library call (559) 488–3195. The DEIS is also available on the following Web site: *http://www.bigsandyrancheria.com/project/project.htm.*

To obtain a compact disk copy of the DEIS, please provide your name and address in writing or by voicemail to John Rydzik, Chief of the Division of Environmental, Cultural Resources Management and Safety, at the BIA address listed in the **ADDRESSES** section of this notice or at the telephone number provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Note however, individual paper copies of the DEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

Public Comment Availability: Written comments, including names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published pursuant to Section 1503.1 of the Council of Environmental Quality Regulations (40 CFR, Part 1500 through 1508) and Section 46.305 of the Department of Interior Regulations (43 CFR Part 46), implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 4371 *et seq.*), and is in the exercise of authority delegated to the

Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: December 29, 2010.

George Skibine,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2011–560 Filed 1–13–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000 L71220000.EX0000 LVTFF0986020 241A.00; MO #4500017947; 11–08807; TAS: 14X8069]

Notice of Availability of the Final Supplemental Environmental Impact Statement for the Cortez Hills Expansion Project, Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM), Battle Mountain District, Mount Lewis Field Office, Battle Mountain, Nevada, has prepared a Final Supplemental Environmental Impact Statement (EIS) for the Cortez Hills Expansion Project in Lander County, Nevada.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days from the date that the Environmental Protection Agency publishes its notice of availability in the **Federal Register**.

ADDRESSES: Copies of the Cortez Hills Expansion Project Final Supplemental EIS are available for public inspection at the Battle Mountain District Office, 50 Bastian Road, Battle Mountain, Nevada, during regular business hours of 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Interested persons may also review the Final Supplemental EIS at the following Web site: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html.*

FOR FURTHER INFORMATION CONTACT: Christopher Worthington, (775) 635–4000, or e-mail: *Christopher_Worthington@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM signed a Record of Decision and Plan of Operations approval on November 12, 2008, for the Cortez Gold Mines (CGM) Cortez Hills Expansion Project, which is an expansion of existing open-pit gold mining and processing operations in northeastern Nevada. The project entails new surface disturbance of approximately 6,633 acres, which includes 6,412 acres of public land administered by the BLM Battle Mountain District and 221 acres of private land owned by CGM. The Notice of Availability of the Final Cortez Hills Expansion Project EIS was published in the **Federal Register** on October 3, 2008.

On December 3, 2009, the U.S. Court of Appeals for the Ninth Circuit partially reversed the U.S. District Court of Nevada's denial of preliminary injunctive relief with respect to BLM's environmental analysis of air quality and water resource issues. The BLM subsequently elected to prepare a Supplemental EIS to refine the analysis of potential air quality effects and the dewatering mitigation effectiveness for the Cortez Hills Expansion Project.

A Notice of Intent to prepare a Supplemental EIS was published in the **Federal Register** on July 16, 2010. The Draft Supplemental EIS was released for public review on August 20, 2010, with a 45-day comment period. Following the release of the Draft Supplemental EIS, two public comment meetings were held, one in Crescent Valley and one in Battle Mountain in September 2010 to solicit additional comments on the document. Comments and resultant changes in the impact analyses are documented in the Final Supplemental EIS.

Ron Wenker,

State Director, Nevada.

Authority: 40 CFR 1501.7.

[FR Doc. 2011–605 Filed 1–13–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000.L14300000.FR0000; WYW139860, WYW63275]

Notice of Realty Action; Modification of the Segregative Effect of Recreation and Public Purposes Act Classifications of Public Lands in Natrona County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is amending the segregative effect of two Recreation and Public Purposes (R&PP) Act classifications which are included in the Federal lands selected as part of the Muddy Mountain Land Exchange (exchange) in Natrona County, Wyoming. This action will modify the segregation to open the lands only to effect this exchange.

FOR FURTHER INFORMATION CONTACT: Patrick J. Moore, Assistant Field Manager, Minerals and Lands, Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604–2968; (307) 261–7530; or e-mail *Patrick_Moore@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM is processing a proposed land exchange in Natrona County, Wyoming. The selected Federal lands include two R&PP leases to the Town of Midwest for a sewage lagoon site and a diving pond. Prior to issuance of the leases, the lands were classified for R&PP lease on November 3, 1978, and published in the **Federal Register** (62 FR 9446) which included segregation of the lands from the public land laws. In order for the R&PP leased land to be included in the exchange, the segregative effect of the classifications must be modified to allow for the exchange. Upon completion of the exchange, title to the lands encumbered by the R&PP leases will be transferred to the non-Federal party subject to the R&PP leases. Therefore, on January 14, 2011, the segregative effect of the classification for the Midwest sewage lagoon (WYW6327501) and the segregative effect of the classification for the Midwest diving pond (WYW13986001) is modified and the lands are opened only to transfer of title pursuant to the Muddy Mountain Land Exchange (WYW168824).

Except for the Muddy Mountain exchange, the lands will continue to be segregated from the operation of the public land laws.

Authority: 43 CFR 2741.5.

Donald A. Simpson,

State Director.

[FR Doc. 2011–604 Filed 1–13–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CONC–0111–6326; 2410–OYC]

Notice of Continuation of Visitor Services

AGENCY: National Park Service, Interior.

ACTION: Public notice.

DATES: Effective January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone, (202) 513–7156.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service intends to request a continuation of visitor services for a period not-to-exceed 1 (one) year from the date of contract expiration.

SUPPLEMENTARY INFORMATION: The contracts listed below have been extended to maximum allowable under 36 CFR 51.23. Under the provisions of current concession contracts and pending the completion of the public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year under the terms and conditions of the current contract as amended. The continuation of operations does not affect any rights with respect to selection for award of a new concession contract.

Conc ID No.	Concessioner name	Park
NACC004–89	Landmark Services Tourmobile, Inc	National Capital Parks—Central.
INDE001–94	Concepts by Staid, Ltd	Independence National Historical Park.
SHEN001–85	ARAMARK Sports & Entertainment Services, Inc	Shenandoah National Park.
DEVA002–81	Xanterra Parks & Resorts, Inc	Death Valley National Monument.
LAKE001–73	Rex G. Maughan & Ruth G. Maughan	Lake Mead National Recreation Area.
LAKE002–82	Lake Mead RV Village, LLC	Lake Mead National Recreation Area.
LAKE005–97	Rex G. Maughan	Lake Mead National Recreation Area.
LAKE006–74	Las Vegas Boat Harbor, Inc.	Lake Mead National Recreation Area.
LAKE009–88	Seven Resorts, Inc.	Lake Mead National Recreation Area.
OLYM001–78	ARAMARK Sports & Entertainment, Inc	Olympic National Park.
OLYM002–89	Log Cabin Resort, Inc	Olympic National Park.
ROLA003–87	Ross Lake Resort, Inc	Ross Lake National Recreation Area.
AMIS002–89	Forever Resorts	Amistad National Recreation Area.
AMIS003–87	Forever Resorts	Amistad National Recreation Area.
CACH001–84	White Dove, Inc. dba Thunderbird Lodge	Canyon de Chelly National Monument.
GLAC002–81	Glacier Park, Inc	Glacier National Park.
GLCA002–88	ARAMARK	Glen Canyon National Recreation Area.
GLCA003–69	ARAMARK	Glen Canyon National Recreation Area.
GRTE003–97	Rex G. and Ruth G. Maughan	Grand Teton National Park.
GRTE004–98	Louise M. and Harold M. Bertschy dba Triangle X Ranch	Grand Teton National Park.
MEVE001–82	ARAMARK	Mesa Verde National Park.
PEFO001–85	Xanterra Parks & Resorts, LLC	Petrified Forest National Park.
HOSP002–94	Buckstaff Bath House Company	Hot Springs National Park.
OZAR012–88	Akers Ferry Canoe Rental, Inc	Ozark National Scenic Riverway.
OZAR016–89	Carr's Grocery & Canoe Rental	Ozark National Scenic Riverway
BLRI001–93	Southern Highland Handicraft Guild	Blue Ridge Parkway.
BLRI002–83	Northwest Trading Post, Inc	Blue Ridge Parkway.
BLRI007–82	Forever NPC Resorts, LLC	Blue Ridge Parkway.
CAHA001–98	Avon-Thornton Limited Partnership	Cape Hatteras National Seashore.
CAHA002–98	Cape Hatteras Fishing Pier, Inc	Cape Hatteras National Seashore.
CAHA004–98	Oregon Inlet Fishing Center, Inc	Cape Hatteras National Seashore.
MACA002–82	Forever Resorts, Inc	Mammoth Cave National Park.
VIIS001–71	Caneel Bay, Inc	Virgin Islands National Park.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone (202) 513–7156.

Dated: January 10, 2011.

Katherine H. Stevenson,

Associate Director, Business Services.

[FR Doc. 2011–693 Filed 1–13–11; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

[NPS–WASO–CONC–0111–6327; 2410–OYC]

Notice of Extension of Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public notice.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone 202/513–7156.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contracts for a period of up to 1 (one) year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: All of the listed concession authorizations will expire by their terms on or before December 31, 2010. The National Park Service has determined that the proposed short-term extensions are necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Conc ID No.	Concessioner name	Park
NACC001–89	Golf Course Specialist, Inc	National Capital Parks—Central.
GATE003–98	Marinas of the Future, Inc	Gateway National Recreation Area.
LAKE017–05	Black Canyon/Willow Beach River Adventures	Lake Mead National Recreation Area.
PORE003–98	Golden Gate Council of American Youth Hostels	Point Reyes National Seashore.

Conc ID No.	Concessioner name	Park
BISC002–04	Biscayne National Underwater Park, Inc	Biscayne National Park.
BISO003–06	Bobby Gene and Gretta York	Big South Fork National Seashore.
BLRI004–88	Virginia Peaks of Otter	Blue Ridge Parkway.
BUIS001–06	Southern Seas, Inc	Buck Island.
EVER004–98 TRF	Concessions Specialists of Florida, Inc	Everglades National Park.
GUIS001–03	Dudley Food and Beverage	Gulf Islands National Seashore.
JODR002–90	International Leisure Hosts, Ltd	John D. Rockefeller.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone 202/513–7156.

Dated: January 10, 2011.

Katherine H. Stevenson,

Assistant Director, Business Services.

[FR Doc. 2011–694 Filed 1–13–11; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2410–OYC]

Notice of Extension of Concession Contract

AGENCY: National Park Service, Interior.

ACTION: Public notice.

DATES: *Effective Date:* January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone 202/513–7156.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 1 (one) year, or until such time as a new contract is executed, whichever occurs sooner.

SUPPLEMENTARY INFORMATION: The listed concession authorization will expire by its terms on or before December 31, 2010. The National Park Service has determined that the proposed 1-year extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption.

Conc ID No.	Concessioner name	Park
NACC003–86	Guest Services, Inc.	National Capital Parks—Central.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, Telephone 202/513–7156.

Dated: January 4, 2011.

Katherine H. Stevenson,

Associate Director, Business Services.

[FR Doc. 2011–691 Filed 1–13–11; 8:45 am]

BILLING CODE 4312–53–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–748]

In the Matter of Certain Data Storage Products and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on a Withdrawal of the Complaint; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 9) of the presiding administrative law judge ("ALJ") terminating the investigation based on withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 24, 2010 based on a complaint filed by Data Network Storage, LLC of Newport Beach, California ("DNS"). 75 FR 71736 (Nov. 24, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain data storage products and components thereof by reason of infringement of claims 1–8 of United States Patent No. 6,098,128. The complaint named several entities as respondents.

On December 15, 2010, DNS filed an unopposed motion to terminate the investigation in its entirety based on withdrawal of the complaint. On December 20, 2010, the Commission investigative attorney filed a response in support of the motion to terminate the investigation.

On December 22, 2010, the ALJ issued the subject ID (Order No. 9) terminating the investigation. None of the parties petitioned for review of the ID. The Commission has determined not to review the ID. Accordingly, this investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in

section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: January 10, 2011.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–708 Filed 1–13–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–739]

In the Matter of Certain Ground Fault Circuit Interrupters and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 13) issued by the presiding administrative law judge ("ALJ") granting a motion filed by complainant Leviton Manufacturing Co. ("Leviton") for leave to amend its complaint and the notice of investigation.

FOR FURTHER INFORMATION CONTACT: Paul M. Bartkowski, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 9, 2010, based on a complaint filed by Leviton Manufacturing Co. ("Leviton") of Melville, New York. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ground fault circuit interrupters and products containing the same. The Commission's notice of investigation named numerous respondents.

The presiding administrative law judge issued the subject ID on December 20, 2010, granting Leviton's motion to (1) correct the name of respondent Zhejiang Trimone Co. and (2) add Shanghai Jia AO Electrical Co. as a respondent. No party filed a petition for review of the ID. The Commission has determined not to review the subject ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 10, 2011.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–707 Filed 1–13–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–299 (Third Review); (Investigation Nos. 701–TA–267 and 731–TA–304 (Third Review)]

Porcelain-on-Steel Cooking Ware From Taiwan; Top-of-the-Stove Stainless Steel Cooking Ware From Korea

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in October 2010 to determine whether revocation of the antidumping duty order on imports of porcelain-on-steel cooking ware from Taiwan and the antidumping and countervailing duty orders on imports of top-of-the-stove stainless steel cooking ware from Korea would be likely to lead to continuation or recurrence of material injury. On December 29, 2010, the Department of Commerce published notice that it was revoking the orders "[b]ecause no domestic interested party responded to the sunset review notice of initiation by the applicable deadline * * *" The effective date of the revocation of the antidumping duty order on imports of top-of-the-stove stainless steel cooking ware from Korea is November 17, 2010. The effective date of the revocation of the antidumping duty order on imports of porcelain-on-steel cooking ware from Taiwan and the countervailing duty order on imports of top-of-the-stove stainless steel cooking ware from Korea is November 22, 2010. Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject reviews are terminated.

DATES: *Effective Dates:*

November 17, 2010: Top-of-the-Stove Stainless Steel Cooking Ware from Korea (Investigation No. 731–TA–304 (Third Review))

November 22, 2010: Porcelain-on-Steel Cooking Ware from Taiwan (Investigation No. 731–TA–299 (Third Review)) and Top-of-the-Stove Stainless Steel Cooking Ware from Korea (Investigation No. 701–TA–267 (Third Review))

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: January 10, 2011.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2011–706 Filed 1–13–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,280]

Whirlpool Corporation, Benton Harbor Division, Including On-Site Leased Workers of Aerotek and Penske Logistics, LLC, Benton Harbor, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 14, 2010, applicable to workers of Whirlpool Corporation, Benton Harbor Division, Benton Harbor, Michigan, including on-site leased workers from Aerotek, Benton Harbor, Michigan. The Department's notice of determination was published in the **Federal Register** on September 29, 2010 (75 FR 60143).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of machined and plated component parts utilized in laundry equipment.

The company reports that workers leased from Penske Logistics, LLC, were employed on-site at the Benton Harbor, Michigan location of Whirlpool Corporation, Benton Harbor Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Penske Logistics, LLC working on-site at the Benton Harbor, Michigan location of Whirlpool Corporation, Benton Harbor Division.

The amended notice applicable to TA–W–74,280 is hereby issued as follows:

All workers of Whirlpool Corporation, Benton Harbor Division, including on-site leased workers from Aerotek and Penske Logistics, LLC, Benton Harbor, Michigan, who became totally or partially separated from employment on or after June 18, 2009, through September 14, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 17th day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–764 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,873; TA–W–72,873C; TA–W–72,873G; TA–W–72,873H; TA–W–72,873I; TA–W–72,873J]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–72,873
RBS Citizens, N.A., Business Services, Including On-Site Leased Workers of Manpower and Randstad and Workers Whose Unemployment Insurance (UI) Wages are Reported Through NextGen Information Services, Inc., 1 Citizens Drive, Riverside, Rhode Island

TA–W–72,873c
RBS Citizens, N.A., Business Services, Including On-Site Leased Workers of Manpower and Randstad and Workers Whose Unemployment Insurance (UI) Wages, are Reported Through NextGen Information Services, Inc., 20 Cabot Rd., Medford, Massachusetts

TA–W–72,873G
RBS Citizens, N.A., Business Services, Including On-Site Leased Workers of Manpower and Randstad and Workers Whose Unemployment Insurance (UI) Wages are Reported Through NextGen Information Services, Inc., 1000 Lafayette Boulevard, Bridgeport, Conneticut

TA–W–72,873H
RBS Citizens, N.A., Business Services, Including On-Site Leased Workers of Manpower and Randstad and Workers Whose Unemployment Insurance (UI) Wages are Reported Through NextGen Information Services, Inc., 443 Jefferson Boulevard, Warwick, Rhode Island

TA–W–72,873I
RBS Citizens, N.A., Business Services, Including On-Site Leased Workers of Manpower and Randstad and Workers Whose Unemployment Insurance (UI) Wages are Reported Through NextGen Information Services, Inc., 480 Jefferson Boulevard, Warwick, Rhode Island

TA–W–72,873J
RBS Citizens, N.A., Business Services, Including On-Site Leased Workers of Manpower and Randstad and Workers Whose Unemployment Insurance (UI) Wages are Reported Through NextGen Information Services, Inc., 10561 Telegraph Road, Glen Allen, Virginia

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 21, 2010, applicable to the workers of RBS Citizens, N.A., Business Services Division, at multiple locations across Rhode Island, Massachusetts, Ohio, New Jersey and Pennsylvania. The notice was published in the **Federal Register** on March 5, 2010 (75 FR 10322). The notice was amended on March 2, 2010 and July 14, 2010 to include other facilities of the subject firm located in Bridgeport, Connecticut, Warwick, Rhode Island, Glen Allen, Virginia, Pittsburgh, Pennsylvania, and Manchester, New Hampshire. The notices were published in the **Federal Register** on March 13, 2010 (75 FR 11921) and August 2, 2010 (75 FR 45158), respectively.

At the request of a State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of internal administrative services.

New information shows that some workers leased from Manpower were supplied to RBS Citizens, N.A., Business Services Division through a contract with NextGen Information Services, Inc., and had their wages reported through a separate unemployment insurance (UI) tax account under the name NextGen Information Services, Inc.

Accordingly, the Department is amending this certification to include workers provided by NextGen Information Services, Inc. under contract with Manpower to RBS Citizens, N.A., Business Services Division, located in Riverside, Rhode Island; Medford, Massachusetts; Bridgeport, Connecticut; Warwick, Rhode Island; and Glen Allen, Virginia.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the shift in services.

The amended notice applicable to TA–W–72,873 is hereby issued as follows:

"All workers of RBS Citizens, N.A., Business Services Division, including on-site leased workers of Manpower and Randstad, and workers whose unemployment insurance (UI) benefits are reported through NextGen Information Services, Inc. through a contract with Manpower, 1 Citizens Drive, Riverside, Rhode Island (TA–W–72,873); 20 Cabot Road, Medford, Massachusetts (TA–W–72,873C); 1000 Lafayette Boulevard, Bridgeport, Connecticut (TA–W–72,873G); 443 Jefferson Boulevard, Warwick, Rhode Island (TA–W–72,873H); 480 Jefferson Boulevard, Warwick, Rhode Island (TA–W–72,873I); and 10561 Telegraph Road, Glen Allen, Virginia (TA–W–72,873J) who became

totally or partially separated from employment on or after November 16, 2008, through January 21, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 4th day of January 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–745 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,326]

Pitney Bowes, Inc., Mailing Solutions Management Division Including On-Site Leased Workers of Guidant Group, and Teleworkers Located Throughout the United States, Shelton, CT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 2010, applicable to workers and former workers of Pitney Bowes, Inc., Mailing Solutions Management Division, Engineering Quality Assurance, Shelton, Connecticut. The Department's Notice was published in the **Federal Register** on September 23, 2010 (75 FR 57981).

At the request of a state workforce agent, the Department reviewed the certification to clarify the identity of the subject worker group.

The worker group consists of workers of Pitney Bowes, Inc., the Mailing Solutions Management Division, located in Shelton, Connecticut, including workers in the various subgroups of the Mailing Solutions Management Division, including but not limited to the engineering quality assurance group. The subject worker group also includes leased workers of Guidant Group working within the Mailing Solutions Management Division and on-site at the Shelton, Connecticut facility. The worker group also includes workers of Pitney Bowes, Inc. working within the Mailing Solutions Management Division who are located in remote work sites, including but not limited to home offices, located throughout the United States and who report to the Shelton, Connecticut facility.

The amended notice applicable to TA–W–74,326 is hereby issued as follows:

All workers of Pitney Bowes, Inc., Mailing Solutions Management Division, including on-site leased workers of Guidant Group and teleworkers located throughout the United States, Shelton, Connecticut, who became totally or partially separated from employment on or after June 23, 2009, through September 10, 2010, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 3rd day of January 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–746 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,575]

Dell Products LP, Winston-Salem (WS–1) Division, Including On-Site Leased Workers From Adecco, Spherion, Patriot Staffing, Manpower, Teksystems, APN, ICONMA, Staffing Solutions, South East, Omni Resources and Recovery, Securamerica, LLC, Industrial Distribution Group (IDG), LLC, ARM Automation, Inc., Seaton Corporation, and Foxconn/PCE Technology, Inc., Winston-Salem, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 1, 2010, applicable to workers of Dell Products LP, Winston-Salem (WS–1) Division, including on-site leased workers from Adecco, Spherion, Patriot Staffing, Manpower, TEKsystems, APN and ICONMA, Winston-Salem, North Carolina. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21361). The notices were amended on March 30, 2010, August 31, 2010, and November 18, 2010 to include on-site leased workers from Staffing Solutions, South East, and Omi Resources and Recovery, SecurAmerica, LLC, Industrial Distribution Group (IDG), LLC, ARM Automation, Inc., and Seaton Corporation. The notices were published on the **Federal Register** on April 19, 2010 (75 FR 20385), September 13, 2010 (75 FR 55614), and December 7, 2010 (75 FR 76040) respectively.

At the request of Foxconn/PCE Technology, Inc., the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of desktop computers.

New information shows that workers leased from Foxconn/PCE Technology, Inc. were employed on-site at the Winston-Salem, North Carolina location of Dell Products LP, Winston-Salem (WS–1) Division. The Department has determined that on-site workers from Foxconn/PCE Technology, Inc. were sufficiently under the control of the subject firm to be covered by this certification.

Based on these findings, the Department is amending this certification to include workers leased from Foxconn/PCE Technology, Inc. working on-site at the Winston-Salem, North Carolina location of Dell Products LP, Winston-Salem (WS–1) Division.

The amended notice applicable to TA–W–72,575 is hereby issued as follows:

All workers of Dell Products LP, Winston-Salem (WS–1) Division, including on-site leased workers of Adecco, Spherion, Patriot Staffing, Manpower, TEKsystems, APN, ICONMA, and Staffing Solutions, South East, Omni Resources and Recovery, SecurAmerica, LLC, Industrial Distribution Group (IDG), LLC, ARM Automation, Inc., Seaton Corporation, and Foxconn/PCE Technology, Inc. Winston-Salem, North Carolina, who became totally or partially separated from employment on or after October 13, 2008 through March 1, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 4th day of January 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–744 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,357]

Cinram Distribution, LLC, a Subsidiary of Cinram International, Simi Valley Distribution Center, Including On-Site Leased Workers From Labor Ready Southwest, Inc. and Select Remedy Staffing Services, Simi Valley, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 24, 2010, applicable to workers of Cinram Distribution, LLC, a subsidiary of Cinram International, Simi Valley Distribution Center, include on-site leased workers from Labor Ready Southwest, Inc., and Select Remedy Staffing Services, Simi Valley, California. The notice was published in the **Federal Register** on September 15, 2010 (75 FR 51643).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the supply of DVD, BluRay, and CD distribution services.

Upon review of the case investigation regarding the subject firm, the investigation revealed that an earlier petition was submitted on behalf of the workers of Cinram Distribution, LLC, Simi Valley, California, dated August 19, 2009. However, that petition was not properly instituted.

In order to include workers in the certified worker group who were separated before July 7, 2009, the Department is amending the impact date for TA–W–74,357 to August 19, 2008, one year before the petition date of August 19, 2009. The investigation revealed that worker separations between August 19, 2008 and July 7, 2009 were attributable to the increased imports that were the basis for certification.

The amended notice applicable to TA–W–74,357 is hereby issued as follows:

"All workers of Cinram Distribution, LLC, a subsidiary of Cinram International, including on-site leased workers from Labor Ready Southwest, Inc., and Select Remedy Staffing Services, Simi Valley, California, who became totally or partially separated from employment on or after August 19, 2008, through August 24, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 4th day of January 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–747 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–71,054
Apria Healthcare Including On-Site Leased Workers from Corporate Employment Resources, Inc., D/B/A Corestaff and Leafstone, Foothill Ranch, California
TA–W–71,054A
Apria Healthcare Including On-Site Leased Workers from Corporate Employment Resources, Inc., D/B/A Corestaff and Leafstone, Indianapolis, Indiana
TA–W–71,054B
Apria Healthcare, Including On-Site Leased Workers from Corporate Employment Resources, Inc., D/B/A Corestaff and Leafstone, Mechesney Park, Illinois
TA–W–71,054C
Apria Healthcare, Including On-Site Leased Workers from Corporate Employment Resources, Inc., D/B/A Corestaff and Leafstone, Ultimate Staffing (Roth Staffing Companies) and Aerotek, Cromwell, Connecticut
TA–W–71,054D
Apria Healthcare, Including On-Site Leased Workers from Corporate Employment Resources, Inc., D/B/A Corestaff and Leafstone, Tampa, Florida
TA–W–71,054E
Apria Healthcare, Including On-Site Leased Workers from Corporate Employment Resources, Inc., D/B/A Corestaff and Leafstone, Minster, Ohio
TA–W–71,054F
Apria Healthcare, Including On-Site Leased Workers from Corporate Employment Resources, Inc., D/B/A Corestaff and Leafstone, St. Louis Missouri
TA–W–71,054G
Apria Healthcare, Including On-Site Leased Workers from Corporate Employment Resources, Inc., D/B/A Corestaff and Leafstone, San Diego, California

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 23, 2009, applicable to workers of Apria Healthcare, including on-site leased workers from Corestaff, Cromwell, Connecticut. The workers are engaged in activities related to the supply of information technology and patient billing and collection services.

The Department's notice was published in the **Federal Register** on January 25, 2010 (75 FR 3938). The certification was amended on February 26, 2010 to include on-site leased workers from Ultimate Staffing (Roth Staffing Companies) and Aerotek (TA–W 71,054C). The notice of amended certifications was published in the **Federal Register** on March 12, 2010 (75 FR 11922).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information shows that workers leased from Corporate Employment Resources, Inc., d/b/a Corestaff and Leafstone, were employed on-site at the above-mentioned locations of Apria Healthcare. The Department has determined that these workers were sufficiently under the operational control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Corporate Employment Resources, Inc., d/b/a Corestaff and Leafstone, working on-site at the above mentioned locations of Apria Healthcare.

The amended notice applicable to TA–W–TA–W–71,054 and TA–W–71,054A–G are hereby issued as follows:

"All workers of Apria Healthcare, including on-site leased workers from Corporate Employment Resources, Inc., d/b/a Corestaff and Leafstone, Foothill Ranch, California (TA–W–71,054), Apria Healthcare, including on-site leased workers from Corporate Employment Resources, Inc., d/b/a/Corestaff and Leafstone, Indianapolis, Indiana (TA–W–71,054A), Apria Healthcare, including on-site leased workers from Corporate Employment Resources, Inc., d/b/a Corestaff and Leafstone, Machesney Park, Illinois (TA–W–71,054B), Apria Healthcare, including on-site leased workers from Corporate Employment Resources, Inc., d/b/a Corestaff and Leafstone, Ultimate Staffing (Roth Staffing Companies) and Aerotek, Cromwell, Connecticut (TA–W–71,054C), Apria Healthcare, including on-site leased workers from Corporate Employment Resources, Inc., d/b/a Corestaff and Leafstone, Tampa, Florida (TA–W–71,054D), Apria Healthcare, including on-site leased workers from Corporate Employment Resources, Inc., d/b/a Corestaff and Leafstone, Minster, Ohio (TA–W–71,054E), Apria Healthcare, including on-site leased workers from Corporate Employment

Resources, Inc., d/b/a Corestaff and Leafstone, St. Louis, Missouri (TA–W–71,054F), and Apria Healthcare, including on-site leased workers from Corporate Employment Resources, Inc., d/b/a Corestaff and Leafstone, San Diego, California (TA–W–71,054G), who became totally or partially separated from employment on or after June 5, 2008, through November 23, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 29th day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–743 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,610; TA–W–74,610A]

Ocwen Loan Servicing, LLC, Including Workers Whose Wages Were Reported Under Barclays Capital Real Estate, d/b/a HomEQ Servicing, North Highlands, CA; Ocwen Loan Servicing, LLC, Including Workers Whose Wages Were Reported Under Barclays Capital Real Estate, D/B/A HomEQ Servicing, Raleigh, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 23, 2010, applicable to workers of Ocwen Loan Servicing, LLC, including workers whose wages were reported under HomEQ Servicing, North Highland, California. The notice was published in the **Federal Register** on December 8, 2010 (75 FR 76488). The notice as amended on December 17, 2010 to include workers whose wages were reported under HomEQ Services. The notice was published in the **Federal Register** on January 3, 2011 (76 FR 178).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers supply loan servicing.

New information shows that workers separated from employment at the North Highland, California and Raleigh, North Carolina locations of Ocwen Loan Servicing, LLC had their wages reported through a separated unemployment insurance (UI) tax account under the name Barclays Capital Real Estate, d/b/a HomEQ Servicing.

Accordingly, the Department is amending this certification to properly reflex this matter.

The intent of the Department's certification is to include all workers the North Highlands, California and the Raleigh, North Carolina locations of Ocwen Loan Servicing, LLC who were adversely affected by a shift in loan services to a foreign country.

The amended notice applicable to TA–W–74,610 and TA–W–74,610A are hereby issued as follows:

All workers of Ocwen Loan Servicing, LLC, including workers whose wages were reported under Barclays Capital Real Estate, d/b/a HomEQ Servicing, North Highland, California (TA–W–74,610), and Ocwen Loan Servicing, LLC, including workers whose wages were reported under Barclays Capital Real Estate, d/b/a HomEQ Servicing, Raleigh, North Carolina (TA–W–74,610A), who became totally or partially separated from employment on or after September 7, 2009, through November 23, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 4th day of January 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–748 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,529; TA–W–71,529A]

Sara Lee Corporation, Master Data, Cash Applications, Deductions, Collections, Call Center, Information Technology, Accounts Payable, General Accounts, Financial Accounts, Payroll, and Employee Master Data Departments, Including On-Site Leased Workers From Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstad, RGP, RHI, Sapphire Technology, Select Staffing, TekSystems, The Brighton Group, TraSys, VIP Staffing, Workforce Temps, Earth City, MO; Sara Lee Corporation, Bellevue, NE; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 13, 2010, applicable to workers of Sara Lee Corporation, Master Data, Cash Applications, Deductions, Collections, Call Center, Information Technology, Accounts Payable, General Accounts, Financial Accounting, Payroll, and Employee Master Data Departments, Earth City, Missouri. The Department's notice was published in the **Federal Register** on February 16, 2010 (75 FR 7037). The subject workers supply a variety of support services.

At the request of a worker group, the Department reviewed the certification for workers of the subject firm.

New findings show that workers at an affiliated facility in Bellevue, Nebraska supply accounting and payroll services for Sara Lee Bakery facilities in Nebraska, Iowa, and Missouri.

Accordingly, the Department is amending the certification to include workers of Sara Lee Corporation supplying accounting and payroll services at the Bellevue, Nebraska facility.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the subject firm's acquisition from foreign countries services like or directly competitive with the services supplied by the workers, including but not limited to accounting and payroll.

The amended notice applicable to TA–W–71,529 is hereby issued as follows:

All workers of Sara Lee Corporation, Master Data, Cash Applications, Deductions, Collections, Call Center, Information Technology, Accounts Payable, General Accounts, Financial Accounting, Payroll, and Employee Master Data Departments, including on-site leased workers from Adecco, Crossfire, Kelly, K-Force, Labor Ready Staffing, Randstad, RGP, RHI, Sapphire Technology, Select Staffing, Snelling Staffing, TekSystems, The Brighton Group, TraSys, VIP Staffing, and Workforce Temps, Earth City, Missouri (TA–W–71,529) and all workers of Sara Lee Corporation, Bellevue, Nebraska (TA–W–71,529A), supplying accounting and payroll services, who became totally or partially separated from employment on or after July 1, 2008 through January 13, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through January 1, 2012, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 17th day of December 2010.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–763 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,044]

Croscill Acquisition, LLC, Currently Known as Croscill Home, LLC, Plant No. 8, Oxford, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 25, 2009, applicable to workers of Croscill Acquisition, LLC, formerly doing business as Royal Home Fashions, a subsidiary of Croscill, Inc., Plant No. 8, Oxford, North Carolina. The notice was published in the **Federal Register** on November 5, 2009 (74 FR 57342). The workers are engaged in the supply of warehousing and distribution services of household products, and are separately identifiable from workers producing samples at the same location.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm.

New information shows that the correct name of the subject firm should read Croscill Acquisition, LLC, currently known as Croscill Home, LLC, Plant No. 8. Some workers separated from employment at Croscill Acquisition, LLC had their wages reported under a separate unemployment insurance (UI) tax account under the name Croscill Acquisition, LLC currently known as Croscill Home, LLC.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the acquisition of warehousing and distribution services from China, Turkey and India.

The amended notice applicable to TA–W–70,044 is hereby issued as follows:

All workers of Croscill Acquisition, LLC, currently known as Croscill Home, LLC, Plant No. 8, Oxford, North Carolina, engaged in employment related to the supply of warehousing and distribution services, who became totally or partially separated from employment on or after May 25, 2009, through August 25, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 4th day of January 2011.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–741 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of December 13, 2010 through December 17, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group

eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
73,745	Zumtobel Lighting, Inc., Zumtobel Ag, National Labor Strategy	Garfield, NJ	March 17, 2009.
73,971	Liz Palacios Designs Ltd	San Francisco, CA	September 6, 2009.
74,037	Electronic Technical Services, Inc	Albuquerque, NM	April 20, 2009.
74,317	Irving Forest Products	Fort Kent, ME	June 17, 2009.
74,423	Kennametal Extrude Hone, Kennametal, Leased Wkrs from Adecco Employment Service and Kelly Services.	Irwin, PA	July 15, 2009.
74,625	Duro Bag Manufacturing Company	Hudson, WI	September 13, 2009.
74,676	Sparton Medical Systems Corporation, Leased Workers Resource Mfg.	Frederick, CO	September 28, 2009.
74,698	Fraser, N.H. LLC, Fraser Paper LTD., Leased Workers of Vescom Corporation.	Gorham, NH	March 13, 2010.
74,702	Sperry and Rice Manufacturing Company, LLC	Killbuck, OH	October 4, 2009.
74,775	Guardian Manufacturing Company, LLC, Paug-Vik Enterprises, Inc.	Willard, OH	October 21, 2009.
74,780	Harvard Folding Box Company, Also Known As Ideal Box Company, Diamond Staffing.	Lynn, MA	October 20, 2009.
74,780A	Harvard Folding Box Company, Also Known As Ideal Box Company, Encore Staffing.	Lawrence, MA	October 20, 2009.
74,832	SK Hand Tools Corporation	Defiance, OH	November 2, 2009.
74,840	Startek USA, Inc	Grand Junction, CO	October 12, 2009.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,271	BAE Systems Platform Solutions, Electrical & Mechanical Circuit, Supperior Tech, Aerotek, Ensco, RPQ.	Johnson City, NY	June 21, 2009.
74,582	ACF Industries, LLC, Workforce Temps	Milton, PA	August 31, 2009.

TA–W No.	Subject firm	Location	Impact date
74,614	International Business Systems (IBM), Global Technology Services, Xcel Energy Account.	Denver, CO	September 9, 2009.
74,641	Citicorp Credit Services, Inc. (USA), Citigroup Management Corp., Finance Reconciliation.	Irving, TX	September 17, 2009.
74,771	Psychonomic Society, Publications Office	Austin, TX	October 21, 2009.
74,794	Datrose, Working On-site at Xerox	Webster, NY	October 27, 2009.
74,820	Clearwater Paper Corporation, Finance Division, Leased Workers from Express Temp Services.	Spokane, WA	October 28, 2009.
74,821	Hewlett Packard, Global Information Security, Virtual Workers Reporting To.	Tulsa, OK	November 1, 2009.
74,852	Genascis, LLC, fks Physician Management Group, Robert Half International, Legal, etc.	Los Angeles, CA	November 8, 2009.
74,863	Neiman Marcus Group, Information Services Division	Irving, TX	November 10, 2009.
74,867	ABB, Inc., Reliability Services	Westerville, OH	November 3, 2009.
74,885	Haldex Brake Products Corporation, Leased Workers from Manpower.	Grand Haven, MI	November 16, 2009.
74,915	Lay-Z-Boy	Siloam Springs, AR	November 22, 2009.
74,915A	Lay-Z-Boy, Working On-Site at Lay-Z-Boy	Siloam Springs, AR	November 22, 2009.
74,916	Philips Luminaries North America, Sparta Operations Division, Philips, Leased Workers from @Work.	Sparta, TN	November 22, 2009.
74,918	Henkel Corporation	Olean, NY	November 22, 2009.
74,918A	Henkel Corporation, Leased Workers at Henkel Corporation	Olean, NY	November 22, 2009.
74,920	Raypak, Inc., PI US Holdings	Arcadia, FL	November 22, 2009.
74,921	Anthem Blue Cross and Blue Shield, Senior Medicare, Claims Rep Unit, Kelly Services.	Fond Du Lac, WI	November 23, 2009.
74,934	Ilpea Industries, Inc	Fort Smith, AR	November 29, 2009.
74,934A	TEC Staffing Services, On-Site at Ilpea Industries, Inc	Fort Smith, AR	November 29, 2009.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,857	Federal Mogul Corporation, Leased Workers of Aerotek	Schofield, WI	October 15, 2009.
74,910	Denim North America, Leased Workers of Westaff Agency	Columbus, GA	November 12, 2009.
74,952	Johnston Textiles, Inc., Micolas Plant, Johnston Acquisition, Leased Workers of Ambessador Personnel.	Opp, AL	December 1, 2009.
74,960	Caraustar Custom Packaging Group, Caraustar Industries, Leased Workers from Manpower.	Versailles, CT	December 3, 2009.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,574	Luke Paper Company, NewPage Corporation, Leased Workers from Select Staffing.	Luke, MD	November 17, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
74,312	Maine Industrial Tire, LLC	Gorham, ME.	
74,816	JPMorgan Chase & Co., Tresury and Securities, World Security, Transfer, Forum, Aerotek, Integrity.	Cincinnati, OH.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
73,857	The Marlin Firearms Company, Inc., Remington Arms	North Haven, CT.	
74,263	Sitton Motor Lines, Inc	Joplin, MO.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
74,670	McCrorie Wood Products	Hickory, NC.	
74,913	Sara Lee Bakery, Sara Lee Corporation	Bellevue, NE.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
74,011	Kennametal, Inc., Leased Workers From Spherion Staffing Services.	Bedford, PA.	
74,750	HomEq Servicing	Raleigh, NC.	
74,781	Harvard Folding Box Company, Also Known As Ideal Box Company.	Lawrence, MA.	
74,988	Ingersoll Rand Company, Hussman Corporation, Climate Solutions.	Bridgeton, MO.	

I hereby certify that the aforementioned determinations were issued during the period of December 13, 2010 through December 17, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: December 21, 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance .

[FR Doc. 2011–762 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of December 27, 2010 through December 30, 2010.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or

directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,737	Qantas Airways Limited, Air Pacific Account	Tucson, AZ	September 22, 2009.
74,850	StarTek USA, Inc	Greeley, CO	November 5, 2009.
74,939	DMI Furniture, Inc. Plant #5, Flexsteel Industries, Inc.; Domestic Commercial Office Furniture Operation.	Huntingburg, IN	November 23, 2009.
74,985	Cooper Hosiery Mill, Inc	Fort Payne, AL	December 17, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,396	Hartford Financial Services Group, Inc., Enterprise Information Technology; Leased Workers Cognizant and Beeline; etc.	Farmington, CT	July 15, 2009.
74,396A	Hartford Financial Services Group, Inc., Enterprise Information Technology/ EB&T/Billing and Audit Division.	Hartford, CT	July 15, 2009.
74,396B	Hartford Financial Services Group, Inc., Enterprise Information Technology/ EB&T/Billing and Audit Division.	Hartford, CT	July 15, 2009.
74,396C	Hartford Financial Services Group, Inc., Enterprise Information Technology/ EB&T/Billing and Audit Division.	Simsbury, CT	July 15, 2009.
74,715	Kaiser Foundation Hospitals, KPIT Division	Oakland, CA	September 29, 2009.
74,834	Pentair Residential Filtration, Leased Workers of Adecco	Milwaukee, WI	November 2, 2009.
74,834A	Pentair Residential Filtration, Leased Workers of Adecco	Brookfield, WI	November 2, 2009.
74,862	R & D Maidment, Inc., World of Leisure Pool Table Company	Victorville, CA	November 9, 2009.

TA–W No.	Subject firm	Location	Impact date
74,912	Thomson Reuters (Tax & Accounting), Inc., Professional Division, Business Compliance & Knowledge Solutions Unit.	Rochester, NY	November 22, 2009.
74,969	Bosch Communications Systems, Bosch STNA Division; Leased Workers from Resources for You, etc.	Glencoe, MN	December 24, 2010.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,841	PSB Industries, Inc., Leased Workers from Career Concepts Staffing Services, etc.	Erie, PA	November 3, 2009.
74,846	Mayflower Vehicle Systems, LLC, The Kings Mountain Plant; Leased Workers Personnel Services Limited; etc.	Grover, NC	November 2, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
73,961	Speidel	Cranston, RI	
74,143	Providence Watch Hospital, Speidel, LLC	Cranston, RI	
74,241	Allen Canning Company	Hessmer, LA	
74,340	Bert Jensen & Sons, Inc	Racine, WI	
74,374	TTM Technologies, Inc	Santa Ana, CA	
74,456	Global Recruiters of Boulder	Boulder, CO	
74,996	Manson Industries, Inc	Manson, IA	

I hereby certify that the aforementioned determinations were issued during the period of December 27, 2010 through December 30, 2010. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: January 5, 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–740 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 24, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 24, 2011.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 30th day of December 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 12/20/10 AND 12/23/10

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
75013	Cable Consultants, Inc. (Workers)	Corvallis, OR	12/20/10	11/12/10
75014	Fairchild Semiconductor (Company)	South Portland, ME	12/20/10	12/17/10
75015	Optima, Inc. (Company)	Stratford, CT	12/20/10	12/17/10
75016	Faurecia Emissions Control Technologies (Company)	Dexter, MO	12/20/10	12/16/10
75017	Nokia Mobile Phones (State/One-Stop)	Fort Worth, TX	12/20/10	12/17/10
75018	Owens-Illinois, Inc. (Workers)	Bridgeton, NJ	12/21/10	12/19/10
75019	Suss Microtec (Workers)	Waterbury Center, VT	12/21/10	12/20/10
75020	John Hancock Life Insurance Company (Company)	Milwaukee, WI	12/21/10	12/17/10
75021	Thompson Type, Inc. (Company)	San Diego, CA	12/21/10	12/17/10
75022	Carole Hochman Design Group, Inc. (Workers)	Williamsport, PA	12/21/10	12/17/10
75023	Chrysler Mack Avenue Engine Plant #1 (Union)	Detroit, MI	12/22/10	12/16/10
75024	SLI Lighting Products (Company)	Mullins, SC	12/22/10	12/20/10
75025	Emerson Electric Company (State/One-Stop)	Bidgeton, MO	12/22/10	12/21/10
75026	C & R Lumber Mill, LLC (Company)	Charleston, ME	12/22/10	12/21/10
75027	K.W.S. Inc. (State/One-Stop)	Cheboygan, MI	12/22/10	12/14/10
75028	Alpha Technology Corporation (Company)	Howell, MI	12/22/10	12/20/10
75029	CompX Precision Slides, Inc. (Company)	Byron Center, MI	12/22/10	12/16/10
75030	Weyerhaeuser (Company)	Hot Springs, AR	12/22/10	12/21/10
75031	Time-O–Matic, Inc. (Company)	Danville, IL	12/22/10	12/21/10
75032	PricewaterhouseCoopers, LLC (State/One-Stop)	Detroit, MI	12/22/10	12/15/10
75033	Indianapolis Metal Center (Union)	Indianapolis, IN	12/22/10	12/20/10
75034	East Jefferson General Hospital (Workers)	Metairie, LA	12/22/10	12/20/10
75035	3M IMTEC (Workers)	Ardmore, OK	12/22/10	12/16/10
75036	Panasonic North America (Workers)	Secaucus, NJ	12/22/10	11/22/10
75037	Hartford Compressors (Workers)	West Hartford, CT	12/22/10	12/21/10
75038	International Paper Company (Company)	Bellevue, WA	12/23/10	12/20/10
75039	Auto-Trol Technology Corporation (State/One-Stop)	Westminster, CO	12/23/10	12/21/10
75040	Janesville Acoustics/Jason Inc. (Union)	Grand Rapids, MI	12/23/10	12/20/10
75041	Lockheed Martin (State/One-Stop)	Eagan, MN	12/23/10	12/22/10
75042	Allied Automotive (Workers)	Janesville, WI	12/23/10	12/15/10
75043	SpectraWatt Inc. (Company)	Hopewell Junction, NY	12/23/10	12/22/10
75044	Hewlett Packard (HP) (State/One-Stop)	Fort Collins, CO	12/23/10	12/22/10

[FR Doc. 2011–739 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 24, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than January 24, 2011.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 27th of December 2010.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

TAA PETITIONS INSTITUTED BETWEEN 12/13/10 AND 12/17/10

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
74983	AAR Mobility System (Union)	Cadillac, MI	12/13/10	12/07/10
74984	Express Scripts (State/One-Stop)	Bloomington, MN	12/13/10	12/10/10
74985	Cooper Hosiery Mill, Inc. (Company)	Fort Payne, AL	12/13/10	12/10/10
74986	Hewlett Packard (State/One-Stop)	Camp Hill, PA	12/13/10	11/29/10
74987	Foxconn (Company)	Austin, TX	12/14/10	12/13/10
74988	Ingersoll Rand Company (USW)	Bridgeton, MO	12/14/10	12/13/10

TAA PETITIONS INSTITUTED BETWEEN 12/13/10 AND 12/17/10—Continued

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
74989	J. M. Smucker Company (Company)	Orrville, OH	12/14/10	12/13/10
74990	Everbrite (Company)	La Crosse, WI	12/14/10	12/13/10
74991	Norandex Building Materials Distribution, Inc. (State/One-Stop).	Gaylord, MI	12/14/10	12/13/10
74992	SuperMedia, LLC (Workers)	Dallas, TX	12/14/10	12/13/10
74993	Baxter Healthcare Corporation (State/One-Stop)	Beltsville, MD	12/14/10	12/13/10
74994	The Travelers Indemnity Insurance Company (State/One-Stop).	Houston, TX	12/15/10	12/14/10
74995	Bush Industries, Inc. (Company)	Erie, PA	12/15/10	12/10/10
74996	Manson Industries, Inc. (Company)	Manson, IA	12/15/10	12/14/10
74997	Emergency First Aid Products, Inc. (Workers)	Plattsburgh, NY	12/15/10	12/14/10
74998	Temple-Inland, Inc. (Workers)	Scranton, PA	12/15/10	12/03/10
74999	Central Maine Healthcare (Workers)	Lewiston, ME	12/15/10	11/30/10
75000	Harley-Davidson Motor Company (State/One-Stop)	Milwaukee, Menomonee Falls, Wauwatosa, & Franklin, Wisconsin, WI.	12/15/10	12/13/10
75001	Means Industries (Union)	Saginaw, MI	12/16/10	12/15/10
75002	International Truck and Engine (State/One-Stop)	Brookfield, WI	12/16/10	12/15/10
75003	Velsicol Chemical Corporation (Union)	Memphis, TN	12/16/10	12/15/10
75004	Burroughs Payment Systems, Inc. (Union)	Plymouth, MI	12/16/10	12/14/10
75005	Manufacturers Industrial Group—Athens, LLC (Company)	Athens, TN	12/16/10	12/15/10
75006	EMD Serono (State/One-Stop)	Billerica, MA	12/16/10	12/15/10
75007	Serigraph, Inc. (State/One-Stop)	West Bend, WI	12/16/10	12/15/10
75008	Weyerhauser Choice Wood (Workers)	Titusville, PA	12/16/10	12/08/10
75009	UBS AG (Workers)	Stamford, CT; New York, NY; Chicago, IL, CT.	12/16/10	12/15/10
75010	Hachette Book Group (Workers)	Boston, MA	12/17/10	11/29/10
75011	A. J. Wright, Inc. (Union)	Fall River, MA	12/17/10	12/16/10
75012	DataViz, Inc. (State/One-Stop)	Milford, CT	12/17/10	12/16/10

[FR Doc. 2011–738 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Trade Adjustment Assistance Program; Designation of Certifying Officers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is to designate Certifying Officers to carry out functions under the Trade Adjustment Assistance (TAA) program under chapter 2 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2271 *et seq.*), and the implementing regulations at 29 CFR part 90.

Background: The TAA program operates under the Trade Act of 1974, as amended, to provide assistance to domestic workers adversely affected in their employment by certain types of foreign trade. The Trade and Globalization Adjustment Assistance Act of 2009 amended the Trade Act of 1974, expanded TAA coverage to more workers and firms, including workers and firms in the service sector; made benefits available to workers whose jobs have been off-shored to any country, as opposed to only covering certain shifts in production; and improved workers' training opportunities and opportunities for health insurance coverage. The new law also included additional funding for employment services and case management, extended income support, increased funding for training, and provided for earlier access to training. Workers become eligible for program benefits only if the worker group is certified under the Act as eligible to apply for adjustment assistance. From time to time the agency issues an Order designating or redesignating officials of the agency authorized to act as Certifying Officers, responsible for reviewing and signing adjustment assistance determinations. This also is done when current Certifying Officials retire or leave and/or when there is a need to designate new Certifying Officials. Employment and Training Order No. 1–11 was issued to revise the listing of officials designated as Certifying Officers, superseding the previous Order. The Employment and Training Order No. 1–11 is published below.

FOR FURTHER INFORMATION CONTACT: Erin FitzGerald, 202–693–3560.

SUPPLEMENTARY INFORMATION:

Employment and Training Order No. 1–11

To: National and Regional Offices.

From: Jane Oates, Assistant Secretary for Employment and Training.

Subject: Trade Adjustment Assistance Program (Trade Act of 1974)—Designation of Certifying Officers.

1. *Purpose.* To designate Certifying Officers to carry out functions under the Trade Adjustment Assistance (TAA) program under chapter 2 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2271 *et seq.*), and the implementing regulations at 29 CFR part 90.

2. *Directive Affected.* Employment and Training Order No. 1–09, July 28, 2009, 74 FR 40613 (August 12, 2009), which designated Certifying Officers, is cancelled and superseded.

3. *Background.* Regulations at 29 CFR part 90 vest persons designated as Certifying Officers with the authority and responsibility to make determinations and redeterminations and to issue certifications of eligibility of groups of workers to apply for adjustment assistance under the TAA program.

4. *Designation of Officials.* By virtue of my authority under Secretary's Order No. 6–2010, October 20, 2010 (75 FR 66267, October 27, 2010), I designate or

redesignate as Certifying Officers for the TAA program:

a. Del Min Amy Chen, Program Analyst, Office of Trade Adjustment Assistance

b. Michael W. Jaffe, Program Analyst, Office of Trade Adjustment Assistance

c. Hope D. Kinglock, Program Analyst, Office of Trade Adjustment Assistance

d. Elliott S. Kushner, Program Analyst, Office of Trade Adjustment Assistance

e. Norris T. Tyler III. Director, Division of Management Information Systems and Investigations, Office of Trade Adjustment Assistance

The foregoing officials are delegated authority and assigned responsibility, subject to the general direction and control of the Assistant Secretary and Deputy Assistant Secretaries of the Employment and Training Administration, and the Director of the Office of Trade Adjustment Assistance or the successor office, to carry out the duties and functions of Certifying Officers under 29 CFR part 90 and any succeeding regulations.

5. *Effective Date.* This order is effective on date of issuance.

This order rescinds ETO 1–09.

This Employment and Training Order No. 1–11 was signed by Jane Oates on 1/11/11.

Dated: Signed this 11th day January 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–825 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This **Federal Register** Notice (FR Notice) notifies the public that it has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web Site at *http://www.msha.gov/indexes/petition.htm.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances at 202–693–9475 (Voice), *fontaine.roslyn@dol.gov* (E-mail), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2009–009–C
FR Notice: 74 FR 23746 (May 20, 2009).
Petitioner: Twentymile Coal Company, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222.
Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.
Regulation Affected: 30 CFR 75.312(c) and (d) (Main mine fan examinations and records).

• *Docket Number:* M–2009–019–C
FR Notice: 74 FR 34371 (July 15, 2009).
Petitioner: Process Energy Mining Company, 115 North Big Creek Road, P.O. Box 299, Sidney, Kentucky 41564.
Mine: Mine No. 1, MSHA I.D. No. 15–19097, located in Pike County, Kentucky.
Regulation Affected: 30 CFR 75.380(d)(3) (Escapeways; bituminous and lignite mines).

• *Docket Number:* M–2009–054–C
FR Notice: 74 FR 3258 (January 20, 2010).
Petitioner: Pinnacle Mining Company, P.O. Box 338, Pineville, West Virginia 24874.
Mine: Pinnacle Mine, MSHA I.D. No. 46–01816, located in Wyoming County, West Virginia.
Regulation Affected: 30 CFR 75.507–1 (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

• *Docket Number:* M–2010–014–C
FR Notice: 75 FR 10187 (March 31, 2010).
Petitioner: Sunrise Coal, LLC, 1183, East Canvasback Drive, Terre Haute, Indiana 47802.
Mine: Carlisle Mine, MSHA I.D. No. 12–02349, located in Sullivan County, Indiana.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2010–002–M
FR Notice: 75 FR 34487 (June 17, 2010).
Petitioner: Solvay Chemicals, Inc., P.O. Box 1167, 400 County Road 85, Green River, Wyoming 82935.
Mine: Solvay Chemicals, Inc., Mine, MSHA I.D. No. 48–01295, located in Sweetwater County, Wyoming.
Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

• *Docket Number:* M–2010–004–C
FR Notice: 75 FR 12796 March 17, 2010).
Petitioner: Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444.
Mine: No. 7 Mine, MSHA I.D. No. 01–01401, located in Tuscaloosa County, Alabama.
Regulation Affected: 30 CFR 75.507 (power connection points).

• *Docket Number:* M–2010–030–C
FR Notice: 75 FR 41530 (July 16, 2010).
Petitioner: Rosebud Mining Company, 301 Market Street, Kittanning, Pennsylvania 16201.
Mine: Beaver Valley Mine, MSHA I.D. No. 36–08725, located in Beaver County, Pennsylvania and Cherry Tree Mine, MSHA I.D. No. 36–09224, located in Indiana County, Pennsylvania.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2009–063–C

FR Notice: 75 FR 3253 (January 20, 2010).

Petitioner: Prairie State Generating Company, LLC, 4274 County Highway 12, Marissa, Illinois 62257.

Mine: Lively Grove Mine, MSHA I.D. No. 11–03193, located in Washington County, Illinois.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2009–001–M

FR Notice: 74 FR 23745 (May 20, 2009).

Petitioner: General Chemical (Soda Ash) Partners.

Mine: General Chemical Mine, MSHA I.D. No. 48–00155, located in Sweetwater County, Wyoming.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines) and 30 CFR 18.35 (Portable (trailing) cables and cords).

Dated: January 10, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–686 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before February 14, 2011.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, *Attention:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, *Attention:* Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR §§ 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2010–044–C.

Petitioner: Emerald Coal Resources, LP, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Emerald Mine, MSHA I.D. No. 36–05466, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.1700 (oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance with the standard with respect to vertical degasification wells with horizontal laterals into the underground coal seam. The Emerald Mine proposes to plug vertically drilled degasification gas wells in order to mine through them. The petitioner proposes to use the following procedures when mining through vertically drilled degasification boreholes with horizontal laterals to permit mining through the boreholes: (a) Plugging Procedures: (1) The borehole will be filled with flexible gel prior to the anticipated mine through. Alternative grouting methods including cementations or polyurethane grout may be used; (2) a packer will be installed at a location in the lateral to ensure that an appropriate amount of the lateral will be filled with gel; (3) any water present in the hole will be tested for chlorides prior to the time of the gelling. The gel quality will be adjusted to compensate for the chloride concentration; (4) a triplex piston pump will be utilized to pump (1.75) times the calculated hole volume of gel underground. The calculated volume of gel will be pumped until the volume of gel is depleted, (100–140) psi pressure is realized, or until gel leakage is observed along the ribs underground. The gel will be pumped through the drill string and inflated packer equipped with a one-way check valve. After the calculated (1.75) times the hole volume of gel has been pumped, a robber wiper will be run down the string under the wiper to the top of the packer will be the final gel injection pressure. The one-way check valve will prevent the gel to flow back into the drill string; and (5) the volume of fill required will be calculated and (1.75) times that amount will be pumped unless the (100–140) psi pressure is reached: (b) Procedures for mining through degasification boreholes that are plugged as specified: (1) Prior to mining within 300 feet of the boreholes or lateral, MSHA, the Bureau of Deep Mine Safety, and a representative of the miners will be notified. This notification will be both verbally and through a letter accompanied by a drawing of the borehole location and a copy of a certification that plugging has occurred as specified in this petition; (2) the District Mine inspector from the Bureau of Deep Mine Safety, MSHA District Manager, and a representative of the United Mine Workers of America will be notified in sufficient time prior to the mining through to have representatives present during the actual mining through operations if they so choose; (3) at the beginning of the shift in which a

borehole or lateral will be mined through, all personnel working underground will be informed of the cut through and of the communication procedure to be used. Management will insure that all personnel can be promptly informed of any problem that might develop during the borehole or lateral mine through; (4) when mining approaches to within 10 feet of cutting into the plugged borehole or lateral (10 feet is the radius from the hole plot) a designated person in each operating section will be posted within hearing distance of the section phone until the mine through is complete and an "all clear" command is given. All miners in the mine will be working in known locations within easy reach of a communications system. Mining can continue between shifts and during shift changes. The communications systems will be checked at the beginning of the shift and when within 10 feet of the cut through. Preshift examinations by certified persons may continue as required during the borehole mine through; (5) the mining through will be done with only the miners actually engaged in the mining through operation on the split of air. Those people necessary for safe, efficient continuous miner operation will be permitted to work on the same split of air and the borehole will be permitted to work on the same split of air and the borehole or lateral mine through, including the people working on haulage, conveyors, ventilation, roof control, etc. All other miners will be in splits of air not being used to ventilate the section of the mine through. When the distance from the face to the borehole or lateral reaches 10 feet, all workers will notified and no mining will be done within 20 feet on either side until all persons (except those mentioned above) have been withdrawn to another split or air; (6) Firefighting equipment, including fire extinguishers and rock dust will be available at the mine through site, and enough fire hoses will be available to reach the entire working face. Sufficient supplies of ventilation materials will be available near the working face; (7) The methane monitor on the continuous miner will be calibrated on the shift prior to the mining through operation; (8) A drivage sight will be installed at the last breakthrough to ensure intersection of the borehole or lateral and again, if necessary, to ensure that the last sight is not farther than 50 feet from the borehole or lateral. The anticipated mine through location will be identified underground by known survey points; (9) When mining is in progress, tests for methane will be made with a handheld methane detector at least every 10 minutes from the time that mining is within 30 feet of the borehole or until lateral is intersected; (10) A permissibility check will be made on the section face equipment on the shift prior to the mining through operation or immediately prior to mining into the 10 foot radius surrounding the borehole or lateral. The permissibility check done immediately prior to mining will suffice until the well is mined through; (11) If methane is detected 1-foot from the rib and 1-foot above the intersected borehole or lateral at 1 percent or greater, mining will cease and steps will be taken to reduce the methane concentration to below 1 percent to resuming mining; (12) When mining through the area identified to be within the 10 foot radius of the borehole or lateral, no one will be permitted to work on the return/inby inside of the borehole or lateral until the borehole or lateral is completely mined through and determined to be safe; (13) When the borehole or lateral is contacted, all face equipment inby the last open crosscut will be deenergized, and the place thoroughly examined and determined safe before mining is resumed. The section auxiliary fan will continue to operate as long as the methane concentration in the working place remains at less than 1 percent. Any casing will be removed and no open flame will be permitted in the area until adequate ventilation has been established around the borehole or lateral. Communications will be made throughout the mine when the borehole or lateral is completely mined through and determined to be safe; (14) The mining through operation will be under the direct supervision of the mine foreman or a certified person designated by the mine foreman. Instructions concerning the mining through operation will be issued by the mine foreman or a certified person designated by him to be in charge, rather than others, to avoid confusion; (15) If a void is encountered at the mine through and the methane reading is less than 1 percent, mining may continue. If methane levels are greater than 1 percent, mining will cease. To correct the situation, a mechanical or air packer will be installed in the rib toward the wellhead. This packer may be sealed in to prevent leakage from the wellhead side of the mined through hole. A mechanical or air packer will be installed on the inby side of the mined through hole. The void may be water infused or grouted to seal the opening when additional hole intercepts and mine through are anticipated (*i.e.,* No. 2 and No. 1 entries); (16) The above mining procedure will be reviewed with all personnel involved in the mining through operation prior to the intersection of the plugged borehole or lateral. A drawing will be provided for each well to be mined through. This drawing will be reviewed with all personnel engaged in the actual mine through of the borehole or lateral. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2010–045–C.

Petitioner: Rhino Eastern LLC, P.O. Box 260, Bolt, West Virginia 25817.

Mine: Eagle No. 1 Mine, MSHA I.D. No. 46–08758, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit deluge-type water spray systems to be used without blow-off dust covers on the nozzles. The petitioner states that: (1) Weekly inspections and functional tests of its complete deluge-type water spray system are currently being conducted at the mine; (2) each nozzle is provided with a blow-off dust cover; (3) due to frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use. This will eliminate a potential hazard when reaching across or removing guarding to replace the caps; (4) it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner proposes to continue its weekly inspection and functional testing of the complete deluge-type water spray system at the Eagle No. 1 Mine, and to remove the blow-off dust covers from the nozzles. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners as would be provided by the existing standard.

Docket Number: M–2010–046–C.

Petitioner: Cobra Natural Resources, LLC, P.O. Box 40, Wharncliffe, West Virginia 25651.

Mine: Mountaineer Alma A Mine, MSHA I.D. No. 46–08730, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit deluge-type water

spray systems to be used without blow-off dust covers on the nozzles. The petitioner states that: (1) Weekly inspections and functional tests of its complete deluge-type water spray system are currently being conducted at the mine; (2) each nozzle is provided with a blow-off dust cover; (3) due to frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use; (4) it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner proposes to continue its weekly inspection and functional testing of the complete deluge-type water spray system at the Eagle No. 1 Mine, and to remove the blow-off dust covers from the nozzles. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners as would be provided by the existing standard.

Docket Number: M–2010–047–C.

Petitioner: Canyon Fuel Company, LLC, 597 South SR24, Salina, Utah 84654.

Mine: Sufco Mine, MSHA I.D. No. 42–00089, located in Sevier County, Utah.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard as it applies to low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings under controlled conditions. The petitioner proposes to use non-permissible low-voltage or battery-powered electronic testing and diagnostic equipment that would be limited to laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic measuring devices, electronic component testers and electronic tachometers. The petitioner states that: (1) Permissible approved voltage measuring instruments are available and must be used when possible; (2) other testing and diagnostic equipment may be used if approved in advance by MSHA's District Office; (3) all other testing and diagnostic equipment used in or inby the last open crosscut will be permissible; (3) all non-permissible testing and diagnostic equipment used in or inby the last open crosscut will be examined by a certified person before use to ensure equipment is being maintained in a safe operating condition; (4) examination results will be recorded in the examination book before the equipment is used and will be made available to an authorized representative of the Secretary and the miners at the mine; (5) a qualified person will continuously monitor for methane immediately before and during the use of non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut; (6) non-permissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the non-permissible electronic equipment is being used, the equipment will be immediately de-energized and withdrawn to outby the last open crosscut; (7) all hand-held methane detectors will be MSHA approved and maintained in permissible and proper operating condition as defined in existing 30 CFR 75.320; (8) coal production will cease, except for the time necessary to troubleshoot under actual mining conditions. Coal may remain in or on the equipment in order to test and diagnose the equipment under a load. This change will require production to cease except during actual testing. Accumulations of coal and combustible materials referenced in 30 CFR 75.400 will be removed before testing begins to provide additional safety to miners; (9) non-permissible electronic test and diagnostic equipment will not be used to test equipment when float coal dust is in suspension; (10) all electronic and diagnostic equipment will be used in accordance with the manufacturer's recommended safe use procedures; (11) qualified personnel engaged in the use of electronic test and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of electronic test and diagnostic equipment; (12) any piece of equipment subject to this petition will be inspected by an authorized representative of the Secretary prior to initially placing it in service underground; (13) within 60 days after this petition for modification becomes final, the petitioner will submit proposed revisions for their approved 30 CFR Part 48 training plan to the District Manager. In addition to the requirements specified in Item No. 8 and 9, these proposed revisions will specify initial and refresher training regarding compliance with the terms and conditions stated in the Proposed Decision and Order; (14) cables supplying power to low-voltage test and diagnostic equipment will only be used when permissible testing and diagnostic equipment are unavailable. The petitioner asserts that the proposed alternative method will guarantee no less than the same protection afforded by the standard.

Docket Number: M–2010–048–C.

Petitioner: Canyon Fuel Company, LLC, 597 South SR24, Salina, Utah 84654.

Mine: Sufco Mine, MSHA I.D. No. 42–00089, located in Sevier County, Utah.

Regulation Affected: 30 CFR 75.1002 (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard as it applies to low-voltage or battery-powered non-permissible electronic testing and diagnostic equipment within 150 feet of pillar workings under controlled conditions. The petitioner proposes to use non-permissible low-voltage or battery-powered electronic testing and diagnostic equipment that would be limited to laptop computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic measuring devices, electronic component testers and electronic tachometers. The petitioner states that: (1) Permissible approved voltage measuring instruments are available and must be used when possible; (2) other testing and diagnostic equipment may be used if approved in advance by MSHA's District Office; (3) all other testing and diagnostic equipment used in or inby the last open crosscut will be permissible; (3) all non-permissible testing and diagnostic equipment used in or inby the last open crosscut will be examined by a certified person before use to ensure equipment is being maintained in a safe operating condition; (4) examination results will be recorded in the examination book before the equipment is used and will be made available to an authorized representative of the Secretary and the miners at the mine; (5) a qualified person will continuously monitor for methane immediately before and during the use of non-permissible electronic testing and diagnostic equipment in or inby the last open crosscut; (6) non-permissible electronic testing and diagnostic equipment will not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the non-permissible electronic

equipment is being used, the equipment will be immediately de-energized and withdrawn to outby the last open crosscut; (7) all hand-held methane detectors will be MSHA approved and maintained in permissible and proper operating condition as defined in existing 30 CFR 75.320; (8) coal production will cease, except for the time necessary to troubleshoot under actual mining conditions. Coal may remain in or on the equipment in order to test and diagnose the equipment under a load. This change will require production to cease except during actual testing. Accumulations of coal and combustible materials referenced in 30 CFR 75.400 will be removed before testing begins to provide additional safety to miners; (9) non-permissible electronic test and diagnostic equipment will not be used to test equipment when float coal dust is in suspension; (10) all electronic and diagnostic equipment will be used in accordance with the manufacturer's recommended safe use procedures; (11) qualified personnel engaged in the use of electronic test and diagnostic equipment will be properly trained to recognize the hazards and limitations associated with the use of electronic test and diagnostic equipment; (12) any piece of equipment subject to this petition will be inspected by an authorized representative of the Secretary prior to initially placing it in service underground; (13) within 60 days after this petition for modification becomes final, the petitioner will submit proposed revisions for their approved 30 CFR Part 48 training plan to the District Manager. In addition to the requirements specified in Item No. 8 and 9, these proposed revisions will specify initial and refresher training regarding compliance with the terms and conditions stated in the Proposed Decision and Order; (14) cables supplying power to low-voltage test and diagnostic equipment will only be used when permissible testing and diagnostic equipment are unavailable. The petitioner asserts that the proposed alternative method will guarantee no less than the same protection afforded by the standard.

Docket Number: M–2010–049–C.

Petitioner: Speed Mining, Inc., 1600 Laidley Tower, P.O. Box 553, Charleston, West Virginia 25322.

Mine: American Eagle Mine, MSHA I.D. No. 46–05437, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.1403–5(g) (Criteria—Belt conveyors).

Modification Request: The petitioner requests a modification of the existing standard to allow less than 24 inches of clearance at belt locations due to initial design and construction of the entries by the former owner of the mine. The petitioner states that: (1) Speed Mining is unable to maintain 24 inches of clearance because of the initial design and construction of the entries by the former owner of the mine; (2) approximately eight years ago, the former operator designed the section such that the track and conveyor belt would run in the same entry; (3) because the track and belt run together, and there is a need for some supplemental roof control along certain portions of the belt, it is impossible to provide 24 inches of clearance along the belt; (4) the requested modification has essentially been in place since the former operator's construction of the entries, with no objection from MSHA. Speed Mining is seeking to continue the former owner's practice. The petitioner further states that: (1) Adequate signs indicating close clearance will be installed on the inby and outby sides of the close clearance areas; (2) no work or travel will be allowed in the close clearance area while the belt is running; (3) belt cut-off switches will be installed on the inby and outby sides of the close clearance area; (4) the belt stoppage switches will be installed in a manner that will not allow the belt to be started at another location; (5) before any work is performed in the affected area, the power to the belt will be cut, locked and tagged; (6) signs will be installed to direct foot traffic traveling on the off side of the belt around the block until the close clearance area has been passed; (7) all employees who will be affected by this modification approval will be made aware of the stipulations. The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners.

Dated: January 10, 2011.

Patricia W. Silvey,

Certifying Officer.

[FR Doc. 2011–687 Filed 1–13–11; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0011]

Draft Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance, Availability of Draft Regulatory Guide (DG)–1245.

FOR FURTHER INFORMATION CONTACT: Mark P. Orr, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–415–7495 or e-mail *Mark.Orr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The draft regulatory guide, entitled, "Inspection of Water-Control Structures Associated with Nuclear Power Plants," is temporarily identified by its task number, DG–1245, which should be mentioned in all related correspondence. DG–1245 is proposed Revision 2 of Regulatory Guide 1.127, dated March 1978.

This guide describes a basis acceptable to the NRC staff for developing an appropriate inservice inspection and surveillance program for dams, slopes, canals, and other water-control structures associated with emergency cooling water systems or flood protection of nuclear power plants.

II. Further Information

The NRC staff is soliciting comments on DG–1245. Comments may be accompanied by relevant information or supporting data, and should mention DG–1245 in the subject line. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS).

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0011 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for

submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0011. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at 301–492–3446.

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

NRC's Public Document Room (PDR): The public may examine and copy for a fee publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Regulatory Analysis is available electronically under ADAMS Accession Number ML102380594.

Comments would be most helpful if received by March 15, 2011. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of DG–1245 are available through the NRC's public Web site under Draft Regulatory Guides in the "Regulatory Guides" collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/.* Electronic copies are also available in ADAMS (*http://www.nrc.gov/reading-rm/adams.html*), under Accession No. ML093060150.

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Dated at Rockville, Maryland, this 7th day of January 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–724 Filed 1–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0010]

Withdrawal of Regulatory Guide 1.154

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide 1.154, "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors."

FOR FURTHER INFORMATION CONTACT: Mekonen M. Bayssie, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–251–7489 or *e-mail: Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 1.154, "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors." RG 1.154 was issued by NRC in January 1987 to describe the format and content acceptable to the NRC staff for plant-specific pressurized thermal shock (PTS) safety analyses, and to describe acceptance criteria that NRC staff will use in evaluating licensee analyses and proposed corrective measures.

In recent years, the NRC's Office of Nuclear Regulatory Research (RES) developed a technical basis that supported updating the PTS regulations in Title 10, Section 50.61, of the *Code of Federal Regulations* (10 CFR 50.61). This technical basis, as described in NUREG–1806 and in NUREG–1874, concluded that the risk of through-wall pressure vessel cracking due to a PTS event is much lower than previously estimated. This finding indicated that the reference temperature (RT) screening criteria in 10 CFR 50.61 are overly conservative and may impose an unnecessary burden on some licensees. Therefore, the NRC developed a new rule, 10 CFR 50.61a, "Alternate Fracture Requirements for Protection against Pressurized Thermal Shock Events" (SECY–09–0059: "Final Rule Related to Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events," RIN 3150–AI01, April 9, 2009). The alternative rule allows, but does not require, that licensees may comply with more permissive RT limits that were derived in a risk-informed manner provided that certain requirements regarding vessel inspection and surveillance programs, as outlined in 10 CFR 50.61a, are met.

In the course of developing 10 CFR 50.61a, it became clear to staff that the guidance provided by RG 1.154 is significantly outdated and, in some cases, technically deficient. As such, a plant-specific PTS analysis performed based on guidance in RG 1.154 will not be acceptable to the staff. While the methods and procedures were appropriate based on the situation in the industry when RG 1.154 was developed (1987), the methods and procedures have since either passed into common practice among plant operators, or were accounted for in the development of 10 CFR 50.61a. A fundamental premise underlying RG 1.154 is that the RT screening criteria in 10 CFR 50.61 are based on a large number of conservative assumptions. As such, RG 1.154 postulates that it is possible to perform a plant-specific analysis to show that some conservatism could reasonably be removed while still demonstrating that a plant can be operated at an acceptably low level of risk. The technical basis for 10 CFR 50.61a, however, considered the most accurate models and input values presently available given the current state of the science. This had the effect of eliminating much of the conservatism that was embedded in the more restrictive 10 CFR 50.61 RT screening criteria. This calls into question whether a strong case could be made to remove further conservatism in a plant-specific PTS analysis performed in accordance with RG 1.154. Moreover, RG 1.154 frequently discusses the "licensee's proposed program of corrective measures," reflecting the view that there are actions that an individual licensee can take, beyond present practices, that will mitigate the PTS risk. The continued validity of this premise is also questionable. An assessment of

potential corrective measures described in RG 1.154 indicates that they are either impractical or that they have already been implemented because of changes to standard industry practices since the issuance of the RG in 1987. RG 1.154 lists five general classes of potential corrective actions. The current assessment suggests that few of the corrective actions listed in RG 1.154 would effectively mitigate PTS risk relative to the baseline risk established by the technical basis documents that support the alternative rule 10 CFR 50.61a. Licensees have a choice to apply more conservative screening criteria in 10 CFR 50.61 or more permissive and risk-informed criteria in the alternative rule 10 CFR 50.61a. If a licensee chooses to apply the screening criteria in 10 CFR 50.61 to their plant, and the plant is projected to reach the screening limits in 10 CFR 50.61, the licensee can either choose to follow procedures prescribed in 10 CFR 50.61 (b)(3) on implementing flux reduction measures or 10 CFR 50.61 (b)(4) on performing plant-specific safety analysis. However, if a licensee chooses to follow 10 CFR 50.61 (b)(4) on performing safety analysis, Regulatory Guide 1.154 cannot be used, as it is hereby being withdrawn.

II. Further Information

The withdrawal of RG 1.154 does not alter any prior or existing licensing commitments based on its use. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological, congressional action, or other events.

Guides are revised for a variety of reasons, and the withdrawal of a regulatory guide should be thought of as the final revision of the guide. Although a regulatory guide is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal means that the guide should not be used for future NRC licensing activities. Changes to existing licenses would be accomplished using other regulatory products.

Regulatory guides and publicly available NRC documents are available electronically through the Electronic Reading Room on the NRC's public Web site at: *http://www.nrc.gov/reading-rm/doc-collections/.* The documents can also be viewed online or printed for a fee in the NRC's Public Document Room (PDR) at 11555 Rockville Pike, Rockville, Maryland; the mailing address is USNRC PDR, Washington, DC 20555; *telephone:* 301–415–4737 or 800–397–4209; *fax:* 301–415–3548; and *e-mail: pdr.resource@nrc.gov.*

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Dated at Rockville, Maryland, this 6th day of January 2011.

For the Nuclear Regulatory Commission.

Harriet Karagiannis,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–723 Filed 1–13–11; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Collection of Information

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Peace Corps has submitted a proposed collection of information to the Office of Management and Budget (OMB) for review and clearance under the provisions of the Paperwork Reduction Act of 1995. This notice invites the public to comment on the proposed collection of information by the Peace Corps' Office of Communications. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

DATES: Comments regarding this collection must be received on or before February 14, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via e-mail to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. *Attention:* Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcfr@peacecorps.gov.* Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION: The purpose of this survey is to collect feedback from Peace Corps applicants and Returned Volunteers to help understand which factors are driving recruitment attrition, as well as what information or education needs would increase the conversion ratio. An online survey will be conducted among 1,200 Peace Corps applicants and Returned Peace Corps Volunteers including 300 from each of the following segments: Inquire—complete an initial inquiry but do not begin or submit an application; Begin application—but either do not submit it or move forward; Submit complete application—but then elect not to proceed by stopping communication or actively withdrawing during the review process; Returned Peace Corps Volunteers—who recently closed Peace Corps service in the past two years. Including Returned Peace Corps Volunteers in the study will provide information to understand what is working in the application process and will help guide the strategies for correcting the conversion loss. There is no statutory or regulatory requirement for this information.

Method: The information will be collected through an online survey.

Title: Peace Corps Conversion Loss Survey.

OMB Control Number: [To be assigned.]

Type of Review: New.

Affected Public: Former applicants to the Peace Corps and Returned Peace Corps Volunteers Respondents' obligation to reply: Voluntary.

Estimate of the total number of respondents: 1,200.

Estimated time to complete survey: 20 minutes.

Estimate of the total public burden (in hours): 400 hours.

Frequency of Response: 1 time.

Estimated number of respondents: 1,200.

General description of collection: To understand which factors are driving recruitment attrition, as well as what information or education needs would increase the conversion ratio.

Dated: January 10, 2011.

Earl W. Yates,

Associate Director for Management.

[FR Doc. 2011–766 Filed 1–13–11; 8:45 am]

BILLING CODE 6051–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a

meeting on January 19, 2011, 10 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Executive Committee Reports

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: January 10, 2011.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 2011–864 Filed 1–12–11; 11:15 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA–170; File No. SIPC–2010–01]

Securities Investor Protection Corporation; Order Approving a Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members

January 10, 2011.

On October 8, 2010, the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission ("Commission") a proposed bylaw change pursuant to Section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA"), 15 U.S.C. 78ccc(e)(1). Notice of the proposed bylaw change was published in the **Federal Register** on December 6, 2010.[1] The Commission received no comment letters on the proposed bylaw change. This order approves the proposed bylaw change.

I. Description of Proposed Bylaw Change

Section 4(c)(2) of SIPA requires SIPC to impose assessments upon its member broker-dealers deemed necessary and appropriate to establish and maintain a broker-dealer liquidation fund administered by SIPC (the "SIPC Fund") and to repay any borrowings by SIPC used to liquidate a broker-dealer. Pursuant to this authority, SIPC collects an annual assessment from its members. The amount of the annual assessment is prescribed by SIPA and the SIPC bylaws. When the SIPC Fund is at its targeted level, SIPC collects a minimum assessment as provided in SIPA. The current target level for the SIPC Fund is $2.5 billion.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") amended SIPA to change the minimum assessment from an amount not to exceed $150 to an amount not to exceed 0.02 percent of the gross revenues from the securities business of the SIPC member.[2] Under Article 6 of the SIPC bylaws, SIPC must assess its members a minimum amount ($150) unless certain conditions apply. Because in some cases an assessment of $150 would exceed 0.02 percent of a member's gross revenues, the SIPC Assessments bylaw must be amended to be consistent with the Dodd-Frank Act. First, SIPC has proposed to amend Article 6, Section 1(a)(1)(B) of the SIPC bylaws by replacing "$150" with the term "0.02 percent of the net operating revenues from the securities business." This amendment clarifies that the minimum assessment for members, once the SIPC Fund reaches its target, is 0.02 percent of a member's net operating revenues, rather than $150. Second, SIPC has proposed deleting Section 1(a)(3) of Article 6, which states that $150 was the minimum assessment a SIPC member would be required to pay in any calendar year. These amendments were approved by SIPC's Board of Directors on September 16, 2010.

As indicated above, SIPC's bylaw changes refer to "net operating revenues" instead of "gross revenues." Since 1991, when assessing on a percentage basis (*i.e.,* not a flat $150 minimum assessment), SIPC has based the assessment amount on a percentage of net operating revenues, not gross revenues, from the securities business. In 1991, a SIPC Task Force study found that securities firms no longer structured their business on a gross revenue basis but instead used a net operating revenue basis, which excludes interest expense and dividend expense in accounting for revenue. SIPC bases its assessment on the net revenues associated with that business, which it believes is consistent with SIPA. Basing the assessment on net operating revenues as opposed to gross revenues will decrease the amount of the assessment in most situations. However, under SIPA, SIPC may adjust the basis for collecting assessments and the amount of assessments as long as the assessments are within the parameters prescribed in SIPA.[3] Using a minimum assessment of 0.02 percent of net operating revenues would not cause the amount of the assessment to exceed the maximum amount permitted for the minimum assessment under Section 4(d)(1)(C) of SIPA, as amended by the Dodd-Frank Act.

II. Commission Findings

Section 3(e)(1) of SIPA provides that SIPC must file with the Commission a copy of proposed bylaw changes. That section further provides that bylaw changes shall take effect 30 days after filing, unless the Commission either: (i) Disapproves the change as contrary to the public interest or the purposes of SIPA, or (ii) finds that the change involves a matter of such significant public interest that public comment should be obtained. Once the Commission finds that the proposed bylaw change involves a matter of such significant public interest that public comment should be obtained, the Commission may, after notifying SIPC in writing of such finding, require that the proposed bylaw change be considered by the same procedures as a proposed rule change including, among other things, publication in the **Federal Register** and opportunity for public comment. Prior to approving a proposed bylaw change that has been noticed for public comment the Commission must make a finding that the change is in the public interest and is consistent with the purposes of SIPA.[4]

The Commission finds, pursuant to Section 3(e)(2)(D) of SIPA, that the proposed bylaw change is in the public interest and consistent with SIPA. First, the proposed bylaw change is a necessary consequence of Dodd-Frank. Second, utilizing net operating revenues instead of gross revenues is consistent with industry practice, SIPA, and the SIPC bylaws.

III. Conclusion

It is therefore ordered, pursuant to Section 3(e)(2)(B) of SIPA, that the proposed bylaw changes (File No. SIPC–2010–01) are approved.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–711 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Release No. SIPA–169 (November 30, 2010), 75 FR 75711 (December 6, 2010).

[2] The Dodd-Frank Act, Section 929V.

[3] 15 U.S.C. 78ddd(c)(2) and 78lll(9).

[4] 15 U.S.C. 78ccc(e)(2)(D).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63662; File No. SR–BYX–2011–001]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

January 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2011, BATS Y-Exchange, Inc. ("Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to Members [5] of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective January 4, 2011, in order to: (i) Amend the fees for certain routing strategies based on a change of fees at the New York Stock Exchange ("NYSE"); and (ii) remove reference to a routing strategy called "Dark Scan" that the Exchange has ceased offering.

(i) One Under Pricing for Certain Orders Executed at NYSE

The Exchange has previously provided a discounted price fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance has been $0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Based on changes in pricing at NYSE, BYX is proposing to increase its fee for a Destination Specific Orders executed at NYSE to align its fees so that the fee remains $0.0001 less per share for orders routed to NYSE. Specifically, the Exchange proposes to increase the fee charged for BYX + NYSE Destination Specific Orders executed at NYSE from $0.0020 per share to $0.0022 per share. In addition, the Exchange offers a variety of routing strategies, including "SLIM" and "TRIM," each of which has a specific fee for an execution that occurs at NYSE.

(ii) Elimination of Dark Scan

The Exchange has discontinued functionality that allowed a User to send an order that routes to certain dark liquidity venues prior to exposing the order to the Exchange's order book (referred to by the Exchange as a "Dark Scan" order). Accordingly, the Exchange proposes to remove reference to Dark Scan orders from its fee schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and Rule 19b–4(f)(2) thereunder,[9] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to its members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BYX–2011–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2011–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2011–001 and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–664 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63687; File No. SR–BX–2011–002]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a $5 Strike Price Program on the Boston Options Exchange Facility

January 10, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 10, 2011, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to allow BOX to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program"), and to clarify that BOX may list option classes designated by other securities exchanges that employ a similar $5 Strike Price Program under their respective rules. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room, and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Chapter IV, Section 6(d) of the BOX Rules to allow BOX to list and trade options series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program") to provide investors and traders additional opportunities and strategies to hedge high priced securities. Additionally, this proposed rule change will clarify that BOX may list series on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $5 Strike Price Program under their respective rules. Similar reciprocity currently is permitted with BOX's $1 Strike Program, $.50 Strike Program and $2.50 Strike Program.[5]

Currently, Chapter IV, Section 6(d)(iii) of the BOX Rules permits strike price intervals of $10 or greater where the strike price is greater than $200.[6] The Exchange is proposing to add the proposed $5 Strike Price Program as an exception to the $10 or greater program language in Chapter IV, Section 6. The proposal would allow BOX to list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. The Exchange specifically proposes to create a new sub-section (d)(v) to Chapter IV, Section 6 which would state, "BOX may list series in intervals of $5 or greater where the strike price is more than $200 in up to

[5] *See* Supplementary Material .02, .03, and .06 to Chapter IV, Section 6 of the BOX Rules.

[6] Chapter IV, Section 6(d) of the BOX Rules also permits strike price intervals of $5.00 or greater where the strike price is greater than $25.00 but less than $200; and $2.50 or greater where the strike price is $25.00 or less.

five (5) option classes on individual stocks. BOX may list $5 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar $5 Strike Price Program under their respective rules." BOX believes the $5 Strike Price Program would offer investors a greater selection of strike prices at a lower cost. For example, if an investor wanted to purchase an option with an expiration of approximately one month, a $5 strike interval could offer a wider choice of strike prices, which may result in reduced outlays in order to purchase the option. By way of illustration, using Google, Inc. ("GOOG") as an example, if GOOG would trade at $610[7] with approximately one month remaining until expiration, the front month (one month remaining) at-the-money call option (the 610 strike) would trade at approximately $17.50 and the next highest available strike (the 620 strike) would trade at approximately $13.00. By offering a 615 strike an investor would be able to trade a GOOG front month call option at approximately $15.25, thus providing an additional choice at a different price point.

Similarly, if an investor wanted to hedge exposure to an underlying stock position by selling call options, the investor may choose an option term with two months remaining until expiration. An additional $5 strike interval could offer additional and varying yields to the investor. For example if Apple, Inc. ("AAPL") would trade at $310[8] with approximately two months remaining until expiration, the second month (two months remaining) at-the-money call option (the 310 strike) would trade at approximately $14.50 and the next highest available strike (the 320) strike would trade at $9.90. The 310 strike would yield a return of 4.67% and the 320 strike would yield a return of 3.20%. If the 315 strike were available, that series would be priced at approximately $12.20 (a yield of 3.93%) and would minimize the risk of having the underlying stock called away at expiration.

With regard to the impact of this proposal on system capacity, BOX has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks $5 Strike Price Program.

The proposed $5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the proposed $5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk management requirements. Finally, the Exchange proposes to clarify that the options in the $5 Strike Price Program may be listed and traded in series that are listed by BOX or other securities exchanges that employ a similar $5 Strike Price Program, pursuant to the rules of the other securities exchanges. Similar reciprocity currently is permitted with BOX's $1 Strike Program, $.50 Strike Program and $2.50 Strike Program.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the $5 Strike Price Program proposal would provide the investing public and other market participants increased opportunities because a $5 series in high priced stocks would provide market participants additional opportunities to hedge high priced securities. This would allow investors to better manage their risk exposure. Moreover, the Exchange believes the proposed $5 Strike Price Program would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the $5 Strike Price Program will generate additional quote traffic, BOX does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, BOX does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and BOX does not believe that the additional price points will result in fractured liquidity. Finally, the Exchange believes that clarifying that BOX may list and trade options in series that are listed by BOX or other securities exchanges that employ a similar $5 Strike Price Program will provide its Options Participants greater clarity on the types of options that may be listed by BOX.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the $5 Strike Price Program is substantially similar to that of another exchange that is already effective and operative.[14] Therefore, the Commission

[7] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[8] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[9] *See* Supplementary Material .02, .03, and .06 to Chapter IV, Section 6 of the BOX Rules.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[14] *See* Securities Exchange Act Release No. 63654 (January 6, 2011) (SR–Phlx–2010–158) (order approving establishment of a $5 Strike Price Program). *See also* Securities Exchange Act Release No. 63658 (January 6, 2011) (SR–Phlx–2011–02) (notice of filing and immediate effectiveness of reciprocity provision related to the $5 Strike Price Program).

designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2011–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–002 and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–772 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63685; File No. SR–NASDAQ–2010–074]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Disapprove Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 4753(c) as a Six Month Pilot in 100 NASDAQ-Listed Securities

January 10, 2011.

I. Introduction

On June 18, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement, on a six-month pilot basis, a volatility-based trading pause in 100 Nasdaq-listed securities ("Volatility Guard"). On June 25, 2010, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 15, 2010.[3] The Commission received four comment letters on the proposal.[4] Nasdaq responded to these comments on August 12, 2010.[5] The Commission subsequently extended the time period in which to either approve the proposed rule change, or to institute proceedings to determine whether to disapprove the proposed rule change, to October 13, 2010.[6] On October 13, 2010, the Commission issued an order instituting disapproval proceedings.[7] The Commission thereafter received one comment letter, which requested that the proposed rule change be disapproved.[8]

Section 19(b)(2) of the Act[9] provides that, after initiating dispproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on July 15, 2010. January 11, 2011 is 180 days from that date, and March 12, 2011, is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider this proposed rule change and the issues raised in the comment letters that have been submitted in connection with this filing. Specifically, the Commission believes the proposal raises issues as to whether the Volatility Guard, by halting trading on Nasdaq when the price of a security moves quickly over a short period of time, will exacerbate the volatility of trading in that security on the other exchanges and over-the-counter trading centers that remain open. In addition, because the thresholds for triggering the Volatility

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62468 (July 7, 2010), 75 FR 41258.

[4] *See* Letter from Joe Ratterman, Chairman and Chief Executive Officer, BATS Global Markets, Inc., to Hon. Mary Schapiro, Chairman, Commission, dated July 1, 2010 ("BATS Letter"); Letter from Jose Marques, Managing Director, Deutsche Bank Securities Inc., to Elizabeth M. Murphy, Secretary, Commission, dated July 21, 2010 ("Deutsche Bank Letter"); Letter from Janet M. Kissane, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth Murphy, Secretary, Commission, dated August 3, 2010 ("NYSE Letter"); Letter from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated June 25, 2010 ("SIFMA Letter").

[5] *See* Letter from T. Sean Bennett, Assistant General Counsel, Nasdaq, to Elizabeth M. Murphy, Secretary, Commission ("Nasdaq response").

[6] *See* Securities Exchange Act Release No. 62740 (August 18, 2010), 75 FR 52049 (August 24, 2010).

[7] *See* Securities Exchange Act Release No. 63098, 75 FR 64384 (October 19, 2010).

[8] *See* Letter from Timothy Quast, Managing Director, ModernIR, to Elizabeth M. Murphy, Secretary, Commission, dated November 11, 2010.

[9] 15 U.S.C. 78s(b)(2).

Guard, and the length of the trading halt that results, differ from those of the recently approved, market-wide single-stock circuit breakers, the Commission believes the proposal raises issues as to whether the operation of the Volatility Guard will interfere with, or otherwise limit the effectiveness of, the circuit breakers, the goal of which is to prevent potentially destabilizing price volatility across the U.S. securities markets. Extending the time within which to approve or disapprove this proposed rule change will enable the Commission to more fully consider these issues.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates March 11, 2011, as the date by which the Commission should either approve or disapprove the proposed rule change.[11]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–771 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] The Comission notes that it is extending the time period in which to issue an approval or disapproval order to March 11, 2011, since the full 60-day extension would expire on Saturday, March 12, 2011.

[12] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63679; File No. SR–Phlx–2010–187]

Self-Regulatory Organizations; NASDAQ OMX PHLX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

January 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 29, 2010, NASDAQ OMX PHLX, Inc. [sic] ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees governing pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index option Customer and Professional orders to away markets for execution.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing Customer and Professional orders in equity and index options to the International Securities Exchange LLC ("ISE") in Select Symbols [4] for orders of 100 or more contracts. ISE recently amended its fees and the amendments proposed herein reflect the proposed ISE amendments.[5]

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[6] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange assesses a Routing Fee of $0.26 per contract for Customer orders and $0.31 per contract for Professional orders. The Exchange proposes to amend its Routing Fees for orders routed to ISE in Select Symbols by assessing $0.18 per contract for Customer orders and $0.34 per contract for Professional Orders.

The Exchange also proposes to remove a footnote reference to the ISE Select Symbols which states "[t]his fee applies to orders of 100 or more contracts." This proposal reflects recent amendments to ISE's fees, which eliminate the fee differential between priority customers with 100 or more contracts and priority customers with less than 100 contracts.[7] All other orders that are routed to ISE, which are not in the Select Symbols, would be assessed the rates labeled "ISE".

The Exchange is proposing these fees to recoup the majority of transaction and clearing costs associated with routing Customer and Professional orders to ISE in Select Symbols. These proposed fees will enable the Exchange to recover the transaction fees assessed by ISE, where applicable, plus clearing fees for the execution of Customer and Professional orders routed from the Phlx XL II system. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on January 3, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that these fees are reasonable because the Exchange is seeking to recoup costs that it incurs when routing orders to ISE in Select Symbols on

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

[4] Select Symbols refer to the symbols which are subject to ISE's Rebates and Fees for Adding and Removing Liquidity in Select Symbols in ISE's Schedule of Fees.

[5] *See* SR–ISE–2010–120.

[6] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[7] *See* SR–ISE–2010–120. *See also* E-mail from Angela S. Dunn, Assistant General Counsel, Phlx, to Johnna B. Dumler, Special Counsel, Commission, dated January 5, 2011.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

behalf of its members. The Exchange believes that the proposed fee amendments are equitable because these amendments mirror recent proposed amendments to ISE's Schedule of Fees and are being uniformly applied to the Exchange's members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and paragraph (f)(2) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–187 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–187. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–187 and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–716 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63663; File No. SR–BATS–2011–001]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

January 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2011, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to Members [5] of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective January 4, 2011, in order to: (i) Amend the fees for certain routing strategies based on a change of fees at the New York Stock Exchange ("NYSE"); and (ii) remove reference to a routing strategy called "Dark Scan" that the Exchange has ceased offering.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

(i) *One Under Pricing for Certain Orders Executed at NYSE*

The Exchange has previously provided a discounted price fee for Destination Specific Orders routed to certain of the largest market centers measured by volume (NYSE, NYSE Arca and NASDAQ), which, in each instance has been $0.0001 less per share for orders routed to such market centers by the Exchange than such market centers currently charge for removing liquidity (referred to by the Exchange as "One Under" pricing). Based on changes in pricing at NYSE, BATS is proposing to increase its fee for a Destination Specific Orders executed at NYSE to align its fees so that the fee remains $0.0001 less per share for orders routed to NYSE. Specifically, the Exchange proposes to increase the fee charged for BATS + NYSE Destination Specific Orders executed at NYSE from $0.0020 per share to $0.0022 per share. In addition, the Exchange offers a variety of routing strategies, including "SLIM" and "TRIM," each of which has a specific fee for an execution that occurs at NYSE.

(ii) *Elimination of Dark Scan*

The Exchange has discontinued functionality that allowed a User to send an order that routes to certain dark liquidity venues prior to exposing the order to the Exchange's order book (referred to by the Exchange as a "Dark Scan" order). Accordingly, the Exchange proposes to remove reference to Dark Scan orders from its fee schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to its members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BATS–2011–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2011–001 and should be submitted on or before February 4, 2011 in the **Federal Register**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–665 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63680; File No. SR–C2–2011–002]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the C2 Fees Schedule and C2 Rule 3.1

January 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2011, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

C2 proposes to amend proposes [sic] to [sic] amend [sic] its Fees Schedule and C2 Rule 3.1(e) regarding the assessment of Trading Permit fees and bandwidth packet fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

C2 proposes to amend its Rules and Fees Schedule to assess access fees and bandwidth packet fees during the first week of the following month rather than the first day of the effective month. Specifically, C2 proposes to incorporate language regarding the manner in which these fees will be assessed into its Fees Schedule and to amend C2 Rule 3.1(e) to provide that that [sic] the entire fee for a Trading Permit shall be due and payable in accordance with the Exchange Fee Schedule in place of the current language of the Rule under which fees for a Trading Permit shall be due and payable in full on or before the first day on which the Trading Permit is effective. The proposed assessment of the referenced fees is identical to the process in place at the Chicago Board Options Exchange, Incorporated ("CBOE"). C2 also proposes to make a technical change to the Section 3 of the C2 Fees Schedule to remove language referencing that access fees would not be assessed for October 2010.

C2 imposes access fees for the two types of Trading Permits available for use on C2, the Market-Maker Permit and the Electronic Access Permit. C2 is proposing to add language to the Fees Schedule to describe the assessment of the access fees and modify the way in which access fees are currently assessed. Specifically, C2 is proposing to include language reflecting that access fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month.[3] If a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) a written notification[4] to cancel the Trading Permit effective at or prior to the end of the applicable month.[5]

C2 offers two kinds of bandwidth packets for use to supplement the standard bandwidth allocation provided with each access permit, the Quoting and Order Entry Bandwidth Packet and the Order Entry Bandwidth Packet. Similar to the access fees, C2 currently assesses fees for supplemental bandwidth packets on the first day of each month. C2 is proposing to add language to the Fees Schedule to describe the assessment of bandwidth packet fees and modify the way in which the bandwidth packet fees are assessed. Specifically, C2 is proposing to include language reflecting that bandwidth packet fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month. If a bandwidth packet is issued during a calendar month after the first trading day of the month, the bandwidth packet fee for that calendar month is prorated based on the remaining trading days in the calendar month. Bandwidth packets will be renewed automatically for the next month unless the Trading Permit Holder submits by the last business day of the prior month written notification to cancel the bandwidth packet effective at or prior to the end of the applicable month.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),[6] in general, and furthers the objectives of Section 6(b)(4)[7] of the Act in particular, in that by increasing the efficiency of the billing process and putting in place a process that is consistent with the process in place at CBOE and that is familiar to common trading permit holders, it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Trading Permit Holders and other persons using Exchange facilities.

B.Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[3] Thus, Trading Permit Fees for access during January 2011 will be assessed through the integrated billing system during the first week of February 2011.

[4] Written notification may be submitted to the Registration Services Department by e-mail to *tradingpermits@cboe.com* or by other means of written notification, including, but not limited to, a hand-delivered letter or facsimile to the Registration Services Department.

[5] Thus, if a Trading Permit Holder has a Trading Permit in January 2011, notice must be provided by January 25, 2011 if the Trading Permit Holder would like to terminate the Trading Permit by the end of January 2011 and not be assessed the applicable Trading Permit Fee for February 2011.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2011–002 and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–680 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63668; File No. SR–NSCC–2010–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change Regarding the Creation of a Universal Trade Capture Application and Automated Special Representative Facility

January 6, 2011.

I. Introduction

On August 30, 2010, the National Securities Clearing Corporation ("NSCC") filed proposed rule change SR–NSCC–2010–09 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] On September 9, 2010, NSCC filed an amendment to the proposed rule change. The proposed rule change modifies NSCC's rules and procedures to create a new Universal Trade Capture ("UTC") application and an automated Special Representative facility. The proposed rule change was published for comment in the **Federal Register** on September 20, 2010.[3] No comment letters were received. This order approves the proposed rule change.

II. Description of the Proposal

A. Uniform Trade Capture

Pursuant to the proposed rule change, NSCC is replacing its trade capture applications, such as the Trade Comparison and Recording Operation, with the new UTC application that is designed to standardize, streamline, consolidate, and modernize NSCC's system for capturing securities transaction information for clearance and settlement at NSCC.

The UTC application will accept and process a common input record from all securities marketplaces. It will receive and report data from members and self-regulatory organizations ("SROs") in both real-time and intraday batch submissions to and. NSCC will convert the existing input format to the new UTC input record format, which will enable the UTC to provide members and SROs with their trade output in the format of their choice (new or old). UTC will also replace all current locked-in over-the-counter ("OTC") and listed trade capture applications with one central, real-time validation and reporting process and will have the capability to accept, reject, validate, process, and send contract output to members in real-time. Members will only have to support one standardized input and output format.

B. Correspondent Clearing Service

Prior to this rule change, NSCC's rules provided that its Correspondent Clearing Service could only be used to: (a) Accommodate a member with multiple affiliate accounts that wishes to move a position resulting from an "original trade" in the process of clearance from one affiliate account to another or (b) accommodate a member that relies on its Special Representative to execute a trade in a market that the member is precluded due to membership requirements (*e.g.,* membership requirement for access to markets) or applicable regulation in order to enable the resulting position to be moved from the Special Representative to that member.

Under this rule change, NSCC will provide that the Correspondent Clearing Service may be utilized by members to accommodate a member that relies on its Special Representative to execute a trade in any market regardless of whether that member maintains direct access to that market to enable the resulting position to be moved from the Special Representative to that member.

C. Creation of an Automated Special Representative Facility

To assist members control and monitor their Special Representative and Qualified Special Representative relationships, NSCC is creating an automated, online, secure facility by which members themselves may establish, monitor, and maintain these relationships. Both the Special Representative Member and the Correspondent Member will have to submit matching instructions within the facility in order for the relationship to be established. Either party will be able to submit an entry to retire the relationship.

Members will be reminded, through formatting within the facility, of their existing and unchanged obligations

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62822 (Sept. 20, 2010), 75 FR 57318.

under NSCC's rules with respect to utilizing these services—namely, that by establishing the relationship within the facility both members will continue to be bound by NSCC's rules, the Correspondent is bound by the details of all transactions submitted on their behalf by the Qualified Special Representative or Special Representative, and any errors or omissions or disputes relating to such relationships and related transactions must be resolved directly between the parties.

The establishment of relationships through the automated facility will meet the written notice requirements for such services as otherwise set forth within NSCC's rules and procedures. Members will no longer be required to submit signed forms to NSCC for these processes.

D. Implementation Time Frame

NSCC will implement many of the changes described above by January 31, 2011.

With respect to UTC changes and to support the migration period, NSCC will provide a conversion process to support those markets that are not yet ready to submit transaction data in the new common input format (*i.e.,* NSCC will accept data in the old format and convert data into the new UTC format). The conversion process will enable NSCC to offer members and SROs the new output format regardless of whether the market has converted to the new standard. UTC will continue to support all existing interfaces with markets, members, and SROs with respect to trade input and output.

To provide maximum flexibility in allowing firms to migrate to the new input and output formats according to their own schedules, NSCC will continue to support all existing interfaces with markets, members, SROs and regulatory agencies for a period of time after UTC is implemented.

Finally, NSCC will establish a plan for the retirement of all legacy input and output formats and by the end of the first quarter of 2012 will reassess the status of those firms utilizing legacy formats. At that time, NSCC will work with any members, SROs, and regulatory agencies that have not yet converted from legacy reporting, thereby affording such firms sufficient lead time for migration.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC. In particular, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Act,[4] which requires that the rules of a registered clearing agency are designed to, among other things, remove impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. NSCC's consolidation of its trade capture and reporting applications are designed to remediate certain operational inefficiencies associated with providing and maintaining redundant transaction submission and reporting systems that were created to service different transaction sources. As securities marketplaces have ceased providing clearance and settlement services for their members and as those members have ultimately become direct NSCC members or have entered clearing arrangements with other NSCC members, there is little operational basis for NSCC to continue to service different data formats and systems. Accordingly, consolidating its systems to receive and report transaction details while providing new automated services to assist NSCC members maintain their correspondent and Special Representative relationships should help remove certain impediments to the perfection of the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act[5] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–2010–09) be and hereby is approved.[7]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–666 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(2).

[7] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63669; File No. SR–NYSE–2011–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Price List

January 6, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 3, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2011 Price List ("Price List") for equity transactions in stocks with a per share stock price less than $1.00 to provide that the equity per share charge for all other transactions when taking liquidity from the Exchange per transaction will be the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.0023 per share. The amended pricing will take effect on January 3, 2011. The text of the proposed rule change is available at the Exchange, at *http://www.nyse.com,* at the Commission's Public Reference Room, and on the Commission's Web site at http://*www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Price List for equity transactions in stocks with a per share stock price less than $1.00 to provide that the equity per share charge for all other transactions (*i.e.,* when taking liquidity from the NYSE) per transaction will be the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.0023 per share. This is an increase of $0.0002 per share from the currently applicable rate of $0.0021 per share under the second part of the formula.

The amount of the proposed fee increase under this portion of the formula is identical to the increase in charges to customers and floor brokers for the trading of NYSE-listed securities that take liquidity from the Exchange with a per share stock price of $1.00 or more, as recently filed with the Commission by the Exchange [4] pursuant to Rule 19b–4 under the Securities Exchange Act of 1934 ("Act").[5]

These changes are intended to be effective immediately for all transactions beginning January 3, 2011 and are only applicable to those NYSE-listed securities with a per share stock price of under $1.00. The charges are equally applicable to customers and floor brokers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure, the new charges apply equally to both customers and floor brokers, and access to the Exchange's market is offered on fair and non-discriminatory terms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes or changes a due, fee, or other charge imposed on its members by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2011–01 and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–667 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63673; File No. SR–FINRA–2011–002]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a TRACE Pilot Program

January 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule

[4] *See* File No. SR–NYSE–2010–87.

[5] 17 CFR 240.19b–4.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the pilot program in FINRA Rule 6730(e)(4) to July 8, 2011. The pilot program does not require reporting to Trade Reporting and Compliance Engine ("TRACE") transactions in TRACE-Eligible Securities that are executed on a facility of the NYSE in accordance with NYSE Rules 1400, 1401 and 86 and reported to NYSE in accordance with NYSE's applicable trade reporting rules and disseminated publicly by NYSE.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6730(e)(4) to extend the pilot program, which is scheduled to expire on January 7, 2011, to July 8, 2011.[4] The pilot program does not require reporting to TRACE transactions in TRACE-Eligible Securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400, 1401 and 86 and reported to NYSE in accordance with NYSE's applicable trade reporting rules and disseminated publicly by NYSE, provided that a data sharing agreement between FINRA and NYSE related to transactions covered by the Rule remains in effect.

FINRA is proposing to extend the pilot program until July 8, 2011 to continue to exempt transactions in TRACE-Eligible Securities on an NYSE facility (and as to which all the other conditions of the exemption are met) from the TRACE reporting requirements. FINRA believes that the extension will provide additional time to analyze the impact of the exemption. Without the extension, members would be subject to both FINRA's and NYSE's trade reporting requirements with respect to these securities.

The proposed rule change would not expand or otherwise change the pilot. FINRA notes that the success of the pilot program remains dependent on FINRA's ability to effectively continue to conduct surveillance on corporate debt trading in the over-the-counter market. In this regard, FINRA Rule 6730(e)(4) would continue to require that the exemption be predicated on the data agreement between FINRA and NYSE to share data related to the transactions covered by the Rule remaining in effect. However, FINRA supports a regulatory construct that, in the future, consolidates all last sale transaction information to provide better price transparency and a more efficient means to engage in market surveillance of TRACE-Eligible Securities transactions. The extension proposed herein will allow the pilot program to continue to operate without interruption while FINRA and the NYSE further assess the effect of the exemption and issues regarding the consolidation of market data, market surveillance and price transparency.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that the pilot can continue to operate without interruption.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the extension of the exemptive provision protects investors and the public because transactions will be reported, transparency will be maintained for these transactions, and NYSE's agreement to share data with FINRA allows FINRA, at this time, to conduct surveillance in the corporate debt securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange represented that the proposed rule change qualifies for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Exchange Act[6] and Rule 19b–4(f)(6) thereunder[7] because it: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[8]

The Exchange has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission hereby grants the Exchange's request.[9] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 54768 (November 16, 2006), 71 FR 67673 (November 22, 2006) (Order Approving Proposed Rule Change; File No. SR–NASD–2006–110) (pilot program in FINRA Rule 6730(e)(4), subject to the execution of a data sharing agreement addressing relevant transactions, became effective on January 9, 2007); Securities Exchange Act Release No. 59216 (January 8, 2009), 74 FR 2147 (January 14, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2008–065) (pilot program extended to January 7, 2011).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing period in this case.

[9] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

interest by allowing the continuation of the pilot program without interruption while permitting FINRA and NYSE to further assess the effects of the current exemption issues regarding the consolidation of market data, market surveillance, and price transparency.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2011–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–002 and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–668 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63677; File No. SR–C2–2011–001]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

January 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2011, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to extend a fee waiver related to the PULSe workstation. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to extend a fee waiver related to the PULSe workstation.

By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of C2. In addition to providing the capability to send orders to the C2 market, the PULSe workstation will also provide a user with the capability to send options orders to other U.S. options exchanges and stock orders to other U.S. stock exchanges through a PULSe Routing Intermediary.[5]

The purpose of this proposed rule change is to extend the waiver of the PULSe Routing Intermediary fee. Currently the Exchange has waived the Routing Intermediary fee through December 31, 2010. The Exchange is proposing to extend this waiver through March 31, 2011. Thus this fee will be assessed beginning April 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Permit Holders in that the same fee waivers are

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] For a more detailed description of the PULSe workstation and its other functionalities, *see, e.g.,* Securities Exchange Act Release No. 63246 (November 4, 2010), 75 FR 69478 (November 12, 2010)(SR–C2–2010–007).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

applicable to all users of the PULSe workstation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 [9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–C2–2011–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2011–001. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2011–001 and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–671 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63678; File No. SR–NASDAQ–2010–166]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASDAQ Members Using the NASDAQ Market Center

January 7, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 2010, The NASDAQ Stock Market LLC ("NASDAQ"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on January 3, 2011.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending Rule 7018 to encourage members to provide liquidity directly to NASDAQ that previously had been provided via a sponsored access relationship. Direct liquidity provision is beneficial to NASDAQ and to the marketplace generally. Direct liquidity provision improves NASDAQ's market surveillance by providing a clear view of a member's market activity, rather than a view of that activity under the aegis of the sponsored access provider. Direct liquidity provision also enables NASDAQ to offer rebates more equitably, based upon each member's unique liquidity provision rather than compensating the effort required to aggregate order flow.

To encourage the direct provision of liquidity, NASDAQ is adding subsection Rule 7018(k). This subsection applies in the first month in which a member begins providing liquidity to NASDAQ directly that previously had been

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

provided to NASDAQ via a sponsored access relationship. In that month, the rebates for that member under Rule 7018 shall be based upon the average daily volume of liquidity provided by the sponsored access provider. Under this calculation, the member will receive the same rebate for sending orders directly to NASDAQ that that member would have paid had it remained in a sponsored access relationship. Because NASDAQ's liquidity provider rebates vary based upon volume of liquidity provided, absent this formulation, members might receive lower rebates by virtue of switching mid-month from sponsored access to direct provision of liquidity.[3]

For example, assume that Member ABCD provides liquidity to NASDAQ via a sponsored access relationship with Member 1234. Member 1234 provides average daily liquidity of 60 million shares of which 20 million shares is provided by Member ABCD. Member ABCD switches on the 20th trading day of January—a month with 25 trading days—from providing liquidity via Member 1234 to providing liquidity directly to NASDAQ. Member ABCD continues to provide 20 million shares of liquidity directly to NASDAQ for the final five trading days of January. Member 1234 continues to provide 40 million shares of liquidity to NASDAQ for the final five trading days of January, having lost 20 million shares per day due to Member ABCD's changed behavior.

Under current Rule 7018, if Member ABCD continues to provide liquidity via Member 1234 for the entire month of January, it receives rebates of $0.0029 per share of liquidity provided based on Member 1234 providing 60 million shares of liquidity per day. If Member ABCD switches on the 20th trading day of the month to providing liquidity directly to NASDAQ, it will receive rebates for the final five trading days at a rate of $0.0020 per share based on 4 million shares per day (20 million × 5 actual trading days ÷ 25 trading days in the month). Member 1234 has the ability to calculate the rebates for Member ABCD at less favorable rates as well because Member ABCD has lowered the average daily liquidity provided by Member 1234. This has the effect of de-valuing the liquidity provided by Member ABCD for the periods of time both before and after it switches from sponsored access to direct liquidity provision. This discourages Member ABCD from providing liquidity directly to NASDAQ for any partial month period.

Under new Rule 7018(k), NASDAQ will calculate the rebate for Member ABCD as follows. For the first 20 trading days, Member ABCD will be credited with all of the liquidity that Member 1234 provides to NASDAQ—60 million shares. For the final five trading days of the month, Member ABCD will continue to be credited with the liquidity provided by member 1234—40 million shares—rather than the liquidity provided directly by member ABCD—20 million shares. Thus, both Member ABCD and Member 1234 will receive rebates of $0.0029 based upon average daily liquidity provided of 56 million shares per day (60 million shares per day × 20 days + 40 million shares per day × five days ÷ 25 days).[4]

NASDAQ believes that this provides an appropriate incentive for members to switch from sponsored access relationships to direct liquidity provision, while also fairly valuing the liquidity provided by all members. It is appropriate for NASDAQ to share with members the substantial benefit that NASDAQ enjoys when it receives liquidity directly from members. As stated above, this benefit is both monetary and regulatory. At the same time, there is no cost to sponsored access providers that, under new subsection 7018(k), continue to enjoy the benefit of their successful efforts to aggregate liquidity.

This option will be available to members only once and only for the final five trading days of a month. The five-day period is designed to allow members an operating transition from sponsored access to direct liquidity provision. To make that transition, members must re-program systems and test their interaction with NASDAQ systems. Members are reluctant to make this transition on the first day of a trading month because errors could reduce monthly liquidity provision and lead to lower rebates. NASDAQ considered offering this benefit for a longer period of time but concluded, after assessing multiple factors, that a five-day transition period is adequate for operational continuity. NASDAQ believes members should make this transition only once and that it is appropriate to compensate them for making this transition only once.

It shall be the obligation of the member to notify NASDAQ prior to invoking Rule 7018(k) in a form specified by NASDAQ. This will enable NASDAQ to monitor and measure the liquidity provision that is transferred from a sponsored access relationship directly to NASDAQ.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls.

As stated above, the impact of the price changes upon the rebates received by a particular market participant will depend upon a number of variables, including the specifics of the market participant's sponsored access relationship, its propensity to add or remove liquidity, the duration of the transition period, and other factors.

Additionally, the proposed allocation of fees is fair and reasonable in that it furthers NASDAQ's legitimate goal of encouraging members to provide liquidity directly to NASDAQ. There is a meaningful regulatory and economic benefit to NASDAQ when a firm provides liquidity directly as opposed to providing it via sponsored access. It is equitable and fair for NASDAQ to share that benefit with the member and to encourage that behavior. NASDAQ's proposal is narrowly tailored to the goal of encouraging direct liquidity provision, and it imposes no penalty on any firm for not opting to invoke new Rule 7018(k).

NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem rebate levels at a particular venue to be excessive. Additionally, members can choose to remain in sponsored access relationships rather than voluntarily choose to send order flow directly to NASDAQ. Accordingly, if particular market participants object to the proposed fee changes, they can avoid receiving the rebates implicated by this filing. NASDAQ believes that its fees continue to be reasonable and equitably allocated to members on the basis of whether they opt to direct orders to NASDAQ.

[3] *See* NASDAQ Rule 7018(a). NASDAQ's fees for accessing liquidity are fixed; they do not vary with volume and thus are not impacted by this proposal.

[4] This is one example of how new Rule 7018(k) will operate. The actual rebates provided to members will vary depending upon the liquidity provided by their sponsored access provider and by the member itself. In all cases, the rebates for all members will be calculated using the rebates duly filed with the Commission and set forth in NASDAQ's online manual.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–166 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–166. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–166, and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–672 Filed 1–13–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Disclosure of Code-Share Service by Air Carriers and Sellers of Air Transportation

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice.

SUMMARY: The Department is publishing the following notice on the enforcement of its rules relating to disclosure of code-share service on Internet Web sites and elsewhere by air carriers, their agents, and third party sellers of air transportation in view of recent amendments to 49 U.S.C. 41712.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Attorney, Office of Aviation Enforcement and Proceedings (C–70), 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366–9349.

United States of America, Department of Transportation, Office of the Secretary, Washington, DC

Guidance on Disclosure of Code-Share Service Under Recent Amendments to 49 U.S.C. 41712

Notice

This notice is intended to provide guidance on the disclosure of code-share service in light of recent amendments to 49 U.S.C. 41712. It is also intended to provide a reminder to ticket agents with respect to their code-share disclosure responsibility, particularly as it concerns the development and provision of Internet Web sites (Web sites) that display code-share flights and to air carriers regarding their responsibilities in connection with the Web sites of their agents.

A recent amendment to section 41712, which has for some time contained a general prohibition against unfair and deceptive practices and unfair methods of competition on the part of air carriers, foreign air carriers and ticket agents, added a new section 41712(c) that specifically requires that these entities disclose in any oral, written or electronic communication to the public, prior to the purchase of a ticket, the name of the carrier providing the service for each segment of a passenger's itinerary. The language is principally intended to address service rendered pursuant to code-share arrangements. In addition, the new language explicitly requires that on Web sites, disclosure must be made "on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer." Airline Safety and Federal Aviation Administration Extension Act of 2010, Public Law 111–216, Title II, § 210, 124 Stat. 2362, Aug. 1, 2010.

The Department's current regulation on the disclosure of code-sharing arrangements, 14 CFR part 257, which was issued in 1999, is based on the general unfair and deceptive practice language of section 41712. Section 257.5(a) requires, in all Web sites and other publicly available displays of schedule information, that code-share service be indicated with "an asterisk or other easily identifiable mark and that the corporate name of the transporting carrier and any other name under which that service is held out to the public is also disclosed." As with the recently amended statutory language, the rule requires that in oral communications with the public, ticket agents must inform the consumer of the code-share service "before booking transportation" and state "the name of the transporting

carrier by its corporate name and any other name under which that service is held out to the public." (Section 257.5(b)) Written notice of code-share service is also required where an itinerary is issued. (Section 257.5(c)(1)) In printed advertisements, including those published via a Web site, the code-share relationship must be "prominently" disclosed and an abbreviated notice must be included in any radio or television advertisement. (For a recent enforcement interpretation of this requirement, see Order 2010–7–4, *Delta Air Lines, Inc., and Northwest Airlines, Inc.,* and Order 2009–7–6, *United Air Lines, Inc.,* July 7, 2009.) With regard to Web sites, we have, as a matter of enforcement policy, not pursued enforcement action in cases where disclosure of an operating carrier's corporate name and other pertinent names was provided through rollover or hyperlinked displays. On the other hand, we have pursued enforcement action where neither such disclosure nor direct disclosure of the operating carrier's name or names was provided.

The amended language of section 41712 makes explicit that the disclosure of code-share service, in the context of Web site displays, must be included in any schedule displayed in response to an itinerary request by a consumer. To be "easily visible," the disclosure should be on the same screen as the itinerary and immediately adjacent to that itinerary and to each alternative itinerary, if applicable. Nothing in section 41712(c) would permit code-share disclosure to be made through a hyperlink or rollover. Code-share service may be highlighted by an asterisk or other mark, but should still include appropriate text on the itinerary display that is easily visible to a viewer, identifying the operating carrier by its corporate name. Because of this new statutory provision, we intend to pursue enforcement action in the future where the only code-share disclosure is by rollover or hyperlinked displays.

To avoid the initiation of enforcement action in the future, air carriers, foreign air carriers, and their ticket agents, including independent Web site vendors, are advised to promptly modify their practices to conform to these statutory disclosure requirements. In view of the fact that Web site sellers will need a period in which to modify their Web site displays, the Aviation Enforcement Office will not begin to enforce the new statutory provision until 60 days after the date of publication of this notice. During the intervening period, we will continue to pursue enforcement action against sites which fail, at a minimum, to provide full disclosure of the operating carrier's required name or names through hyperlinks or rollovers.

By this notice we are also reminding air carriers of their general responsibility regarding the advertising practices of their agents and in particular with respect to disclosure of code-share service on the agents' Web sites. Based on our preliminary review, it appears that most U.S. air carrier Web sites already comply with section 41712(c), while many of their agents' sites do not. Carriers are responsible for the activities of their agents and must ensure compliance with code-share disclosure requirements by those agents, or they could face enforcement action.

We are also taking this opportunity to warn ticket agents, in particular global distribution systems, which may be assisting travel agents to establish airline ticket sales Web sites, that they should not be providing those agents Web site software that is not in compliance with the Department's advertising requirements, in general, or code-share disclosure requirements, in particular. Such actions that facilitate violations of Department rules or section 41712 may themselves violate 41712, and we will not hesitate to institute enforcement action against ticket agents in such situations, if appropriate.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

An electronic version of this document is available at *http://www.regulations.gov.*

Dated: January 10, 2011.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 2011–753 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Eighty-Fourth Meeting: RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting: Global Positioning System (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System (GPS).

DATES: The meeting will be held February 7–11, 2011, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159: Global Positioning System (GPS) meeting. The agenda will include:

SPECIFIC WORKING GROUP SESSIONS

Monday, February 7

- All Day, Working Group 2C, GPS/Inertial, MacIntosh-NBAA Room and Hilton-ATA Room

Tuesday, February 8

- All Day, Working Group 2, GPS/WAAS, Colson Board Room

Wednesday, February 9

- All Day, Working Group 2, GPS/WAAS, Colson Board Room
- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room and Hilton-ATA Room

Thursday, February 10

- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room and Hilton-ATA Room.
- Afternoon, Working Group 7, Antenna (GPS Antenna), Colson Board Room

Friday, February 11, 9 a.m.

Plenary Session—See Agenda Below

Agenda—Plenary Session—Agenda

Colson Board Room

- Chairman's Introductory Remarks
- Approval of Summary of the 83rd Meeting held October 29, 2010, RTCA Paper No. 004–11/SC159–989
- Review Working Group (WG) Progress and Identify Issues for Resolution
  - GPS/3rd Civil Frequency (WG–1)
  - GPS/WAAS (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)

- GPS/Antennas (WG–7)
- Review of EUROCAE Activities
- Surveillance Availability Prediction Tool Requirements and Verification/Validation—Discussion
- Assignment/Review of Future Work
- Other Business
- Date and Place of Next Meeting

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 11, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–818 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for San Diego International Airport, San Diego, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for San Diego International Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150 by the San Diego County Regional Airport Authority, San Diego County, California. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for San Diego International Airport were in compliance with applicable requirements, effective November 10, 2009, 74 FR 66400–66401. The proposed noise compatibility program will be approved or disapproved on or before July 3, 2011.

DATES: *Effective Date:* The effective date of the start of FAA's review of the noise compatibility program is January 5, 2011. The public comment period ends March 7, 2011.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Federal Aviation Administration, Los Angeles Airports District Office, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: 310/725–3637. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for San Diego International Airport which will be approved or disapproved on or before July 3, 2011. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for San Diego International Airport, effective on June 22, 2010. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 3, 2011.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Western-Pacific Region Office, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Los Angeles Airports District Office, 15000 Aviation Boulevard, Room 3000, Hawthorne, California 90261.

Mr. Dan Frazee, San Diego International Airport, 3225 North Harbor Drive, AAAA3rd Floor, Commuter Terminal, San Diego, California 92101.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on January 5, 2011.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 2011–804 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. FAA–2011–01]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), 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 February 3, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–1221 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: Frances Shaver, (202) 267–4059, Office of Rulemaking (ARM–207), 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 January 11, 2011.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–1221.

Petitioner: Indigenous Peoples Technology and Education Center, Inc. (ITEC).

Section of 14 CFR Affected: § 21.190(c)(2).

Description of Relief Sought: Petition for exemption from the Federal Aviation Regulations, § 21.190(c)(2) to permit an additional weight allowance for a powered parachute (PPC) light-sport aircraft (LSA) intended for both flight operations and operation on public roadways, similar to the weight allowance for LSA intended for operation on water. A roadable PPC has similar weight penalties to an LSA intended for operation on water due to the additional equipment required to make the vehicle roadworthy, and therefore a similar weight allowance seems appropriate. This petition for exemption will allow ITEC to issue a statement of compliance (FAA Form 8130–15) for each ITEC "Maverick" PPC LSA for operation at the same weight prescribed by 14 CFR 1.1 for LSA intended for operation on water.

[FR Doc. 2011–717 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (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 collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 12, 2010 (75 FR 62625).

DATES: Comments must be submitted on or before February 14, 2011.

ADDRESSES: Comments should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 - 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Nicholas Englund, National Highway Traffic Safety Administration, Office of the Chief Counsel (NCC–111), (202) 366–5263, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Confidential Business Information.

Type of Request: Extension of a currently approved collection.

Form Number: This collection of information uses no standard forms.

OMB Control Number: 2127–0025.

Frequency: Submission of information pursuant to this regulation will depend on the frequency with which a given entity, such as a manufacturer of motor vehicles or motor vehicle equipment, submits information and a request that the agency hold the information confidential, generally pursuant to Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4).

Affected Public: This collection of information would apply to any person who seeks to have the agency treat as confidential information submitted to the agency either voluntarily or pursuant to a mandatory information request issued by the agency. Thus, the collection of information could apply to any of the entities over which the agency exercises regulatory authority. Recent trends lead the agency to estimate that NHTSA will receive approximately 450 requests for confidential treatment in 2011 and subsequent years. Large manufacturers make the vast majority of requests for confidential treatment.

Abstract: NHTSA's Confidential Business Information (CBI) rule, coupled with case law, has governed the submission of requests for confidential treatment of information for over 18 years.

Estimated Annual Burden: Using the above estimate of approximately 450 requests for confidentiality per year, with an estimated eight hours of preparation to collect and provide the information, at an assumed rate of $28.19 an hour, the annual estimated cost of collecting and preparing the information necessary for 450 complete requests for confidential treatment is about $101,484 (8 hours of preparation × 450 requests × $28.19). Adding in a postage cost of $2,205 (450 requests at a cost of $4.90 for postage), we estimate that it will cost $103,689 per year for persons to prepare and submit the information necessary to satisfy the confidential business information provisions of 49 CFR Part 512.

Requesters are not required to keep copies of any records or reports submitted to us. As a result, the cost imposed to keep records would be zero hours and zero costs.

Number of Respondents: We estimate that there will be approximately 450 requests per year.

Summary of the Collection of Information: Any entity seeking confidential treatment for information submitted to the agency will be required to request confidential treatment from the agency and to justify that request. To obtain confidential treatment of submitted information, the submitting

entity must comply with the requirements in NHTSA's CBI regulation and satisfy the requirements for one of the exemptions provided under the FOIA, 5 U.S.C. 552(b).

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 - 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: January 7, 2011.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2011–819 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Research Innovative Technology Administration, U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Thursday, February 24, 2011, from 9 a.m. to 5 p.m. EST in the Oklahoma City Room at the U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC. Section 5601(o) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C., App. 2) to advise the Bureau of Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department. The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Overview of prior meeting; (3) Discussion of the FY 2012 budget; (4) Discussion of product dissemination; (5) Council Members review and discussion of statistical programs; (6) future Council activities and (7) Public Comments and Closing Remarks. Participation is open to the public. Members of the public who wish to participate must notify Petrina Collier at *Petrina.Collier@dot.gov,* not later than February 2, 2011. Members of the public may present oral statements at the meeting with the approval of Steven K. Smith, Deputy Director of the Bureau of Transportation Statistics. Noncommittee members wishing to present oral statements or obtain information should contact Petrina Collier via e-mail no later than February 9, 2011.

Questions about the agenda or written comments may be e-mailed or submitted by U.S. Mail to: U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, Attention: Petrina Collier, 1200 New Jersey Avenue, SE., Room # E34–457, Washington, DC 20590, *Petrina.Collier@dot.gov,* or faxed to (202) 366–3640. BTS requests that written comments be received by February 9, 2011. Access to the DOT Headquarters building is controlled therefore all persons who plan to attend the meeting must notify Ms. Petrina Collier at (202) 366–5796 prior to February 9, 2011. Individuals attending the meeting must report to the main DOT entrance on New Jersey Avenue, SE., for admission to the building. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Collier at (202) 366–5796 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 30th day of December 2010.

Steven K. Smith,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2011–770 Filed 1–13–11; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 705]

Competition in the Railroad Industry

AGENCY: Surface Transportation Board.

ACTION: Notice.

SUMMARY: The Surface Transportation Board will receive comments and hold a public hearing to explore the current state of competition in the railroad industry and possible policy alternatives to facilitate more competition, where appropriate. The Board is seeking written comments prior to the hearing addressing the legal, factual, and policy matters described below.

DATES: Initial comments are due on February 18, 2011. Reply comments are due 28 days thereafter, on March 18, 2011. The hearing will begin at 9:30 a.m., on Tuesday, May 3, 2011, in the Board's hearing room at the Board's headquarters located at 395 E Street, SW., Washington, DC. The Board plans to hold the hearing in a single day, but may extend the hearing if the number of participants or the breadth of submitted written testimony so requires. The hearing will be open for public observation. However, only parties who have notified the Board of their intent to participate will be permitted to speak. Any party wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party, the proposed speaker, and the time requested) no later than April 4, 2011. With the notice of intent, the party shall provide written testimony on the issues it will address at the hearing.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the "E-FILING" link on the Board's "*www.stb.dot.gov*" Web site. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 705, 395 E Street, SW., Washington, DC 20423–0001.

Copies of written submissions will be posted to the Board's Web site and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131. Copies of the submissions will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245–0236 or 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The rail network in the United States is a series of interconnected lines owned by various rail carriers. Because of the high fixed cost associated with building a rail network, sometimes there is only one railroad serving a particular destination and origin. Some companies that either ship by rail, or would like to do so, have complained about being physically limited to a single rail carrier and would like to have greater access to competition from other railroads. Some shippers have suggested that mandated access by a second carrier to singly served businesses would be in the public interest. Railroads have responded that such an action would undermine their ability to price their services differentially based on demand and that, as a result, they would be unable to earn enough revenue to invest sufficiently in their networks. Over the years, various possible measures that would change the way rail shippers currently obtain access to rail service have been debated, including: (1) Requiring railroads to quote a rate between any two points they serve to allow another railroad to serve the shipper from an intermediate point to the final destination; and (2) imposing new rules for competitive access, such as mandated reciprocal switching or mandated terminal use arrangements, including trackage rights.

It has been some time since the agency has conducted a thorough analysis of these issues. More than a decade ago, the Board conducted a comprehensive analysis of "captive shippers" and their available remedies for rate relief, as well as the incumbent railroad's rights and obligations. This analysis culminated in a series of decisions collectively known as the "*Bottleneck*" cases. *Cent. Power & Light* v. *S. Pac., et al.,* 1 S.T.B. 1059 (1996) (*Bottleneck I*), *clarified,* 2 S.T.B. 235 (1997) (*Bottleneck II*), *aff'd sub nom. MidAmerican Energy Co.* v. *STB,* 169 F.3d 1099 (8th Cir. 1999).

The Board also conducted a review of its competitive access standards in *Review of Rail Access & Competition Issues,* 3 S.T.B. 92 (1998).[1] More recently, in response to a recommendation of the United States Government Accountability Office (GAO),[2] the Board commissioned Christensen Associates, Inc. (Christensen Associates), to perform an independent study to examine these issues. The resulting report, *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals That Might Enhance Competition (November 2009),* is available on the Board's Web site or at *http://www.lrca.com/railroadstudy/.*[3]

The United States railroad industry has changed in many significant ways since the Board's competitive access standards were originally adopted in the mid-1980s. Among the more salient developments have been the improving economic health of the railroad industry, increased consolidation in the Class I railroad sector,[4] the proliferation of a short line railroad network, and an increased participation of rail customers in car ownership and maintenance, as well as other activities previously undertaken by the carrier. Since 1980, railroad productivity improved dramatically, resulting in lower transportation rates. However, productivity gains appear to be diminishing and, since 2004, overall rail transportation prices have increased. *See Christensen Update* at i & 3–26. Taken together, these events suggest that it is time for the Board to consider the issues of competition and access further.

The Bottleneck Issue. A rail bottleneck rate issue arises when more than one railroad can provide service over at least a portion of the movement of a shipper's goods from an origin to a destination, but where either the origin or destination is served by only one carrier, *i.e.,* the bottleneck carrier. In each of the *Bottleneck* cases, an electric utility company sought to require the bottleneck carrier to establish a "local rate" for a segment of the through movement that was served only by that carrier, so that the utility could combine that local rate with a rate for the remainder of the movement by another carrier. The utilities further sought to be able to separately challenge the reasonableness of the rate for the bottleneck segment of the movement, rather than having to challenge the origin-to-destination rate in its entirety. Each of the utilities in the *Bottleneck* cases sought to divide the bottleneck carrier's long-haul and through rate into smaller portions that could be priced and, accordingly challenged, independently. The utilities believed that the total charges would be lower if the reasonableness of the rates were adjudicated only for the bottleneck portion of the movement (with the rate set by head-to-head rail competition for the remainder of the movement), rather than for the entire movement. Because the *Bottleneck* cases raised issues of broad importance, the Board provided for extensive public input and held an oral argument.

In the resulting decisions, the Board concluded that a shipper could not routinely direct a bottleneck carrier that

[1] The competitive access standards were originally adopted by the Interstate Commerce Commission (ICC), the Board's predecessor agency, in the mid-1980s. *Intramodal Rail Competition,* 1 I.C.C. 2d 822 (1985), *aff'd sub nom. Balt. Gas & Elec.* v. *United States,* 817 F.2d 108 (DC Cir. 1987); and applied in *Midtec Paper Corp.* v. *Chi. & Nw. Transp. Co.,* 3 I.C.C. 2d 171 (1986), *aff'd sub nom. Midtec Paper Corp.* v. *United States,* 857 F.2d 1487 (DC Cir. 1988).

[2] Government Accountability Office, *Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed,* GAO–07–94, October 6, 2006, pp. 1–2. The GAO stated: "We are recommending that STB conduct a rigorous analysis of the state of competition nationwide and, where appropriate, consider the range of actions available to address problems associated with the potential abuse of market power."

[3] In addition to the original November 2008 report (which was revised as of November 2009), Christensen Associates has provided the Board with two supplemental reports: *An Update to the Study of Competition in the U.S. Freight Railroad Industry (January 2010)* (*Christensen Update*); and *Supplemental Report to the U.S. Surface Transportation Board on Capacity and Infrastructure Investment (March 2009).* These reports are also available in the E–Library on the Board's Web site under "Studies," and at the URL provided above. In this notice, "*Christensen Study*" refers collectively to the original and supplemental reports.

The Board solicited and received public comments on the *Christensen Study. Supplemental Report on Capacity & Infrastructure Inv.,* EP 680 (Sub-No. 1) (STB served Apr. 8, 2009); *Study of Competition in the Freight R.R. Indus.,* EP 680 (STB served Nov. 6, 2008). Many of the issues discussed in the *Christensen Study* are also relevant to the proceeding that is being initiated here. As such, parties are invited to discuss in EP 705 any aspect of the *Christensen Study* that is relevant to the topic of competition in the railroad industry. Because EP 680 and EP 680 (Sub-No. 1) have served their limited purpose of initiating a discussion on competition and capacity in the United States freight rail industry, and because a significant portion of that discussion can continue in the proceeding being initiated here, EP 680 and EP 680 (Sub-No. 1) will be discontinued on the service date of this decision.

[4] The Board designates 3 classes of freight railroads based upon their operating revenues, for 3 consecutive years, in 1991 dollars, using the following scale: Class I—$250 million or more; Class II—less than $250 million but more than $20 million; and Class III—$20 million or less. These operating revenue thresholds are adjusted annually for inflation. 49 CFR pt. 1201, 1–1. Today, there are 7 Class I carriers and approximately 550 short line carriers (*i.e.,* Class II and Class III carriers) operating in the United States.

was capable of providing origin-to-destination rail service for that shipper to "short-haul" itself by routing traffic over the lines of the non-bottleneck carrier. Rather, the Board held that a shipper could seek to force an alternative routing that would include the line of the non-bottleneck carrier only if it could show, under 49 U.S.C. 10705 and the Board's "competitive access" rules developed in *Intramodal Rail Competition,* that there would be sufficient benefits associated with the alternative routing.[5] The Board also held that, under 49 U.S.C. 11101(a) and 10742, a bottleneck carrier generally cannot refuse traffic from other carriers originating at sources that the bottleneck carrier does not serve, even if the bottleneck carrier can carry the identical commodity in its own single-line service from another source. *Bottleneck I,* 1 S.T.B. at 1063–64.

Finally, for either type of movement—same-source movements for which a shipper has successfully obtained an alternative routing, or different-source movements that the bottleneck carrier cannot handle in single-line service—the Board held that it could not force the bottleneck carrier to quote a separately challengeable rate for the bottleneck segment unless the requesting shipper had already entered into a rail contract for the non-bottleneck segment at the time that the bottleneck rate was requested. In so ruling, the Board relied on the Supreme Court decision in *Great Northern Railway* v. *Sullivan,* 294 U.S. 458, 463 (1935), which held that the reasonableness of through rates established by carriers should in general be evaluated from origin-to-destination, rather than on a segment-by-segment basis.[6]

Competitive Access. Competitive access can take the form of mandated reciprocal switching, terminal use, or trackage rights. Reciprocal switching involves the incumbent railroad transporting traffic, usually for a short distance, over its own track on behalf of a competing railroad for a fee. Reciprocal switching thus enables the competing railroad to offer its own single-line rate, even though it cannot physically serve the shipper's facility, to compete with the incumbent's single-line rate. The agency has in the past held that reciprocal switching should not be ordered absent a showing of competitive abuse. More specifically, the complaining party must show that the incumbent railroad has used its market power to extract unreasonable terms or, because of its monopoly position, has disregarded the shipper's needs by rendering inadequate service. *Midtec,* 3 I.C.C. 2d at 181.

Unlike reciprocal switching, forced terminal arrangements (including some forms of trackage rights) involve the physical presence of a competing carrier on a host carrier's facilities owned by the incumbent railroad. Under terminal agreements, an incumbent railroad grants access to its terminal facilities or tracks to another carrier's trains for a fee so that the non-incumbent can serve traffic it would otherwise be unable to access.

Interchange Commitments. Interchange commitments can also fall under the broad rubric of competition and competitive access in the railroad industry. These are contractual provisions included with a sale or lease of a rail line that limit the incentive or the ability of the purchaser or tenant carrier to interchange traffic with rail carriers other than the seller or lessor railroad. The Board has addressed interchange commitments in *Review of Rail Access and Competition Issues—Renewed Petition of the Western Coal Traffic League,* EP 575, *et al.* (STB served Oct. 30, 2007), and *Disclosure of Rail Interchange Agreements,* EP 575 (Sub-No. 1) (STB served May 29, 2008). There are also several pending cases before the Board that will continue to develop, on a case-by-case basis, the Board's policies. Because we will continue to consider these issues and look to improve the processes associated with transactions involving interchange commitments, this hearing will not focus on interchange commitments or the approach adopted in EP 575.

Procedures

This proceeding is intended as a public forum to discuss access and competition in the rail industry, and with a view to what, if any, measures the Board can and should consider to modify its competitive access rules and policies; whether such modification would be appropriate given changes over the last 30 years in the transportation and shipping industries; the effects on rates and service these rules and policies have had; and the likely effects on rates and service of changes to these policies. The Board is providing an opportunity for any person or entity that wishes to participate to file written prepared comments in advance of the hearing, and the Board will provide an opportunity to parties to file replies to those comments. Subsequently, the Board will hold an oral hearing at the agency to explore the issues in more depth.

In particular, we urge the parties to focus their comments, and subsequent testimony and statements for the hearing, as follows:

1. *The Financial State of the Railroad Industry.* Parties are invited to comment on the evolving economic state of the railroad industry. The industry has changed significantly since 1980, when Congress passed the Staggers Act of 1980, Public Law 96–448, 94 Stat. 1895 (1980) (Staggers) and the ICC began the process of devising the current competitive access rules and policies. Today, the industry is in substantially stronger condition financially. In this regard, parties should address both the findings and conclusions of recent studies of the railroad industry, including (but not limited to) the *Christensen Study* and the joint study of United States Departments of Agriculture and Transportation.[7]

2. *49 U.S.C. 10705* (alternative through routes). Parties are invited to discuss how to construe this provision in light of current transportation market conditions. In this regard, parties may address pre-Staggers practice, Staggers' effect on this issue, and whether there are statutory constraints on the Board's ability to change policy at this time. Parties are specifically invited to comment on the differences between §§ 10705(a)(1) and 10705(a)(2), the circumstances under which carriers may seek to protect their long hauls under § 10705(a)(2), and whether § 10705(a)(2) should apply where multiple carriers can originate the traffic, but only a single carrier can deliver the traffic to its destination.

3. *49 U.S.C. 11102(a)* (terminal facilities access). Parties are invited to discuss how to construe the terminal access provision in light of current transportation market conditions. Again,

[5] Specifically, the Board's rules state that the shipper must, in such a case, demonstrate the requested alternative route "is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101 or is otherwise anticompetitive, and otherwise satisfies the criteria of 49 U.S.C. 10705 * * *" The Board will also consider several other enumerated factors, including efficiency, revenues, costs, and rates charged. The Board must further find that the complaining shipper (or carrier) would use the alternative route for a "significant portion of its current or future service * * *" *See* 49 CFR 1144.2.

[6] The Board rejected the notion that the shipper could first request the bottleneck rate, and then enter into a contract for the remaining portion of the route. Rather, under *Great Northern Railway,* the Board considered the contract to be a condition antecedent to the request for the bottleneck tariff quote.

[7] *Study of Rural Transportation Issues, http://www.ams.usda.gov* (follow "Publications" hyperlink; then follow "Agricultural Transportation" hyperlink; then follow "Congressional Studies" from the dropdown menu; then follow "04–10: Study of Rural Transportation Issues" hyperlink).

parties may address pre-Staggers practice, Staggers' effect on this issue, and whether there are statutory constraints on the Board's ability to change policy at this time. The Board is also interested in how the definition of "terminal facility" evolved over time.

4. *49 U.S.C. 11102(c)* (reciprocal switching agreements). Parties are invited to discuss, separately from the terminal facilities access provision, how to construe this provision in light of current transportation market conditions. Again, parties may address pre-Staggers practice, Staggers' effect on this issue, and whether there are statutory constraints on the Board's ability to change policy at this time. In particular, parties should address whether the broad "practicable and in the public interest" standard in the statute should be constrained by the provision permitting relief "where * * * necessary to provide competitive rail service." Finally, parties may discuss the distance limitations, if any, associated with this provision.

5. *Bottleneck Rates.* Parties are invited to discuss whether the Board could and should change its precedent finding only narrow authority to compel a railroad to quote a separately challengeable rate for a portion of a movement. Parties are also asked to comment on how the *Great Northern Railway* decision—holding that the reasonableness of a through rate established by carriers is only relevant to the shipper as to the total rate charged, and thus should be evaluated from origin to destination rather than on a segment-by-segment basis—can reasonably be applied in today's transportation world. In particular, we want to explore how the agency would evaluate the reasonableness of the more elaborate through rates used in today's global transportation industry including, for example, a local truck movement at origin, a transload to rail for shipment to a port, an international water movement, and finally a foreign rail or truck movement to destination. In such an example, do *Great Northern Railway* and other precedent require the agency to evaluate the reasonableness of the rates exclusively from origin to destination? If so, how could the agency evaluate the entire through rate when a portion of that rate includes transportation outside the Board's jurisdiction? Or does the agency have the discretion to permit the shipper to challenge just the rail carrier's division of the international through rate? Does the agency have discretion in other purely domestic settings? Participants may also address the role that short lines play in through rates, and whether the reasoning in *Great Northern Railway* encompasses "bottleneck" situations and a more highly concentrated rail industry. Should freight rail customers be allowed to determine intermediate origin and destination points that would enable a competing carrier or mode to serve the shipper's final destination?

6. *Access Pricing.* If the Board were to modify its competitive access rules, it would also need to address the access price. The Board seeks comments on what tools it can and should consider using (within statutory and constitutional limits) in evaluating how the carriers can assess terminal access prices, reciprocal switch fees, or segment rates, such as Constrained Market Pricing principles, or an alternative set of principles, such as cost-based pricing principles or Efficient Component Pricing. What role, if any, should a carrier's current financial standing and future prospects bear in this determination? [8]

7. *Impact.* Finally, we invite comments from all interested parties on the positive and negative impact any proposed change would have on the railroad industry, the shipper community, and the economy as a whole. The introduction of greater rail-to-rail competition could improve service and lower rates for captive shippers. But a loss of revenue could lead to less capital investment, constraining capacity and deteriorating service for future traffic. Any party advocating a change should address these impacts.

In addition to the guidance provided above, parties are welcome to offer their comments on any other aspect of our competitive access rules. Parties are also invited to comment on the specific questions in our prior order on this similar subject. *Policy Alts. to Increase Competition in the R.R. Indus.,* EP 688 (STB served Apr. 14, 2009). *Board Releases and Live Video Streaming Available Via the Internet:* Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.* This hearing will be available on the Board's Web site by live video streaming. To access the hearing, click on the "Live Video" link under "Information Center" at the left side of the home page beginning at 9 a.m. on May 3, 2011.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing in this proceeding will be held on Tuesday, May 3, 2011, at 9:30 a.m., in the Surface Transportation Board Hearing Room, at 395 E Street, SW., Washington, DC, as described above.

2. Initial comments are due on February 18, 2011.

3. Reply comments are due on March 18, 2011.

4. By April 4, 2011, parties wishing to speak at the hearing shall file with the Board a notice of intent to participate identifying the party, the proposed speaker, and the time requested. With the notice of intent, the party shall provide written testimony on the issues it will address at the hearing. Written submissions by interested persons who do not wish to appear at the hearing are also due by April 4, 2011.

5. This decision is effective on the date of service.

Decided: January 11, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–774 Filed 1–13–11; 8:45 am]

BILLING CODE 4915–01–P

[8] A basis for the Board's historic pricing policy under Staggers and ICCTA was to permit demand-based differential pricing and allow captive shippers to bear a greater share of the carriers' fixed and common costs to help the railroads achieve revenue adequacy.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 10, 2011.

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 these information collections 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 February 14, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1623.

Type of Review: Extension without change to a currently approved collection.

Title: REG–246256–96 (Final) Excise Taxes on Excess Benefit Transactions

Abstract: The rule affects organizations described in Internal Revenue Code section 501(c)(3) and (4) applicable tax-exempt organizations). The collection of information entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) is at fair market value. These actions comprise two of the requirements specified in the legislative history for obtaining the rebuttable presumption of reasonableness.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 910,083 hours.

OMB Number: 1545–2182.

Type of Review: Extension without change to a currently approved collection.

Title: REG–125592–10, Affordable Care Act Internal Claims and Appeals and External review Disclosures.

Abstract: Section 2719 of the Public Health Service Act, incorporated into Code section 9815 by section 1563(f) of the Patient Protection and Affordable Care Act, Public Law 111–148, requires group health plans and issuers of group health insurance coverage, in connection with internal appeals of claims denials, to provide claimants free of charge with any evidence relied upon in deciding the appeal that was not relied on in making the initial denial of the claim. This is a third party disclosure requirement. Individuals appealing a denial of a claim should be able to respond to any new evidence the plan or issuer relies on in the appeal, and this disclosure requirement is essential so that the claimant knows of the new evidence.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 150 hours.

OMB Number: 1545–1010.

Type of Review: Extension without change to a currently approved collection.

Title: U.S. Income Tax Return for Regulated Investment Companies.

Form: 1120–RIC.

Abstract: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRC uses Form 1120–RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 369,021 hours.

OMB Number: 1545–1186.

Type of Review: Extension without change to a currently approved collection.

Title: Form 8825—Rental Real Estate Income and Expense of a Partnership or an S Corporation.

Form: 8825.

Abstract: Form 8825 is used to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property. The form is filed with either Form 1065 or Form 1120S.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 6,288,600 hours.

OMB Number: 1545–0971.

Type of Review: Extension without change to a currently approved collection.

Title: Estimated Income Tax for Estates and Trusts.

Form: 1041–ES, 1041–ES (PR).

Abstract: Internal Revenue Code section 6654(1) imposes a penalty on trusts, and in certain circumstances, a decedent's estate, for underpayment of estimated tax. Form 1041–ES is used by the fiduciary to make the estimated tax payments. For "first-time" filers, the form is available in an Over The Counter (OTC) version at IRS offices. For previous filers, the form is sent to them by the IRS with preprinted vouchers in the Optical Character Resolution (OCR) version.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 3,161,236 hours.

OMB Number: 1545–0056.

Type of Review: Extension without change to a currently approved collection.

Title: Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

Abstract: Form 1023 is filed by applicants seeking Federal income tax exemption as organization described in section 501(c)(3). IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation.

Form: 1023.

Respondents: Private Sector: Not-for-profit institutions.

Estimated Total Burden Hours: 3,138,550 hours.

Bureau Clearance Officer: Allan Hopkins, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 622–6665

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. 2011–810 Filed 1–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 10, 2010.

The Department of the Treasury will submit the following public information collection requirements 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 these information collections 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 February 14, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1292.

Type of Review: Extension without change to a currently approved collection.

Title: PS–97–91 and PS–101–90 (T.D. 8448) Enhanced Oil Recovery Credit.

Abstract: This regulation provides guidance concerning the costs subject to the enhanced oil recovery credit, the circumstances under which the credit is available, and procedures for certifying to the Internal Revenue Service that a project meets the requirements of section 43(c) of the Internal Revenue Code.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,460 hours.

OMB Number: 1545–1324.

Type of Review: Extension without change of a currently approved collection.

Title: CO–88–90 (TD 8530—Final) Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change; Rule for Value of a Loss Corporation Under the Jurisdiction of a Court in a Title II Case.

Abstract: This information serves as evidence of an election to apply section 382(1)(6) in lieu of section 382(1)(5) and

an election to apply the provisions of the regulations retroactively. It is required by the Internal Revenue Service to assure that the proper amount of carryover attributes are used by a loss corporation following specified types of ownership changes.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 813 hours.

Bureau Clearance Officer: Allan Hopkins, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 622–6665.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–813 Filed 1–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning its information collection titled "Loans in Areas Having Special Flood Hazards."

DATES: You should submit written comments by: March 15, 2011.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mail Stop 2–3, Attention: 1557–0202, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0202, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Loans in Areas Having Special Flood Hazards—12 CFR 22.

OMB Control Number: 1557–0202.

Description: The regulation requires national banks to make disclosures and keep records regarding whether a property held as security for a loan is located in a special flood hazard area.

This information collection is required by section 303(a) [1] and title V of the Riegle Community Development and Regulatory Improvement Act,[2] the National Flood Insurance Reform Act of 1994 amendments to the National Flood Insurance Act of 1968,[3] the Flood Disaster Protection Act of 1973,[4] and by OCC regulations implementing those statutes. The information collection requirements are contained in 12 CFR part 22.

Section 22.6 requires a national bank to use the Standard Flood Hazard Determination Form developed by the Federal Emergency Management Agency (FEMA) and to maintain a completed copy of that form for the period of time the bank owns the loan.

Section 22.7 requires a national bank or its loan servicer, if a borrower has not obtained flood insurance, to notify the borrower to obtain adequate flood insurance coverage or the bank or servicer will purchase flood insurance on the borrower's behalf.

Section 22.9 requires a national bank making, extending, increasing, or renewing a loan secured by a building or a mobile home located in a special flood hazard area to advise the borrower and the loan servicer that the property is located in a special flood hazard area, provide a description of the flood insurance purchase requirements, and provide information regarding the availability of insurance under the National Flood Insurance Program and of Federal assistance in the event of a declared Federal flood disaster. In lieu of providing the borrower notice, a national bank may obtain a satisfactory written assurance from a seller or lessor that, within a reasonable time before completion of the sale or lease transaction, the seller or lessor provided such notice to the purchaser or lessee. For the period of time the bank owns the loan, the bank must maintain a record of the borrower's and loan servicer's receipts of these notices and, where appropriate, the written assurance from the seller or the lessor.

Section 22.10 requires a national bank making, increasing, extending, renewing, selling, or transferring a loan secured by a building or a mobile home located in a special flood hazard area to notify FEMA of the identity of the servicer, and of any change in servicers.

These information collection requirements ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Regular review.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,650.

Estimated Total Annual Responses: 166,650.

Estimated Frequency of Response: On occasion.

Estimated Time per Respondent: 25.5 hours.

Estimated Total Annual Burden: 42,075 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments 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;

[1] 12 U.S.C. 4804.

[2] 42 U.S.C. 4104(a).

[3] 12 U.S.C. 4104a and 4104b.

[4] 12 U.S.C. 4012a and 4106(b).

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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.

Dated: January 10, 2011.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2011–799 Filed 1–13–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee Meeting

ACTION: Notification of Citizens Coinage Advisory Committee January 19, 2011 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for January 19, 2011.

Date: January 19, 2011.

Time: 9 a.m. to 12 p.m.

Location: 8th Floor Board Room, United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Full CCAC review and consideration of the draft report: "A Blueprint for Advancing Artistic Creativity and Excellence in United States Coins and Medals," and discussion about preparing the CCAC 2010 Annual Report.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: January 10, 2011.

Andrew Brunhart,

Deputy Director, United States Mint.

[FR Doc. 2011–721 Filed 1–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0663]

Agency Information Collection (Pay Now Enter Info Page) Activity Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0663" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0663."

SUPPLEMENTARY INFORMATION:

Title: Pay Now Enter Info Page.

OMB Control Number: 2900–0663.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who participated in VA's benefit programs and owe debts to VA can voluntary make online payments through VA's Pay Now Enter Info Page website. Data enter on the Pay Now Enter Info Page is redirected to the Department of Treasury's Pay.gov website allowing claimants to make payments with credit or debit cards, or directly from their bank account. At the conclusion of the transaction, the claimant will receive a confirmation acknowledging the success or failure of the transaction.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 4, 2010, at pages 68040–68041.

Affected Public: Individuals or households.

Estimated Annual Burden: 11,667 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Daily.

Estimated Number of Respondents: 70,000.

Dated: January 11, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–789 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0159]

Agency Information Collection (Matured Endowment Notification) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and

its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0159" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0159."

SUPPLEMENTARY INFORMATION:

Title: Matured Endowment Notification, VA Form 29–5767.

OMB Control Number: 2900–0159.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–5767 is used to notify the insured that his or her endowment policy has matured. The form also request that the insured elect whether he or she prefer to receive the proceeds in monthly installment or in a combination of cash and monthly installment and to designate a beneficiary(ies) to receive the remaining proceeds.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 4, 2010, at pages 68039–68040.

Estimated Annual Burden: 2,867 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,600.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–777 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0059]

Proposed Information Collection (Statement of Person Claiming To Have Stood in Relation of a Parent) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's who stood in relation of parents to a deceased veteran eligibility for death benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0059" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Person Claiming to Have Stood in Relation of a Parent, VA Form 21–524.

OMB Control Number: 2900–0059.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–524 is used to gather information from claimants seeking service-connected death benefits as persons who stood in the relationship of the natural parent of a deceased veteran. The information is used to determine the claimant's eligibility for such benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 800 hours.

Estimated Average Burden per Respondent: 2 hours.

Frequency of Response: One–time.

Estimated Number of Respondents: 400.

Dated: January 11, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–778 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0659]

Proposed Information Collection (Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) and Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to obtain evidence to substantiate claims for service connection post-traumatic stress disorder (PTSD).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0659" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD), VA Form 21–0781.

b. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault, VA Form 21–0781a.

OMB Control Number: 2900–0659.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans seeking compensation for post-traumatic stress disorder and need VA's assistance in obtaining evidence from military records and other sources to substantiate their claims of in-service stressors must complete VA Forms 21–0781 and 21–0791a. Veterans who did not serve in combat or were not a prisoner of war and are claiming compensation for post-traumatic stress disorder due to in-service stressors, he or she must provide credible supporting evidence that the claimed in-service stressor occurred.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD), VA Form 21–0781—16,800 hours.

b. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault, VA Form 21–0781a—980 hours.

Estimated Average Burden per Respondent:

a. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD), VA Form 21–0781—70 minutes.

b. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault, VA Form 21–0781a—70 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD), VA Form 21–0781—14,400.

b. Statement in Support of Claim for Service Connection for Post-Traumatic Stress Disorder (PTSD) Secondary to Personal Assault, VA Form 21–0781a—840.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–779 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0149]

Agency Information Collection (Application for Conversion) (Government Life Insurance) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0149" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0149."

SUPPLEMENTARY INFORMATION:

Title: Application for Conversion (Government Life Insurance), VA Form 29–0152.

OMB Control Number: 2900–0149.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–0152 is completed by insured veterans to convert his/her term insurance to a permanent plan of insurance.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 4, 2010, at page 68036.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,500.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–780 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0179]

Proposed Information Collection (Application for Change of Permanent Plan (Medical); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to establish eligibility to change insurance plans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0179" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Change of Permanent Plan (Medical) (Change to a policy with a lower reserve value), VA Form 29–1549.

OMB Control Number: 2900–0179.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to establish his/her eligibility to change insurance plans from a higher reserve to a lower reserve value.

Affected Public: Individuals or households.

Estimated Annual Burden: 14 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–781 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0139]

Proposed Information Collection (Notice—Payment Not Applied); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine a claimant's eligibility to reinstate government life insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov*. Please refer to "OMB Control No. 2900–0139" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice—Payment Not Applied, VA Form 29–4499a.

OMB Control Number: 2900–0139.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–4499a is used by policy holders to reinstate their National Service Life Insurance (NSLI) policy. The information collected is used to determine the insurer's eligibility for reinstatement to government life insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–782 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0708]

Agency Information Collection (Evidence for Transfer of Entitlement of Education Benefits (CFR 21.7080)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 14, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0708" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0966 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–0708."

SUPPLEMENTARY INFORMATION:

Title: Evidence for Transfer of Entitlement of Education Benefits (CFR 21.7080).

OMB Control Number: 2900–0708.

Type of Review: Extension of a currently approved collection.

Abstract: Servicemembers on active duty may request to designate up to a maximum of 18 months of their educational assistance entitlement to their spouse, one or more of their children, or a combination of the spouse and children. VA will accept DOD Form 2366–1 as evidence that the servicemember was approved by the military to transfer entitlement. The servicemember must submit in writing to VA, the name of each dependent, the number of months of entitlement transferred to each dependent, and the period (beginning date or ending date) for which the transfer will be effective for each designated dependent. VA will use the information shown on DOD Form 2366–1 to determine whether the dependent qualifies to receive education benefits under the transfer of entitlement provision of law.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 4, 2010, at pages 68035–68036.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,227.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 62,725.

Dated: January 11, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–783 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0393]

Proposed Information Collection (VAAR Part 813) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate quotations received and to determine which quotation offers the best value in terms of price and other factors.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0393" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Part 813.

OMB Control Number: 2900–0393.

Type of Review: Extension of a currently approved collection.

Abstract: VA collects acquisition information from firms and individuals who wish to sell supplies, services, and construction or who wish to establish blanket purchase agreements (BPA) or other contractually related agreements with VA. VA uses the information collected to determine to whom to award contracts or with whom to enter into BPAs or other contractually related agreements.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden: 20,845 hours.

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,845.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–784 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0418]

Proposed Information Collection (VAAR Sections 809.106–1, 809.504(d), and Clause 852.209–70) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether or not a firm's plant being considered for an award has been inspected by another Federal agency and whether or not an award of a contract to the firm involves a conflict of interest.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0418" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Sections 809.106–1, 809.504(d), and Clause 852.209–70.

OMB Control Number: 2900–0418.

Type of Review: Extension of a currently approved collection of information.

Abstract:

a. VAAR section 809.106–1 requires VA to contact a firm being considered for a contract award for bakery, dairy, or ice cream products or for laundry or dry cleaning services whether or not the firm's facility has recently been inspected by another Federal agency and, if so, which agency. The information is used to determine whether a separate inspection of the facility should be conducted by VA prior to award contract.

b. VAAR section 809.504(d) and Clause 852.209–70 requires VA to determine whether or not to award a contract to a firm that might involve or result in a conflict of interest. VA uses the information to determine whether additional contract terms and conditions are necessary to mitigate the conflict.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden:

a. VAAR section 809.106–1—30 hours.

b. VAAR section 809.504(d)—500 hours.

c. and VAAR clause 852.209–7—500 hours.

Estimated Average Burden per Respondent:

a. VAAR section 809.106–1—3 minutes.

b. VAAR section 809.504(d)—30 minutes.

c. Clause 852.209–7—30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR section 809.106–1—600.

b. VAAR section 809.504(d)—500.

c. Clause 852.209–7—500.

Dated: January 11, 2011.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–785 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0422]

Proposed Information Collection (VAAR Clauses 852–236–72, 852.236–81, 852.236–82, 852.236–83, 852.236–84, and 852.236–88) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to administer contracts.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0422" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax (202) 273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, (OM) invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of (OM)'s functions, including whether the information will have practical utility; (2) the accuracy of (OM)'s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–72, Performance of Work by the Contractor.

b. Department of Veterans Affairs Acquisition Regulation (VAAR) Alternate I to Clause 852.236–80, Subcontracts and Work Coordination.

c. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1.

d. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1.

e. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–84, Schedule of Work Progress.

f. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes.

OMB Control Number: 2900–0422.

Type of Review: Extension of a currently approved collection.

Abstract: The information contained Department of Veterans Acquisition Regulation (VAAR) Clauses 852.236–72, Alternate I to 852.236–80, 852.236–82, 852.236–83, 852.236–84, and 852.236–88 is necessary for VA to administer construction contracts, and to carry out its responsibility to construct, maintain and repair real property for the Department.

a. VAAR Clause 852.236–72, Performance of Work by the Contractor, requires contractors awarded a construction contract containing Federal Acquisition Regulation (FAR) clause 52.236–1, to submit a statement designating the branch or branches of contract work to be performed by the contractor's own forces. The VAAR clause implements the FAR clause by requiring the contractor to provide information to the contracting officer on how the contractor intends to fulfill this contractual obligation. The contracting officer uses this information to ensure that the contractor complies with the contract requirements.

b. Alternate I to Clause 852.236–80, Work Coordination, require construction contractors, on contracts involving complex mechanical-electrical work, to furnish coordination drawings showing the manner in which utility lines will fit into available spaces and relate to each other and to the existing building elements. The information is used by the contracting officer and VA engineer assigned to the project to resolve any problems relating to the installation of utilities on construction contract.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), requires construction contractors to submit a schedule of costs for work to be performed under the contract. If the contract includes guarantee period services, Alternate I requires contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), requires construction contractors to submit a schedule of costs for work to be performed under the contract. If the contract includes guarantee period services, Alternate I requires contractor to submit information on the total and itemized costs of the guarantee period services and to submit a performance plan/program. The information is needed to allow the contracting officer to determine the correct amount to pay the contractor as work progresses and to properly proportion the amount paid for guarantee period services. The difference between this clause and the one above 852.236–82 is that this clause requires the contractor to use a computerized Network Analysis System (NAS) to prepare the cost estimate.

e. VAAR Clause 852.236–84, Schedule of Work Progress, requires construction contractors, on contracts that do not require the use of a NAS, to submit a progress schedule. The information is used by the contracting officer to track the contractor's progress under the contract and to determine whether or not the contractor is making satisfactory progress.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes. FAR Clause 52.243–4 authorizes the contracting officer to order changes to a construction contract but does not specifically require the contractor to submit cost proposals for those changes. VAAR Clause 852.236–88 requires contractors to submit cost proposal for changes ordered by the contracting officer or for changes proposed by the contractor. This information is needed to allow the contracting officer and the contractor to reach a mutually acceptable agreement on how much to pay the contractor for the proposed changes to the contract. It is also used by the contracting officer to determine whether or not to authorize the proposed changes or whether or not additional or alternate cost proposals for changes are needed.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—36 hours.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—1,190 hours.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1,397 hours.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—59 hours.

e. VAAR Clause 852.236–84, Schedule of Work Progress—2,095 hours.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—807 hours.

Estimated Average Burden per Respondent:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—1 hour.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—10 hours.

c. VAAR Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1 hour.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—30 minutes.

e. VAAR Clause 852.236–84, Schedule of Work Progress—1 hour.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—3 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR Clause 852.236–72, Performance of Work by the Contractor—36.

b. VAAR Alternate I to Clause 852.236–80, Subcontracts and Work Coordination—119.

c. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–82, Payments Under Fixed-Price Construction Contracts (without NAS), including Alternate 1—1,397.

d. VAAR Clause 852.236–83, Payments Under Fixed-Price Construction Contracts (with NAS), including Alternate 1—119.

e. VAAR Clause 852.236–84, Schedule of Work Progress—1,397.

f. VAAR Clause 852.236–88, Contract Changes, Supplements FAR Clause 52.243–4, Changes—269.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–786 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0590]

Proposed Information Collection (Department of Veterans Affairs Acquisition Regulations Clause 852.237–7, Indemnification and Medical Liability Insurance) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine if offerors and contractors have adequate insurance coverage prior to contract awarded.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0590" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Veterans Affairs Acquisition Regulation Clauses 852.237–7, Indemnification and Medical Liability Insurance.

b. Veterans Affairs Acquisition Regulation Clauses 852.237–71, Indemnification and Insurance.

c. Veterans Affairs Acquisition Regulation Clauses 852.207–70, Report of Employment Under Commercial Activities.

OMB Control Number: 2900–0590.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. VA Acquisition Regulation Clauses 852.237–7 is used in solicitations and contracts for the acquisition of non-personal health care services. It requires the bidder/offeror prior to contract award to furnish evidence of insurability of the offeror and/or all healthcare providers who will perform under the contract. The information provided is used to ensure that VA will not be held liable for any negligent acts of the contractor or it employees and that VA and VA beneficiaries are protected by adequate insurance coverage.

b. Clause 852.237–71 is used in solicitations for vehicle or aircraft services. It requires the bidder/offeror prior to contract award to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. The information is necessary to ensure that VA beneficiaries and the public are protected by adequate insurance coverage.

c. Clause 852.207–70, is used in solicitations for commercial items and services where the work is currently being performed by VA employees and where those employees might be displaced as a result of an award to a commercial firms. The clause requires the contractor to report the names of the affected Federal employees offered employment opening and the names of employees who applied for but not offered employment and the reasons for withholding offers to those employees. The information collected is used by contracting officers to monitor and ensure compliance by the contractor under the requirements of Federal Acquisition Regulation clause 52.207–3, Right of First Refusal of Employment.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden:

a. Veterans Affairs Acquisition Regulation Clauses 852.237–7, Indemnification and Medical Liability Insurance—750 hours.

b. Veterans Affairs Acquisition Regulation Clauses 852.237–71, Indemnification and Insurance—250 hours.

c. Veterans Affairs Acquisition Regulation Clauses 852.207–70, Report of Employment Under Commercial Activities—15 hours.

Estimated Average Burden per Respondent:

a. Veterans Affairs Acquisition Regulation Clauses 852.237–7, Indemnification and Medical Liability Insurance—30 minutes.

b. Veterans Affairs Acquisition Regulation Clauses 852.237–71, Indemnification and Insurance—30 minutes.

c. Veterans Affairs Acquisition Regulation Clauses 852.207–70, Report of Employment Under Commercial Activities 30—minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Veterans Affairs Acquisition Regulation Clause 852.237–7, Indemnification and Medical Liability Insurance—1,500.

b. Veterans Affairs Acquisition Regulation Clause 852.237–71, Indemnification and Insurance—500.

c. Veterans Affairs Acquisition Regulation Clause 852.207–70, Report of Employment Under Commercial Activities—30.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–787 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0623]

Proposed Information Collection (VAAR Clause 852.236.91, Special Notes) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to evaluate bidder's qualification and to support claims for price adjustment due to delay in construction caused by severe weather.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*; or to Arita Tillman, Office of Acquisition and Logistics (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: arita.tillman@va.gov*. Please refer to "OMB Control No. 2900–0623" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236.91.

OMB Control Number: 2900–0623.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR Clause 852.236.91 requires bidders to furnish information on previous experience, technical qualifications, financial resources, and facilities available to perform the work. The clause also requires contractors submitting a claim for price adjustment due to severe weather delay to provide climatologically data covering the period of the claim and covering the same period for the ten preceding years. VA uses the data collected to evaluate the bidder's qualification and responsibility, and to evaluate the contractor's claims for contract price adjustment due to weather-related delays.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden:

a. Qualifications Data: 758 hours.

b. Weather Data: 20 hours.

Estimated Average Burden per Respondent:

a. Qualifications Data: 30 min.

b. Weather Data: 1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. Qualifications Data: 1,516.

b. Weather Data: 20.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–788 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0622]

Proposed Information Collection (VAAR Clause 852.236.89, Buy American Act) Activity: Comment Request

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Management (OM), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to consider the use of domestic foreign construction material.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 15, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Arita Tillman, Office of Acquisition and Logistics (049P1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC

20420; or *e-mail: arita.tillman@va.gov.* Please refer to "OMB Control No. 2900–0622" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Arita Tillman at (202) 461–6859, Fax 202–273–6229.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OM's functions, including whether the information will have practical utility; (2) the accuracy of OM's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.236–89, Buy American Act.

OMB Control Number: 2900–0622.

Type of Review: Extension of a currently approved collection.

Abstract: The Buy American Act requires that only domestic construction material shall be used to perform domestic Federal contracts for construction, with certain exceptions. Despite the allowable exceptions, it is VA policy not to accept foreign construction material. VAAR clause 852.236–89 advises bidders of theses provisions and requires bidders who choose to submit a bid that includes foreign construction material to identify and list the price of such material. VA uses the information to determine whether to accept or not accept a bid that includes foreign construction material.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden: 20 hours.

Estimated Average Burden per Respondent: 30 min.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40.

Dated: January 11, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–802 Filed 1–13–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Friday

No. 10 January 14, 2011

Part II

Department of Veterans Affairs

38 CFR Part 5

Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900–AL74

Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language regulations governing VA compensation, pension, burial, and related benefits, including regulations concerning apportionments, payments to fiduciaries, and payments to incarcerated beneficiaries and fugitive felons. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants, beneficiaries, and VA personnel in locating and understanding these regulations.

DATES: Comments must be received by VA on or before March 15, 2011.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand-delivery to: Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AL74—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries." Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William F. Russo, Director of Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 461–4902 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 "VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs." The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing, and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding apportionments, payments to fiduciaries, and the manner in which VA reduces or discontinues benefit payments when beneficiaries are incarcerated or are fugitive felons. It also includes proposed rules regarding the adjustment and resumption of benefits based upon receipt of hospital, domiciliary, and nursing home care. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

Outline

Overview of New Part 5 Organization
Overview of This Notice of Proposed Rulemaking
Table Comparing Current Part 3 Rules With Proposed Part 5 Rules
Content of Proposed Regulations

Subpart L—Payments and Adjustments to Payments

Hospital, Domiciliary, and Nursing Home Care Reductions and Resumptions

5.720 Adjustments to special monthly compensation based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care.
5.721 Resumption of special monthly compensation based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.
5.722 Reduction of Improved Pension while a veteran is receiving domiciliary or nursing home care.
5.723 Reduction of Improved Pension while a veteran, surviving spouse, or child is receiving Medicaid-covered care in a nursing facility.
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5.725 Resumption of Improved Pension and Improved Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.
5.726 Reduction of Section 306 Pension while a veteran is receiving hospital, domiciliary, or nursing home care.
5.727 Reduction of Old-Law Pension while a veteran is receiving hospital, domiciliary, or nursing home care.
5.728 Reduction of Old-Law Pension or Section 306 Pension based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care.
5.729 Resumption of Section 306 Pension and Section 306 Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.
5.730 Resumption of Old-Law Pension and Old-Law Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.

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5.810 Incarcerated beneficiaries—general provisions and definitions.
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Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that most provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. This organization will allow claimants, beneficiaries, and their representatives, as well as VA adjudicators, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be "Subpart A—General Provisions." It would include information regarding the scope of the regulations in new part 5, general definitions, and general policy provisions for this part. This subpart was published as proposed on March 31, 2006. *See* 71 FR 16464.

"Subpart B—Service Requirements for Veterans" would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

"Subpart C—Adjudicative Process, General" would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart was published as three separate Notices of Proposed Rulemaking (NPRMs) due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See* 70 FR 24680. The second, covering general evidence requirements, effective dates for awards, revision of decisions, and protection of VA ratings, was published as proposed on May 22, 2007. *See* 72 FR 28770. The third, concerning rules on filing VA benefits claims, was published as proposed on April 14, 2008. *See* 73 FR 20136.

"Subpart D—Dependents and Survivors" would inform readers how VA determines whether an individual is a dependent or a survivor for purposes of determining eligibility for VA benefits. It would also provide the evidence requirements for these determinations. This subpart was published as proposed on September 20, 2006. *See* 71 FR 55052.

"Subpart E—Claims for Service Connection and Disability Compensation" would define service-connected disability compensation and service connection, including direct and secondary service connection. This subpart would inform readers how VA determines service connection and entitlement to disability compensation. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart has been published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published as proposed on July 27, 2004. *See* 69 FR 44614. The second, relating to special ratings and ratings for health care eligibility only, was published as proposed on October 17, 2008. *See* 73 FR 62004. The third, relating to service-connected and other disability compensation, was published as proposed on September 1, 2010. *See* 75 FR 53744.

"Subpart F—Nonservice-Connected Disability Pensions and Death Pensions" would include information regarding the three types of nonservice-connected pension: Old-Law Pension, Section 306 Pension, and Improved Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension and the effective dates governing each pension. This subpart was published as two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578. The portion concerning eligibility and entitlement requirements, as well as effective dates, for Improved Pension was published as proposed on September 26, 2007. *See* 72 FR 54776.

"Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary" would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart was published as two separate NPRMs due to its size. The portion concerning accrued benefits, death compensation, special rules applicable upon the death of a beneficiary, and several effective-date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published as proposed on October 21, 2005. *See* 70 FR 61326.

"Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors" would pertain to special and ancillary benefits available, including benefits for children with various birth defects. This subpart was published as proposed on March 9, 2007. *See* 72 FR 10860.

"Subpart I—Benefits for Certain Filipino Veterans and Survivors" would pertain to the various benefits available to Filipino veterans and their survivors. This subpart was published as proposed on June 30, 2006. *See* 71 FR 37790.

"Subpart J—Burial Benefits" would pertain to burial allowances. This subpart was published as proposed on April 8, 2008. *See* 73 FR 19021.

"Subpart K—Matters Affecting the Receipt of Benefits" would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits. This subpart was published as proposed on May 31, 2006. *See* 71 FR 31056.

"Subpart L—Payments and Adjustments to Payments" would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, this subpart, except for several regulations concerning hospital, domiciliary, and nursing home care reductions and resumptions, was published in two

separate NPRMs. The first, concerning payments to beneficiaries who are eligible for more than one benefit, was published as proposed on October 2, 2007. *See* 72 FR 56136. The second, concerning provisions applicable to payment of VA benefits and adjustments to payments, was published as proposed on October 31, 2008. *See* 73 FR 65212. The hospital, domiciliary, and nursing home care regulations are included in this NPRM.

The final subpart, "Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries," would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship. This subpart is the primary subject of this NPRM.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the **SUPPLEMENTARY INFORMATION**, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both rulemakings.

Overview of This NPRM

This NPRM pertains to regulations that govern apportionments of benefits, as well as certain matters pertaining to fiduciaries of incompetent beneficiaries and minors. It also pertains to regulations governing incarcerated beneficiaries and beneficiaries who are fugitive felons. These regulations would be contained in proposed Subpart M of new 38 CFR part 5. This NPRM also includes eleven regulations concerning reductions of VA benefits based on hospitalization at government expense. These regulations would be contained in proposed Subpart L of new 38 CFR part 5.

Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as their existing counterparts in 38 CFR part 3. However, a few substantive differences are proposed, as are some regulations that do not have counterparts in 38 CFR part 3.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the relationship between the proposed regulations contained in this NPRM and the current regulations in part 3:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph
5.720(a)	3.551(a), 3.552(b)(3), 3.556(a), 3.556(f)
5.720(b)	3.501(b)(1) and (2), 3.552(a)(1), (b)(1), (b)(2), and (c)
5.720(c)(1)	3.552(b)(2), 3.501(b)(2)
5.720(c)(2)	3.552(d) and (i)
5.720(c)(3)	3.552(f) and (g)
5.720(c)(4)	3.552(h)
5.720(c)(5) and (6)	3.552(a)(3)
5.720(d)	3.552(a)(1) and (2)
5.720(e)(1)	New.
5.720(e)(2) and (3)	3.552(b)(3)
5.720(f)	3.552(k)
5.721	New.
5.722(a)(1)	3.551(e)(1)
5.722(a)(2)	3.551(e)(1)
5.722(a)(3)	3.501(i)(5)(i), 3.551(e)(1)
5.722(b)(1)	3.551(a)
5.722(b)(2) and (b)(3)	New.
5.722(b)(4)	3.551(e)(6)
5.722(c)	3.551(e)(3)
5.722(d)(1)	3.501(i)(5)(ii), 3.551(e)(2)
5.722(d)(2)	New.
5.722(e)	3.551(e)(4)
5.722(f)	3.551(h)
5.722(g)	3.551(e)
5.723	3.501(i)(6), 3.502(f), 3.551(i)
5.724(a)	3.501(b)(1), 3.552(b)(1) and (e) [third and fourth sentences]
5.724(b)	3.552(a)(1) and (2)
5.724(c)	3.501(i)(3), 3.552(b)(3)
5.724(d)	3.552(k)
5.725	New.
5.726(a)(1)	3.551(a) and (c)(1)
5.726(a)(2)	3.551(g)
5.726(a)(3)	3.551(c)(1)
5.726(a)(4)	3.501(i)(2)(i), 3.551(c)(1)
5.726(a)(5)	3.551(f)
5.726(b)(1)	3.551(a)
5.726(b)(2) and (3)	New.
5.726(c)	3.551(c)(3)
5.726(d)(1)	3.501(i)(2)(iii), 3.551(c)(2)
5.726(d)(2)	New.
5.727(a)(1)	3.551(b)(1)
5.727(a)(2)	3.551(g)
5.727(a)(3)	3.551(b)(1)
5.727(a)(4)(i)	3.501(i)(1), 3.551(b)(1)
5.727(a)(4)(ii)	3.551(b)(3)
5.727(b)(1)	3.551(a)
5.727(b)(2) and (3)	New.
5.727(c)(1)	3.551(b)(2)
5.727(c)(2)(i)	New.
5.727(c)(2)(ii)	3.551(b)(3)
5.728(a)	3.501(b)(1), 3.552(b)(1), (e) and (j)
5.728(b)	3.552(e)
5.728(c)	3.552(b)(3)
5.729(a)	3.556(a)
5.729(b)	3.556(b) and (d) [third sentence]
5.729(c)	3.556(c)
5.729(d)	3.556(d) [first sentence] and (e)
5.730(a)	3.556(a)(1)
5.730(b)	3.556(b)
5.730(c)	3.556(e)
5.730(d)	3.556(d)
5.770	3.450
5.771	3.451
5.772(a)	3.452(a)
5.772(b)	3.452(b)
5.772(c)	3.452(c), 3.454
5.772(d)	3.452(d)
5.773	3.453
5.774	3.58, 3.458, 3.503(a)(2), 3.901(c), and 3.902(c)
5.780	3.450(a)(1)(ii), 3.451, and 3.460(b) and (c)
5.781(a)	3.461(a)
5.781(b)	3.461(b)(1)
5.782(a)	3.400(e)(1)
5.782(b)(1)	Introduction to 3.400(e)
5.782(b)(2)	New.
5.782(b)(3)	3.400(e)(2)
5.782(b)(4)	3.665(f)
5.783(a)	3.500(d)(1)
5.783(b)(1) and (2)	3.500(g) and (n)
5.783(b)(3)	New.
5.783(b)(4)	New.
5.784(a)	3.1000(b)(2)
5.784(b)(1)	3.1000(b)(1)
5.784(b)(2)	3.1000(b)(3)
5.790(a)	3.353(a)
5.790(b)	3.353(b)
5.790(c)	3.353(c)
5.790(d)	3.353(d)
5.790(e)	3.353(e)
5.790(f)(1)	3.400(x)
5.790(f)(2)	3.400(y)
5.791(a)	3.850(a)
5.791(b)	3.850(c)
5.791(c)	3.850(b)
5.791(d)	3.850(d)
5.791(e)	3.400(n), 3.500(m)

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph
5.792(a)	3.852(a)
5.792(b)	3.852(b), 3.852(d) [first sentence]
5.792(c)	3.852(d) [second sentence]
5.792(d)	3.852(c)
5.792(e)	3.401(d)
5.792(f)	3.501(j)
5.793	3.403(a)(2), 3.854
5.794(a)	3.855(a)
5.794(b)(1)	3.855(b)(1)
5.794(b)(2)	3.855(b)(2)
5.794(b)(3)	3.855(b)(3)
5.795	3.856
5.796	3.857
5.797	3.355
5.798	3.853(c)
5.810(a)	3.665(b)
5.810(b)	New.
5.810(c)	3.665(a) and introduction to 3.666
5.810(d)	New.
5.810(e)	3.665(a) and introduction to 3.666
5.810(f)	3.665(a) and introduction to 3.666
5.811(a)	3.665(a) and (c)
5.811(b)	3.665(j)(3)(ii) and (k)
5.811(c)	3.665(d)(1) and (2) and (j)
5.812(a)	3.665(a) and (c)
5.812(b)	3.665(d)(3)
5.812(c)	3.665(l)
5.812(d)	3.665(k)
5.813(a)	Introduction to 3.666
5.813(b)	3.666(d)
5.814(a)(1)	3.665(a)
5.814(a)(2)	3.665(h)
5.814(b)	3.665(e)
5.814(c)	3.666(a)(1), (a)(2), and (a)(3)
5.814(d)	3.666(b)(1), (b)(2) and (b)(4)
5.814(e)	3.665(f), 3.666(a)(4) and (b)(3)
5.815(a)	3.665(i)
5.815(b)	3.665(i)(1) and (i)(3)
5.815(c)	3.665(i)(2) and (i)(3)
5.815(d)	3.665(m)
5.816	3.666(c)
5.817(a)	3.665(n)(1) and 3.666(e)(1)
5.817(b)	3.665(n)(2) and (3); 3.666(e)(2) and (3)

Readers who use this table to compare the proposed provisions with the existing regulatory provisions and observe a substantive difference between them should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be repeated in part 5. Such provisions are discussed specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Regulations

Subpart L: Payments and Adjustments to Payments

Hospital, Domiciliary, and Nursing Home Care Reductions and Resumptions

We propose to rewrite current §§ 3.551, 3.552, and 3.556, by dividing the disability compensation and pension provisions in those sections into separate sections. Each section would address different VA benefits.

Section 5.720 Adjustments to Special Monthly Compensation Based on the Need for Regular Aid and Attendance While a Veteran Is Receiving Hospital, Domiciliary, or Nursing Home Care

Proposed § 5.720 includes provisions for discontinuing special monthly compensation (SMC) that is payable because a veteran is in need of regular aid and attendance or a higher level of care while receiving hospital, domiciliary, or nursing home care.

In proposed § 5.720(a), we would define the terms "hospital care", "domiciliary or nursing home care", "temporary absence", and "regular" and "irregular" discharge or release for purposes of §§ 5.720 through 5.730. Current 38 CFR 3.551(a) defines the terms "hospitalized" and "hospitalization" to include "[h]ospital treatment in a Department of Veterans Affairs hospital or in any hospital at Department of Veterans Affairs expense" and "[i]nstitutional, domiciliary or nursing home care in a Department of Veterans Affairs institution or domiciliary or at Department of Veterans Affairs expense." We propose to not include the terms "institution" or "institutional" in the definition of "hospital care" in § 5.720(a)(1) or elsewhere in §§ 5.720–5.730 because, with respect to specific types of VA care or facilities, the terms are obsolete. In 1978, Congress amended 38 U.S.C. 3203(a)(1), the precursor to 38 U.S.C. 5503(a), in part by replacing a reference to "hospital treatment, institutional, or domiciliary care" with references to "domiciliary care" and "hospital or nursing home care." *See* Veterans' and Survivors' Pension Improvement Act of 1978, Public Law 95–588, section 307, 92 Stat. 2497, 2510. Despite this change of terminology in the authorizing statute applicable to Improved Pension, VA kept references to "institutional" care in its part 3 regulations on hospitalization adjustments because the statutes applicable to Section 306 Pension and Old-Law Pension still refer to institutional care and do not refer to nursing home care. However, VA has interpreted "institutional care" in these statutes to include "nursing home care". Accordingly, as stated in § 3.551(a), VA applies the definition of "hospitalized" that includes "nursing home care" to §§ 3.551 through 3.556, including to those provisions pertaining to Section 306 Pension and Old-Law Pension. Therefore, in keeping with current 38 U.S.C. 5503(a), we have not included any reference to institutional care in proposed §§ 5.720–5.730.

Current 38 CFR 3.556(f) defines a "regular" discharge as one which "is granted because of having received maximum hospital benefits." To further clarify the definition, in proposed § 5.720(a)(3), we would define the term "regular discharge or release" to mean "a veteran, surviving spouse, or child is discharged or released at the order of a medical professional based on that professional's opinion that there is no medical reason to continue care." VA's regulations on reduction of pension benefits refer only to veterans and surviving spouses. We propose to add "child" to paragraphs (a)(3)–(a)(5) to make these definitions consistent with Veterans' Benefits Act of 2010, Public Law 111–275, section 606, 124 Stat. 2886.

Proposed § 5.720(a)(4), defining "irregular discharge or release," is derived from current § 3.556(f), which defines the term specifically, and current § 3.552(b)(3), which implicitly defines the term as it applies to readmissions to hospital, domiciliary, or nursing home care. Proposed § 5.720(a)(4) defines the term to mean a discharge or release from a period of hospital, domiciliary, or nursing home care for any of the following reasons: refusal to accept treatment, neglect of treatment, obstruction of treatment, disciplinary reasons, refusal to accept transfer to another facility, leaving a facility against medical advice, or failure to return from unauthorized or authorized absence. The current rules do not explicitly address those patients who leave hospital, domiciliary, or

nursing home care without authorization from the staff and fail to return. VA's practice is to treat such an absence as an irregular discharge or release even if the patient is not formally discharged or released at the time of departure. Accordingly, proposed § 5.720(a)(4), defining "irregular discharge or release" would include situations in which a veteran, surviving spouse, or child fails to return from unauthorized absence.

Proposed § 5.720(a)(5) would define "temporary absence" to mean "a veteran, surviving spouse, or child is placed on non-bed care status or authorized absence." The definition derives from current § 3.556(a). We would also clarify that a temporary absence is not a discharge or release.

In proposed § 5.720(c), describing how to calculate the reduced rate of SMC, we have identified the benefits to be reduced and the new rates by referring to the appropriate part 5 regulations as a convenience for the reader. Identification by implementing regulation is not a substantive change from current § 3.552, which identifies a given benefit by the benefit's authorizing statute and verbal description. More specifically, in proposed § 5.720(c)(4), derived from current § 3.552(h), we identify the benefit to be reduced as SMC under § 5.326(i). Because the reference to § 5.326(i) signifies only SMC payable under 38 U.S.C. 1114(m) for blindness in both eyes leaving a veteran so significantly disabled as to need regular aid and attendance, § 5.720(c)(4) identifies the same benefit as § 3.552(h) does, and it is unnecessary to state in proposed § 5.720(c)(4) that vision must be better than light perception only. Such language is necessary in § 3.552(h) because SMC under section 1114(m) may be paid for either blindness in both eyes having only light perception or for blindness in both eyes leaving the veteran so significantly disabled as to be in need of regular aid and attendance. Only SMC based on the latter condition is reduced based on hospital, domiciliary, or nursing home care, and only SMC based on the latter condition is payable under § 5.326(i); therefore, further clarification is unnecessary in § 5.720(c)(4).

In proposed paragraphs (c)(1) and (f)(1), we have clarified that SMC paid under 38 U.S.C. 1114(r) is discontinued or not payable while a veteran is receiving hospital care that is provided at United States Government expense. We also specify that the discontinuance required by paragraph (c)(1) is made only for the receipt of hospital care and is not made for the receipt of domiciliary or nursing home care. Both of these clarifications are based upon the plain language of the authorizing statute, 38 U.S.C. 5503(c).

In proposed § 5.720(c)(2)(ii), we have referred to a veteran who "has been awarded the intermediate or next higher rate based on additional disability that is independently ratable." Although current § 3.552(i) refers more specifically to "disability independently ratable at 50 percent or 100 percent", such specificity is unnecessary. The reference in § 5.720(c)(2)(ii) to proposed § 5.331(d)(1) and (e)(1) implies that the veterans described are those with disability independently ratable at 50 percent or higher (under § 5.331(d)(1)) or 100 percent (under § 5.331(e)(1)). Further, if the proposed rule was specific, it is possible that it would be misconstrued to exclude veterans with disability independently ratable at 60, 70, 80, or 90 percent.

Proposed § 5.720(d) restates in plain language exceptions contained in § 3.552(a)(1) and (a)(2). As we have proposed elsewhere in part 5, we would substitute the phrase "loss of use" for the current term "paralysis". *See* 73 FR 62004, 62013, 62023 (Oct. 17, 2008) (pertaining to proposed § 5.330(d)). The term "paralysis" is not defined for VA purposes. It is a term most commonly associated with inability to move or have sensation in a body part as a result of an injury or of a disease of the nervous system. This is a narrow definition that does not address disabilities resulting from muscle or bone damage. The phrase "loss of use" is used extensively by VA personnel in rating disabilities involving the extremities and therefore is an appropriate substitute term. The phrase "loss of use" will be clearer to the reader.

Proposed § 5.720(e)(1) is a new provision that states explicitly a rule that is implicit in current § 3.552(b)(3). Under § 3.552(b)(3), from which § 5.720(e)(2) and (3) are derived, VA will, in certain circumstances, immediately reduce a veteran's rate of SMC if the veteran is readmitted to hospital, domiciliary, or nursing home care after a prior period of care for which VA had reduced or discontinued the veteran's SMC. That rule applies if the veteran was given an irregular discharge or release from the prior period of care and the readmission is less than 6 months thereafter. In contrast, proposed § 5.720(e)(1) provides that a readmission to care following a regular discharge from a prior period of care will be treated as if it were an initial admission (i.e., the reduction will not be immediate). Under 38 U.S.C. 5503(c), VA is authorized to immediately reduce benefits only if the readmission follows an irregular discharge, not a regular discharge. The new provision explicitly states current VA practice and is favorable to veterans.

Proposed § 5.720 includes references to several SMC regulations—§§ 5.323, 5.324, 5.326, 5.328, 5.330, 5.331, 5.332, and 5.333—which were published as proposed on October 17, 2008. *See* 73 FR 62004.

Section 5.721 Resumption of Special Monthly Compensation Based on the Need for Regular Aid and Attendance After a Veteran Is on Temporary Absence From Hospital, Domiciliary, or Nursing Home Care or Is Discharged or Released From Such Care

There is no regulation in current 38 CFR part 3 or any statute in 38 U.S.C. regarding resumption of benefits after a veteran whose special monthly compensation based on the need for regular aid and attendance was reduced due to hospital, domiciliary, or nursing home care is discharged or released from such care. Proposed § 5.721 would fill this gap. We have modeled this section on the rules in current § 3.556, "Adjustment on discharge or release", which concerns resumptions of pension benefits upon discharge or release from hospital, domiciliary, or nursing home care. VA has applied these provisions to thousands of veterans' awards over more than 20 years. VA staff can administer them efficiently, and they result in fair and consistent adjustments of veterans' benefits.

Section 5.721(b) would incorporate language from current § 3.556(e), which sets out the rules for resuming benefits following regular discharge or release from hospital, domiciliary, or nursing home care. Section 3.556(e) states that the award resuming benefits "will be based on the most recent rating". The intent of this provision is to ensure that the veteran is paid the proper amount upon discharge or release. For consistency, we have also inserted similar language in §§ 5.725(c)(1) and (2), 5.729(d), and 5.730(c) and (d). Throughout § 5.721(b) and these other sections, instead of using the phrase "based on the most recent rating", we would state, "Payment will be resumed at the rate in effect before the reduction based on [receipt of such care], unless the evidence of record shows that a different rate is required." The use of this broader language throughout these regulations would also encompass beneficiaries whose benefits are not based on a rating decision, such as Improved Pension recipients 65 years of

age or over (to whom proposed § 5.725(c)(2) might apply).

We use the same language in the proposed regulations that govern the resumption of benefits following an irregular discharge. Similar language is not contained in current § 3.556(d), which covers irregular discharge or release. VA regulations originally made no distinction between regular and irregular discharges or releases; the award of benefits following either type of discharge or release was to be based on "the last valid rating." Vet. Reg. No. 6(c), Instruction No. 2, para. IV(e) (Oct. 18, 1934). When VA amended its regulations to distinguish between these types of discharges or releases, VA inadvertently failed to provide for the resumption of the rate in effect prior to the period of care that ended with the irregular discharge or release. *See* R&PR 1256(A) (Mar. 4, 1947).

Section 5.722 Reduction of Improved Pension While a Veteran Is Receiving Domiciliary or Nursing Home Care

Proposed § 5.722 addresses the reduction of Improved Pension while a veteran is receiving domiciliary or nursing home care.

In proposed § 5.722(a), we would clarify that the requirement that VA reduce Improved Pension being paid to a veteran who receives domiciliary or nursing home care for three full calendar months applies only if such care is continuous. This is consistent with long-standing VA practice.

Proposed § 5.722(b) would provide that VA will not reduce a veteran's Improved Pension if any one of the exceptions listed applies. Although current § 3.551 provides exceptions to the reduction of pension, the current regulation is not complete. It is important to clearly state when VA will not reduce Improved Pension payable to a veteran who is receiving domiciliary or nursing home care. Therefore, we have added provisions in proposed paragraphs (b)(2) and (3) to expand upon the rules carried forward from current § 3.551. The additions are exceptions for veterans maintained in a State soldiers' home or receiving domiciliary or nursing home care in a State home and the only payment made by VA to the State for the State home is the per diem rate under 38 U.S.C. 1741. The provisions reflect VA's long-standing practice not to reduce benefits when one of the described situations occurs. Regarding veterans receiving care in a State home, such practice is mandated by 38 U.S.C. 1741. Section 1741(e) specifically provides that per diem payments to a State may not be considered a liability of a third party or otherwise be used to offset or reduce any other payment made to assist veterans.

Although proposed § 5.722 generally pertains to veterans who have no spouse for VA purposes, the law provides for apportionment of pension benefits to a veteran's spouse in certain situations. *See* 38 U.S.C. 5503(a)(2). We have included in proposed paragraph (c) a cross reference to proposed § 5.772(c)(2)(ii), which provides the specific provision relating to such apportionments. The maximum amount that may be apportioned to the spouse is the difference, if any, between $90 and the amount that the veteran would be entitled to receive if he or she were being paid as a married veteran. That information is contained in current § 3.454(b)(3) and its part 5 counterpart, § 5.772(c)(2)(ii). We have not included the information about the rate payable to a married veteran in § 5.722(c), even though it is contained in its part 3 counterpart, current § 3.551(e), which refers to 38 U.S.C. 1521(c). By eliminating the redundant material, proposed § 5.722(c) is easier to read and understand than current § 3.551(e).

Proposed § 5.722(d)(1) is based on current §§ 3.501(i)(5)(ii) and 3.551(e)(2), which govern payments when a veteran is readmitted within 6 months after a period of domiciliary or nursing home care for which Improved Pension was reduced. Proposed paragraph (d)(2) is a new provision, which provides that, if a veteran is readmitted 6 months or more after a period of domiciliary or nursing home care for which Improved Pension was reduced, the readmission will be considered a new admission. This new provision, based on a long-standing VA procedure, would make § 5.722 more explicit and easier to apply than current § 3.551.

Proposed § 5.722(f) would address veterans who are provided nursing home care as part of a prescribed program of rehabilitation under 38 U.S.C. chapter 17. The provisions are derived from current § 3.551(h) with a few changes. The reference to "Chief Medical Director" is outdated because Congress has changed the title "Chief Medical Director" to "Under Secretary for Health." Public Law 102–405, section 302(a), 106 Stat. 1972, 1984 (1992). We use the current title.

Proposed § 5.722(g) would state that, "If a veteran becomes entitled to Improved Pension while receiving domiciliary or nursing home care, VA will reduce pension, or pay a reduced rate of pension, in accordance with this section." This rule is implicit in both the statute, 38 U.S.C. 5503(a), and current § 3.551(e), but is explicit in part 5 to reflect current VA practice regarding new awards of Improved Pension.

We have intentionally not included the provisions in current § 3.551(d) applicable to reduction of Improved Pension for veterans receiving care before February 1, 1990. The current paragraph provides that if a veteran without spouse or child was receiving hospital, domiciliary, or nursing home care before February, 1, 1990, VA will reduce the veteran's pension during such care. With the passage of time, these provisions are now unnecessary. It is unlikely that VA would now retroactively reduce a veteran's Improved Pension because of care provided more than 20 years in the past. Consequently, we have also not included current § 3.501(i)(4), which contains effective dates for reductions under § 3.551(d).

Similarly, we also propose to omit the provisions of current § 3.551(e)(5), which provide that effective February 1, 1990, Improved Pension is no longer reduced because of hospital care unless the veteran is receiving Improved Pension based on the need for regular aid and attendance. Such language is unnecessary because proposed § 5.722 is limited to domiciliary or nursing home care. Provisions related to hospital reductions before February 1, 1990, would not be included in part 5.

Section 5.723 Reduction of Improved Pension While a Veteran, Surviving Spouse, or Child Is Receiving Medicaid-Covered Care in a Nursing Facility

Proposed § 5.723 concerns situations in which a veteran, surviving spouse, or child is receiving Medicaid-covered nursing facility care. It is a plain language rewrite of current §§ 3.501(i)(6), 3.502(f), and 3.551(i), except that we have added "child" to make the rule consistent with Veterans Benefits Act of 2010, Public Law 111–275, section 606, 124 Stat. 2886.

We propose to use the term "nursing facility" instead of the term "nursing home", which is used in the current regulation, because the authorizing statute, 38 U.S.C. 5503(d), uses the term "nursing facility". Proposed § 5.723(a) includes an exception that is contained in 38 U.S.C. 5503(d)(1)(B) that is not contained in part 3. For veterans receiving care in a State home to which VA makes per diem payments under 38 U.S.C. 1741, VA does not reduce benefits under this section.

In proposed § 5.723(b), we have updated the reference to § 3.103(b)(2), contained in current §§ 3.501(i)(6)(i) and 3.502(f)(1), to refer instead to its proposed part 5 counterpart, § 5.83(b), "Right to notice of decisions and

proposed adverse actions", which was published as proposed on May 10, 2005. *See* 70 FR 24680, 24687.

Proposed § 5.723(d) is a new provision that states, "If a veteran, surviving spouse, or child described in paragraph (a) of this section becomes entitled to Improved Pension while receiving Medicaid-covered care in a nursing facility, then VA will not pay more than $90 per month while the veteran, surviving spouse, or child receives such care." This rule is implicit in both 38 U.S.C. 5503(d) and current § 3.551(i), but is explicit in part 5 to reflect current VA practice regarding new awards of Improved Pension under these circumstances.

Section 5.724 Reduction or Discontinuance of Improved Pension Based on the Need for Regular Aid and Attendance While a Veteran Is Receiving Hospital, Domiciliary, or Nursing Home Care

Proposed § 5.724 includes provisions for reduction of Improved Pension based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care. It is a plain language rewrite of applicable provisions involving Improved Pension in current §§ 3.501 and 3.552.

Proposed § 5.724(b) is based on current § 3.552(a)(1) and (2) and 38 U.S.C. 5503(b). Section 5503(b) prohibits the reduction of any type of VA pension (including Improved Pension based on the need for regular aid and attendance) for VA hospital, institutional, or domiciliary care for Hansen's disease. We have included similar language regarding VA hospital, domiciliary, or nursing home care for Hansen's disease in both § 5.724(b)(2) and § 5.728(b)(2).

Current § 3.552(a)(2) states that Improved Pension based on the need for regular aid and attendance will not be reduced if the "pensionable disability is blindness (visual acuity 5/200 or less) or concentric contraction of visual field to 5 degrees or less." The term "pensionable disability" used in § 3.552(a)(2) is imprecise because more than one disability may serve as the basis for pension entitlement. The description of blindness in § 3.552(a)(2) is based on the description in § 3.351(c)(1), which provides that a veteran or surviving spouse with that level of blindness will be considered to be in need of regular aid and attendance. Therefore, "pensionable disability" as used in § 3.552(a)(2) refers to the disability causing the need for regular aid and attendance, in this case, blindness of the level described in § 3.351(c)(1). (The part 5 equivalent to current § 3.351(c)(1) is § 5.390(b)(1) or (2), which was published as proposed on September 26, 2007. *See* 72 FR 54776, 54794.) We have drafted proposed § 5.724(b)(1)(iii) to state the intended concept in plain language.

Section 5.725 Resumption of Improved Pension and Improved Pension Based on the Need for Regular Aid and Attendance After a Veteran Is on Temporary Absence From Hospital, Domiciliary, or Nursing Home Care or Is Discharged or Released From Such Care

Current § 3.556, "Adjustment on discharge or release", is the only regulation in current 38 CFR part 3 regarding resumption of pension benefits after a veteran is discharged or released from hospital, domiciliary, or nursing home care. However, much of § 3.556 refers to Old-Law and Section 306 Pensions. In proposed § 5.725, we would use § 3.556 as the basis for a new rule regarding resumptions of Improved Pension and Improved Pension based on the need for regular aid and attendance. Based on VA's experience in applying § 3.556, this new rule will result in fair, consistent adjustments of Improved Pension and Improved Pension based on the need for regular aid and attendance.

Section 5.726 Reduction of Section 306 Pension While a Veteran Is Receiving Hospital, Domiciliary, or Nursing Home Care

Proposed § 5.726, based on the portions of current 38 CFR 3.551 that pertain to Section 306 Pension, provides for reduction of Section 306 Pension when a veteran is receiving hospital, domiciliary, or nursing home care.

Proposed § 5.726(a)(2), regarding proof of dependents, is based on current § 3.551(g) as it applies to Section 306 Pension. We propose to omit from part 5 the first two sentences of current § 3.551(g), which read, "The veteran will be considered to have neither spouse, child nor dependent parent in the absence of satisfactory proof. Statements contained in the claims folder concerning the existence of such dependents will be considered a prima facie showing." The first sentence is superfluous because there must be satisfactory proof of every fact to be proven in a veteran's claim. The second sentence guides VA staff to refrain from seeking evidence of dependents if such evidence is already of record. This guidance is more appropriately contained in internal VA procedures or training publications.

Proposed § 5.726(a)(4) is based on current § 3.551(c)(1), which applies the same effective date of reduction for domiciliary care as for hospital or nursing home care. However, § 3.501(i)(2), which is based on § 3.551(c), provides two different effective dates of reduction for Section 306 Pension recipients, one for domiciliary care (§ 3.501(i)(2)(i)) and a later one for hospital or nursing home care (§ 3.501(i)(2)(ii)). The effective date under § 3.551(c)(1) for all three types of care is the same as the date used in § 3.501(i)(2)(i) for domiciliary care. The basis for the conflict between the two current rules, §§ 3.551(c)(1) and 3.501(i)(2)(ii), began in 1979, when both §§ 3.501 and 3.551 were amended to implement section 307 of Public Law 95–588, 92 Stat. 2497, 2510 (amending former 38 U.S.C. 3203(a), currently section 5503). 44 FR 45930, 45940–41 (Aug. 6, 1979). Prior to being amended, §§ 3.501(i)(2) and 3.551(c) provided for the reduction in pension to begin after two full calendar months of VA-furnished hospital, domiciliary, or nursing home care. 38 CFR 3.501(i)(2) and 3.551(c) (1978). With regard to VA-furnished hospital and nursing home care, section 307 of Public Law 95–588 delayed the reduction by one full month. 92 Stat. at 2510. VA applied this liberalization to both Improved Pension and Section 306 Pension. 44 FR at 45940–41. However, in VAOPGCPREC 19–90, 55 FR 40990 (Oct. 5, 1990), VA's General Counsel held that the liberalizations made to the limitation contained in former 38 U.S.C. 3203(a) were not intended to apply to Section 306 Pension. Therefore, in February 1991, VA proposed amendments to § 3.551 to comply with VAOPGCPREC 19–90. 56 FR 7630, 7632 (Feb. 25, 1991). When the final rule was published in December 1991, VA also amended § 3.501(i), purportedly "to conform with the newly adopted amendments to [§ 3.551]." 56 FR 65848 (Dec. 19, 1991). However, amended § 3.501(i)(2)(ii) did not conform with § 3.551(c)(1). *Id.* at 65849, 65850. Accordingly, § 3.551(c)(1), as amended, is consistent with former 38 U.S.C. 3203(a)(1) and VAOPGCPREC 19–90, but § 3.501(i)(2)(ii) is not. Therefore, we propose not to include any equivalent to § 3.501(i)(2)(ii) in part 5.

The second sentence of § 3.551(f) uses the phrase, "exclusive of authorized absences in excess of 96 hours." The phrase is redundant of the reference to authorized absences in the first sentence of paragraph (f), so we propose not to include it in part 5.

Current § 3.551(f) also contains a reference to a 90-day period of hospitalization. However, paragraph (f) refers solely to calculating hospitalization periods under paragraph

(c), which only refers to 60-day periods. The "90-day" reference is another artifact of the 1979 amendments, discussed above, and is no longer necessary. Therefore, we propose not to include the reference in part 5.

Proposed § 5.726(b) would state the circumstances in which VA will not reduce Section 306 Pension while the veteran is receiving hospital, domiciliary, or nursing home care. The paragraph would incorporate current § 3.551(a) and add two other exceptions that are based on long-standing VA practice, that is, veterans receiving care in a State soldiers' home or in a State home. See the discussion earlier in this NPRM related to proposed § 5.722(b)(2) and (3) for more information concerning these exceptions to the general reduction rule.

Provisions regarding apportionment of Section 306 Pension benefits to the veteran's spouse are included in proposed § 5.726(c). We have included a cross reference to proposed § 5.772, which provides the specific rules relating to such apportionments.

Proposed § 5.726(d)(2) provides that if a veteran is readmitted 6 months or more after a period of hospital, domiciliary, or nursing home care, the readmission will be considered a new admission. This provision, based on a long-standing VA procedure, has been added to increase the clarity of the rule stated in current § 3.551.

Section 5.727 Reduction of Old-Law Pension While a Veteran Is Receiving Hospital, Domiciliary, or Nursing Home Care

Proposed § 5.727 addresses veterans receiving Old-Law Pension and the reduction of such benefits while the veteran is receiving hospital, domiciliary, or nursing home care.

Proposed § 5.727(a)(1) is based on current § 3.551(b)(1). Current § 3.551(b)(1) unnecessarily contains the term "dependent parent" as it refers to dependents of a veteran who is in receipt of Old-Law Pension. Prior to being amended in 1972, 38 CFR 3.551(b) applied to reductions of disability compensation and pension. Whereas a veteran receiving disability compensation may receive an additional allowance for dependent parents, payment of Old-Law Pension is neither adjusted nor otherwise affected because of a dependent parent. *See* 38 U.S.C. 503, 521, 522 (1958) (providing the statutory authority for Old-Law Pension, as in effect June 30, 1960, prior to amendment by Pub. L. 86–211). When § 3.551(b) was amended in 1972 to apply only to pension, the term was nevertheless retained. *See* 37 FR 19132, 19133 (Sept. 19, 1972). In addition to being unnecessary, the use of "dependent parent" in § 3.551(b) is potentially misleading because it implies that a veteran receiving Old-Law Pension could have a dependent parent. Therefore, in proposed § 5.727(a)(1), we are not including the term.

Proposed § 5.727(a)(2), regarding proof of dependents, is based on current § 3.551(g) as it applies to Old-Law Pension.

In proposed § 5.727(a)(4)(i), we clarify that VA excludes any month (other than the month of admission) that contains an authorized absence from its calculation of the effective date. This rule is not stated in current § 3.551(b)(1) but is based on current § 3.551(b)(3), which pertains to veterans who have been irregularly discharged and then readmitted prior to the effective date of the reduction. To the extent that this clarification is not explicit in part 3, including it in part 5 is favorable to veterans. To apply the rule excluding periods of authorized absence only when a veteran has been irregularly discharged would be unfair to veterans who have complied with their care.

Proposed § 5.727(a)(4)(ii) describes the effect of an irregular discharge that occurs prior to the initial reduction of Old-Law Pension. The first sentence is based on § 3.551(b)(3) and provides that the reduction is effective without regard to the irregular discharge if the readmission occurs before the general effective date. The second sentence of proposed § 5.727(a)(4)(ii) provides that if the veteran is readmitted after the first day of the seventh calendar month after the month of admission to hospital, domiciliary, or nursing home care, the readmission will be considered a new admission. Although this provision is not explicitly stated in part 3, it is based on current VA practice and is favorable to veterans.

Proposed § 5.727(b) would state the circumstances in which VA will not reduce Old-Law Pension while the veteran is receiving hospital, domiciliary, or nursing home care. The paragraph would include language from current § 3.551(a) and add two other exceptions based on long-standing VA practice. See the discussion above related to proposed § 5.722(b)(2) and (3) for more information concerning these exceptions to the general reduction rule.

Proposed § 5.727(c)(2)(i) is a new provision based on paragraph (a)(1) of 38 U.S.C. 3203 (the predecessor to current 38 U.S.C. 5503) as in effect on June 30, 1960, which provides that if a veteran is readmitted to VA hospitalization following an irregular discharge from a prior VA hospitalization during which Old-Law Pension was reduced, Old-Law Pension will be reduced effective from the date of readmission. *See* Public Law 85–857, 72 Stat. 1105, 1234 (1958). That paragraph, as it pertains to Old-Law Pension, was amended by section 3 of Public Law 89–362, 80 Stat. 30 (1966), to limit the rule to readmissions that are within 6 months of the date of irregular discharge or release from the prior hospitalization.

Section 5.728 Reduction of Old-Law Pension or Section 306 Pension Based on the Need for Regular Aid and Attendance While a Veteran Is Receiving Hospital, Domiciliary, or Nursing Home Care

Proposed § 5.728 would provide for reduction of Old-Law Pension or Section 306 Pension based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care. It is a plain language rewrite for clarity of the Old-Law Pension and Section 306 Pension provisions in current 38 CFR 3.501 and 3.552. VA intends no substantive change by this rewording.

As discussed above regarding § 5.724(b), the term "the pensionable disability" used in § 3.552(a)(2) refers to the disability for which the veteran is receiving regular aid and attendance under § 3.351(c)(1). There is no part 5 equivalent to § 3.351(c)(1) for either Old-Law Pension or Section 306 pension. Therefore, § 5.728(b)(1)(iii) would simply state the blindness criteria.

Current § 3.552(e) and (j) in part refer to a reduced rate of Section 306 Pension based on the need for regular aid and attendance that applies "if the veteran was age 78 or older on December 31, 1978." There are no beneficiaries who fit this category as they would be at least 109 years old. Accordingly, similar references do not need to be carried forward to part 5.

Section 5.729 Resumption of Section 306 Pension and Section 306 Pension Based on the Need for Regular Aid and Attendance After a Veteran Is on Temporary Absence From Hospital, Domiciliary, or Nursing Home Care or Is Discharged or Released From Such Care

We propose to separate the provisions of current 38 CFR 3.556 into two new sections, § 5.729 for Section 306 Pension and § 5.730 for Old-Law Pension. We intend no substantive changes as a result of the separation. This would provide readers with a clear and organized description of the rules governing the resumption of Section 306

Pension and Old-Law Pension after the monthly pension rates are reduced under § 5.726, "Reduction of Section 306 Pension while a veteran is receiving hospital, domiciliary, or nursing home care", or under § 5.727, "Reduction of Old-Law Pension while a veteran is receiving hospital, domiciliary, or nursing home care." The proposed regulations will also address the resumption of pension based on the need for regular aid and attendance under these two pension programs when the benefit is reduced under § 5.728, "Reduction of Old-Law Pension or Section 306 Pension based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care."

Proposed § 5.729 would restate the portions of current § 3.556 that pertain to the resumption of benefits under the Section 306 Pension program after a veteran is on temporary absence, or is discharged or released from hospital, domiciliary, or nursing home care.

In § 3.556(c) and (e), the phrase "subject to prior payments" refers to the prior payments made at the reduced rate. It is implicit that VA will not make duplicative payments for these amounts when it resumes payment of the unadjusted (full) rate. Stating in only some regulations that VA makes payments subject to prior payments could cause confusion about the absence of that language in other regulations. For example, current § 3.556(a) does not contain the phrase "subject to prior payments"; whereas § 3.556(c) does contain the phrase. In order to avoid such confusion, we have not used this phrase in § 5.729 or § 5.730.

Proposed § 5.729(d)(2) contains one difference from current § 3.556(e). It addresses the effective date of the discontinuance of an apportionment following a regular discharge or release from hospital care. The current rule provides a later effective date if an overpayment to the apportionee would result under the general effective date rule. As explained by VA's General Counsel in VAOPGCPREC 74–90, 55 FR 43253 (Oct. 26, 1990), such an alternative date is impermissible. We have explained this more fully below in the discussion of proposed § 5.783. Therefore, we have not included the alternative effective date rule in proposed § 5.729(d)(2).

Section 5.730 Resumption of Old-Law Pension and Old-Law Pension Based on the Need for Regular Aid and Attendance After a Veteran Is on Temporary Absence From Hospital, Domiciliary, or Nursing Home Care or Is Discharged or Released From Such Care

Proposed § 5.730 would restate the portions of current 38 CFR 3.556 that pertain to Old-Law Pension. It would address the resumption of benefits under the Old-Law Pension program after a veteran is discharged or released from hospital, domiciliary, or nursing home care.

Other Changes to Hospital Reduction Rules

Finally, we would omit current 38 CFR 3.558 from proposed part 5 because it implements 38 U.S.C. 5503(b) as in effect prior to its repeal on December 27, 2001. *See* Public Law 107–103, § 204(a)(1), 115 Stat. 976, 990 (2001) (repealing 38 U.S.C. 5503(b) and redesignating former subsection 5503(d) as 5503(b)). It required VA to withhold benefits from certain incompetent veterans and provided for resumption of payment of those benefits under prescribed circumstances. Because VA no longer withholds benefits from incompetent veterans, current § 3.558 cannot apply to a claim to which part 5 would apply.

For consistency throughout part 5, we would not use the phrase "involving aid and attendance". We would use the phrase "based on the need for * * * aid and attendance", which is more accurate. For the same reason, part 5 would use the phrase "regular aid and attendance" rather than "aid and attendance".

Subpart M: Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries

Determining Eligibility for Apportionments

We propose to repeat the provisions of VA's current apportionment regulations (38 CFR 3.450–3.461) in part 5 with minimal changes because VA is currently reviewing its apportionment program to determine if the program can be improved. We expect that §§ 3.450–3.461 will be amended following that review. VA will then include these new rules in part 5.

Section 5.770 Apportionment Claims

Proposed § 5.770 is based on current 38 CFR 3.450. Paragraph (a)(2) of § 3.450 refers to apportioning the "compensation * * * payable to the surviving spouse". Paragraph (d) of § 3.450 states, "Any amounts payable for children under §§ 3.459, 3.460 and 3.461 will be equally divided among the children." The reference to "compensation" in § 3.450(a)(2) and the reference to § 3.459 in § 3.450(d) both pertain to the apportionment of death compensation. We propose not to refer to compensation payable to a surviving spouse in § 5.770. We also propose not to include an equivalent to current § 3.459 or any reference thereto. There are less than 300 beneficiaries currently receiving death compensation. Except for one small group of beneficiaries, death compensation is payable only if the veteran died prior to January 1, 1957. VA has not received a claim for death compensation in more than 10 years, and we do not expect to receive any claims for apportionment of death compensation. Dependency and indemnity compensation (DIC) is a much greater benefit than death compensation. VA automatically awards DIC rather than death compensation pending confirmation of the DIC election. *See* 38 CFR 3.702, "Dependency and indemnity compensation". Because of the small number of beneficiaries of death compensation and the unlikelihood of a claim for apportionment of such benefits, the provisions concerning death compensation do not need to be carried forward to part 5.

We propose not to include paragraph (f) of current § 3.450, which states, "Prior to release of any amounts[,] the relationship of the claimant and the dependency of a parent will be fully developed, and the necessary evidence secured." In every apportionment claim, VA must verify the relationships of all claimants and fully develop the claim for relevant evidence. Other proposed part 5 VA regulations would state how VA determines dependency (for example, RIN 2900–AL94, "Dependents and Survivors", 71 FR 55052, Sept. 20, 2006); therefore, there is no need to propose an equivalent to § 3.450(f).

We propose not to include paragraph (g) of current § 3.450, a cross reference to § 3.460, "Death pension", because it does not aid the reader's understanding of the apportionment process and is therefore unnecessary.

Section 5.771 Special Apportionments

Proposed § 5.771 restates current 38 CFR 3.451 and reorganizes the content for clarity. In particular, in § 5.771(a), we have clarified that the section applies without regard to any other apportionment provision not merely without regard to those apportionment provisions where hardship is shown. We have also clarified that § 5.774(b)

and (c), the part 5 equivalents to § 3.458(b) and (c), are exceptions to that rule. However, we have not limited the exception to only paragraphs (b) and (c) of § 5.774. We also included § 5.774(f), which is based on current §§ 3.458(f), 3.901(c), and 3.902(c). The statutory authority for apportionment based on hardship is 38 U.S.C. 5307 which provides, generally, that the specified benefits "may" be apportioned as prescribed by the Secretary. The permissive language of the apportionment statute indicates that Congress intended VA to have significant discretion to determine when an apportionment will be made. However, in exercising that discretionary authority, VA may not violate other statutes. The prohibitions on apportionment in § 5.774(f) are mandated by other statutes. *See* 38 U.S.C. 6103, 6104, and 6105.

Further, the phrase in § 3.451, "may be specially apportioned between the veteran and his or her dependents or the surviving spouse and children", would have a second "between", to read, "* * * between the veteran and his or her dependents or between the surviving spouse and a child". The parallel structure clarifies that there are two sets of apportionment options.

Additionally, proposed § 5.771(b)(2) refers to the "net worth, income, and expenses" of the primary beneficiary and the apportionment claimants instead of referring to "other resources and income" as stated in § 3.451. This change reflects VA's long-standing practice and helps VA accurately determine the extent of any hardship.

Section 5.772 Veteran's Benefits Apportionable

Proposed § 5.772 is based primarily on current 38 CFR 3.452. In proposed § 5.772(a), we added the condition that "the veteran is not reasonably discharging his or her responsibility for the spouse's or child's support," to be consistent with similar language in proposed § 5.770(a)(1)(ii).

Proposed § 5.772(c), is based on current § 3.454 as well as § 3.452(c). Current § 3.454 is essentially redundant of § 3.452(c). Although current § 3.454(a) specifies that if an incompetent veteran is receiving care in a government institution and is entitled to pension VA will pay $25 per month as an institutional award and pay the balance of the pension to the veteran's spouse or child or, if the veteran has no spouse or child but has a dependent parent, apportion pension to the dependent parent as a special apportionment. We have not included this specific information in § 5.772(c) because it is obsolete. To the extent that § 3.454(a) provides that an institutional award is limited to $25, it conflicts with 38 CFR 13.61, which does not limit the amount of such payments. (Section 13.61 is discussed further below in conjunction with proposed § 5.792.) To the extent that it provides that the balance of pension will be apportioned to a veteran's spouse or child, it conflicts with proposed § 5.792(d), which is based on current § 3.852(c) and is discussed further below, which provides that the amount of the apportionment will be determined based on hardship. Because the amount of the institutional award is not fixed by regulation, VA determines the amount of the apportionment on a case-by-case basis. Finally, VA does not apportion a veteran's pension to a dependent parent. A parent may not be a dependent for disability pension. Whereas a veteran receiving disability compensation may receive an additional allowance for dependent parents, Congress authorizes an increased maximum annual pension rate only for a spouse or child, not for a dependent parent. *See* 38 U.S.C. 1542.

We would also not include § 3.454(b)(2). To the extent that § 3.454(b)(2) is based on a reduction under current § 3.551(d) (reducing Improved Pension for veterans receiving care before February 1, 1990) it is unnecessary, as explained above with regard to proposed § 5.722. To the extent that § 3.454(b)(2) is purportedly based on a reduction under § 3.551(e), it is obsolete. VA no longer reduces Improved Pension to $60 under current § 3.551(e). The $60 was increased to $90, effective February 1, 1990, by Public Law 101–237, section 111, 103 Stat. 2062, 2064–65 (1989).

Section 5.773 Veterans Disability Compensation

Proposed § 5.773 is based on current 38 CFR 3.453, which states, "Rates of apportionment of disability compensation, service pension or retirement pay will be determined under § 3.451." "Service pension" is another term for Spanish-American War pension. We propose to not include this benefit in § 5.773 because there are only about 200 surviving beneficiaries receiving such pension and they are survivors of deceased veterans. It is very unlikely that VA will receive an apportionment claim from a dependent of one of these beneficiaries. "Retirement pay" refers to emergency officers' retirement pay. There are no longer any veterans receiving this benefit. Therefore, we also propose not to include this benefit in § 5.773.

Section 5.774 Benefits Not Apportionable

Proposed § 5.774 is based on current 38 CFR 3.458. It would restate § 3.458, using plainer language and reorganized for clarity.

Paragraph (c) of § 3.458 states that VA will not apportion benefits "[f]or purported or legal spouse of the veteran if it has been determined that he or she has lived with another person and held herself or himself out openly to the public to be the spouse of such other person, except * * *" Under the apportionment statute 38 USC 5307 VA may not apportion benefits to a "purported" spouse, so the distinction between "purported" spouse and "legal" spouse is unnecessary. We therefore propose not to include such language in paragraph (c) of § 5.774.

Paragraph (d) of § 3.458 states that a veteran's benefits may not be apportioned "[w]here the child of the disabled person has been legally adopted by another person, except the additional compensation payable for the child." The exception in § 3.458(d) is limited to disability compensation and does not mention the additional dependency and indemnity compensation payable to a surviving spouse for the child. However, current § 3.58 states, "A child of a veteran adopted out of the family of the veteran either prior or subsequent to the veteran's death is nevertheless a *child* within the meaning of that term as defined by § 3.57 and is eligible for benefits payable under all laws administered by the Department of Veterans Affairs." Consistent with § 3.58, we propose to include "the additional dependency and indemnity compensation payable to a surviving spouse for the child" in the exception in § 5.774(d), which is otherwise derived from current § 3.458(d).

In proposed § 5.774(e)(2), we have included the relevant effective date provision based on current § 3.503(a)(2).

In proposed § 5.774(f), we have included a cross reference to the provisions on forfeiture for fraud (§ 5.676), treasonable acts (§ 5.677), and subversive activity (§ 5.678), which were published as proposed on May 31, 2006. *See* 71 FR 31056, 31064–66. Those proposed regulations contain the complete rules on forfeiture and apportionments when benefits have been forfeited. In proposed § 5.774(f)(1) we have combined the provisions contained in current §§ 3.458(f)(1), 3.901, and 3.902. Current § 3.458(f)(1) prohibits an apportionment for forfeitures declared before September 2, 1959, if a veteran's dependent "is

determined by [VA] to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies." Current §§ 3.901 (forfeiture for fraud) and § 3.902 (forfeiture for treason), both permit apportionments to a beneficiary's dependents under certain circumstances if the forfeiture was declared prior to September 2, 1959, but prohibit an apportionment to any dependent who participated in the acts causing the forfeiture. Accordingly, proposed § 5.774(f)(1) states that benefits will not be apportioned to any beneficiary's dependent who is determined by VA to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies or who participated in the acts that caused forfeiture for fraud or treasonable acts.

Section 5.780 Eligibility for Apportionment of Pension

Proposed § 5.780 is based on current 38 CFR 3.460, regarding death pension. Proposed § 5.780 states that apportionment of Improved Death Pension will be based on proposed § 5.771, "Special apportionments." Because this same rule applies to disability pension, we propose to include it here. Part 3 does not contain a specific regulation to this effect for disability pension; however, the hardship standard in current § 3.451, "Special apportionments", applies "[w]ithout regard to any other provision regarding apportionment". To be consistent with § 5.770(a)(1)(ii), we included the condition that "the veteran is not reasonably discharging his or her responsibility for the spouse's or child's support".

Proposed § 5.780 would not include the second sentence of the introductory paragraph of current § 3.460. Although not apparent from the current regulation, this provision only applies to surviving spouses of Spanish-American War veterans. *See* 38 U.S.C. 1536(a) (stating that surviving spouses of Spanish-American War veterans will receive $75 instead of $70 if married to the veteran during the period of war). As discussed above regarding proposed § 5.773, we are not specifically including Spanish-American War pension in part 5. If an apportionment claim were to arise, we would adjudicate it under proposed § 5.771, "Special apportionments". We think that it is reasonable and appropriate that an apportionment claimant should be required to demonstrate hardship in order to receive an apportionment of nonservice-connected death pension.

Proposed § 5.780 would also not include the provisions in current § 3.460(a) regarding apportionment of death pension benefits payable to dependents of the Civil and Indian wars. There are only two individuals receiving VA death pension based on Civil War service and no individuals receiving benefits based on Indian Wars service. Because it is very unlikely that VA will receive an apportionment claim from one of these beneficiary's dependents, we propose not to include those provisions of current § 3.460(a). If an apportionment claim were to arise, we would adjudicate it under proposed § 5.771, "Special apportionments".

Section 5.781 Eligibility for Apportionment of a Surviving Spouse's Dependency and Indemnity Compensation

Proposed § 5.781 is based on current 38 CFR 3.461. We propose not to include the last sentence of current § 3.461(b)(1) in proposed § 5.781. This sentence limits apportionments such that "the surviving spouse's share will not be reduced to an amount less than 50 percent of that to which the surviving spouse would otherwise be entitled." This sentence is obsolete and was added in 1940 when the death compensation program did not allow for additional benefits for each child. There are now situations in which it would be fair and appropriate for VA to apportion more than 50 percent of a surviving spouse's dependency and indemnity compensation (DIC) award. For example, if there were five minor children, the additional benefit payable for the children (from December 1, 2008 through November 30, 2009) would be $1,430 ($286 multiplied by 5). If an apportionment of $286 were awarded to each child, the total amount apportioned ($1,430) would be more than 50 percent of the surviving spouse's award of $2,584 (basic surviving spouse rate of $1,154 plus the $1,430 for the children). Therefore, we propose not to include the 50-percent limitation in proposed § 5.781.

We propose not to include § 3.461(b)(2) in proposed § 5.781. Paragraph (b)(2) of § 3.461 provides that, "The additional amount of aid and attendance, where applicable, will be added to the surviving spouse's share and not otherwise included in the computation." This provision is obsolete. In the DIC program, the dependents' allowances for children under age 18 are the same whether or not the surviving spouse is entitled to additional special monthly DIC for regular aid and attendance.

We also propose not to include current § 3.461(b)(3) in proposed § 5.781. Under that current rule, if a surviving spouse has elected to receive DIC instead of death compensation, the child's share of an apportionment will be either the rate prescribed by the Under Secretary for Benefits or the share that would have been payable as death compensation, but not more than the total DIC amount. There is no longer any circumstance in which the child's death compensation apportionment could be greater than the total DIC amount. The DIC rate, in all cases, will be greater than the death compensation rate. Therefore, the language is obsolete.

Section 5.782 Effective Date of Apportionment Grant or Increase

Proposed § 5.782 is based on current 38 CFR 3.400(e) and 3.665(f). Proposed paragraph (a) states the general rule that the effective date of an apportionment or an increased apportionment is the first day of the month after the month in which VA receives an apportionment claim or a claim for an increased apportionment. The first two exceptions to the general rule are based on the introduction of current § 3.400(e) stating, "On original claims, in accordance with the facts found." Proposed § 5.782(b)(1) provides the effective date of an apportionment award where a primary beneficiary has a claim for VA benefits pending on the date that VA receives an apportionment claim. Proposed § 5.782(b)(2) provides the effective date where an apportionment claim is received within one year of the award of benefits to the primary beneficiary and the dependant has not yet been established on the primary beneficiary's award. The effective date of the apportionment will be the same as the effective date of the primary beneficiary's award, if the apportionment claimant is otherwise shown to be entitled to an apportionment from that date.

Section 5.783 Effective Date of Apportionment Reduction or Discontinuance

Proposed § 5.783 is based on current 38 CFR 3.500(d), (g), and (n). Proposed § 5.783(a), based on current § 3.500(d)(1), provides the general effective date rule for discontinuance or reduction of an apportionment. As explained by VA's General Counsel in VAOPGCPREC 74–90, 55 FR 43253 (Oct. 26, 1990), current § 3.500(d)(1) means that VA should discontinue an apportionment effective the first day of the month following the date that the reason for the apportionment no longer exists. We propose not to include an

equivalent of § 3.500(d)(2) in proposed § 5.783. The rule from paragraph § 3.500(d)(2) has been described by the General Counsel, in VAOPGCPREC 74–90, as "constitutionally faulty" because it provides a later effective date if an overpayment would result by applying the general rule. As explained by the General Counsel, delaying the effective date for the administrative convenience of avoiding an overpayment deprives a veteran of VA benefits that Congress intended the veteran to have and causes such a veteran to receive a lesser amount of VA benefits than a veteran to whom the general rule could apply. With the exception eliminated, the remaining rule is the same as the general rule and unnecessary as a separate provision.

Paragraph (b) of proposed § 5.783 provides the most common exceptions to the general rule stated in proposed paragraph (a). Proposed paragraph (b)(3) explicitly states the principle, implied by VA's current apportionment regulations, that when the primary benefit is discontinued, the apportionment is discontinued effective the same day. Proposed paragraph (b)(4) informs the reader that when a primary beneficiary is released from incarceration, the effective date of discontinuance of the apportionment will be set in accordance with § 5.815 or § 5.816.

Section 5.784 Special Rules for Apportioned Benefits on Death of Beneficiary or Apportionee

Proposed § 5.784 is based on current 38 CFR 3.1000(b). In a prior proposed part 5 rulemaking—the portion concerning accrued benefits—we proposed § 5.563, "Special rules when a beneficiary dies while receiving apportioned benefits", as the part 5 equivalent to current § 3.1000(b). That section was published as proposed on October 1, 2004. *See* 69 FR 59072, 59088. Because the rule relates more to apportionments than to accrued benefits, we would place this rule with the other apportionment rules instead of where it was previously proposed. Further, we have clarified how the payment of benefits in these circumstances relates to the payment of accrued benefits.

Proposed § 5.784(a) is based on § 3.1000(b)(2). We have clarified that the apportionment should be paid to the apportionee and should not be treated as accrued benefits that were due to the deceased beneficiary. Further, we have included death benefits in § 5.784(a) even though § 3.1000(b)(2) applies only to apportionments of a veteran's benefits. In practice, VA applies the rule expressed in § 3.1000(b)(2) to death benefits as well.

Proposed § 5.784(b)(1) is based on current § 3.1000(b)(1), which provides that when a person receiving an apportioned share of a veteran's benefits dies, all or any part of an unpaid apportionment is payable to the veteran or to the veteran's surviving dependents. The current rule essentially repeats the broad authority given to VA under 38 U.S.C. 5121(a)(1); however, it does not specify how VA makes determinations concerning payment to survivors. Proposed § 5.784(b)(1), following long-standing VA practice, provides for payment of the unpaid apportionment to the veteran, if the veteran survives, or to the surviving dependents of a deceased veteran. We propose to use the same order of priority specified in 38 U.S.C. 5121(a)(2), which is applicable to accrued benefits due to the veteran to determine which dependents of a deceased veteran are entitled to these funds. This is accomplished through a cross reference to proposed § 5.551(b)(1), "Persons entitled to accrued benefits." Section 5.551 was published as proposed on October 1, 2004. *See* 69 FR 59072, 59085–86. If there are no eligible claimants who are dependents, then under 38 U.S.C. 5121(a)(5), VA may pay the unpaid apportionment to reimburse the person who bore the expense of the deceased person's last sickness or burial.

Proposed § 5.784(b)(2) is based on current § 3.1000(b)(3), which provides that when a child receiving an apportionment of a surviving spouse's death benefits dies, then the unpaid apportionment is payable only as reimbursement to the person who bore the expense of the deceased child's last sickness or burial. Current § 3.1000(b)(3) appears to conflict with current § 3.1000(a)(3), which provides that when a child beneficiary dies, then accrued benefits are payable to the surviving children of the veteran. Current § 3.1000(b)(3) is based on an outdated interpretation of the predecessor to 38 U.S.C. 5121(a). Prior to the establishment of the dependency and indemnity compensation (DIC) and Improved Pension programs, VA benefits were payable directly to a child only if there were no surviving spouse. Prior to the existence of those programs, the correct interpretation of the accrued benefits statute was that if there were a surviving spouse and the child apportionee died, the only provision of the statute that could apply was that portion providing for payment as reimbursement of expenses of the last sickness or burial. *See* Administrator's Decision, Veterans Administration, No. 666 (Sept. 22, 1945). However, under the current VA benefits system, a surviving child may directly receive Improved Death Pension benefits and, if 18 years of age or older, DIC benefits. Therefore, it is illogical to continue to interpret 38 U.S.C. 5121(a)(4)—which provides for payment to the surviving children—as not applying merely because there is a current surviving spouse. Accordingly, in § 5.784(b)(2), we propose that upon the death of a child receiving an apportionment of a surviving spouse's death benefits, the apportionment is first payable as accrued benefits to the veteran's surviving child. If there is no surviving child claimant, only then are benefits payable to reimburse the person who bore the expense of the last sickness or burial of the apportionee.

Incompetency and Payments to Fiduciaries and Minors

We propose to repeat the provisions of VA's current fiduciary regulations (38 CFR 3.353, 3.355, and 3.850 through 3.857) in part 5 with minimal changes. We are doing this because VA is currently rewriting its fiduciary regulations (RIN 2900–AM90, "Fiduciary Activities") to conform to the Veterans Benefits Improvement Act of 2004, Public Law 108–454, which increased protections for VA beneficiaries. *See* 118 Stat. 3612. Upon the completion of that rulemaking, we will incorporate the revised part 3 fiduciary regulations into part 5.

Section 5.790 Determinations of Incompetency and Competency

Proposed § 5.790 is based on current §§ 3.353 and 3.400(x) and (y). Proposed § 5.790(c) is based on current 38 CFR 3.353(c) which begins, "Unless the medical evidence is clear, convincing and leaves no doubt as to the person's incompetency, the [agency of original jurisdiction] will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities." The phrase "clear, convincing and leaves no doubt" is inconsistent with traditional legal evidentiary standards. Traditionally, "clear and convincing" is a distinct standard. "Leaves no doubt", however, suggests a significantly higher standard. Further, if compared to the standard for conviction in a criminal case ("beyond a reasonable doubt"), "leaves no doubt" could be considered an even higher standard that is inconsistent with other areas of the law. Therefore, we are removing the term "leaves no doubt" and instead simply specifying a "clear

and convincing" standard. "Clear and convincing" is a high evidentiary standard that will permit VA to make a determination of incompetency without requesting an essentially unnecessary medical opinion. Further, the standard is sufficiently high to prevent unwarranted determinations of incompetency. *See Thomas* v. *Nicholson,* 423 F.3d 1279, 1283 (Fed. Cir. 2005) ("The 'clear and convincing' standard is 'reserved to protect particularly important interests in a limited number of civil cases' where there is a clear liberty interest at stake, such as commitment for mental illness, deportation, or denaturalization.") (citations omitted).

Proposed paragraph (f) is the part 5 counterpart to current § 3.400(x) and (y).

In proposed § 5.790, we have updated references in current § 3.353—to §§ 3.102, 3.103, and 3.327(a)—to refer instead to their respective proposed part 5 counterparts—§§ 5.3(b)(2), 5.83, and 5.102. Proposed § 5.3(b)(2) was published on March 31, 2006. *See* 71 FR 16464, 16475. Proposed §§ 5.83 and 5.102 were published on May 10, 2005. *See* 70 FR 24680, 24687–88, 24689–90.

Section 5.791 General Fiduciary Payments

Proposed § 5.791 is based on current § 3.850. In proposed § 5.791(a), to be consistent with the statutory authority of 38 U.S.C. 5502(a)(1), we clarify that the phrase "regardless of any legal disability" applies only to any legal disability on the part of the beneficiary. Also, in order to ensure that readers are aware of fiduciary-related regulations located elsewhere in title 38, we have added a cross reference to part 13 at the end of § 5.791(a).

Proposed § 5.791(c) and (d) are based on current § 3.850(b) and (d) respectively. The part 3 rules are identical in substance to provisions in §§ 13.63 and 13.62 of part 13. In part 5, we propose to use the same language used in the part 13 regulations and provide cross references thereto in order to eliminate confusion about whether the slightly different phrasing between the part 3 regulations and the part 13 regulations is intended to convey a different meaning. Although the regulations are redundant, it is useful to VA personnel to have the same rules located in distinct parts of the CFR. VA's adjudication personnel typically refer to part 3, whereas VA's fiduciary personnel typically refer to part 13.

Proposed paragraph (e) of § 5.791 is the part 5 counterpart to current §§ 3.400(n) and 3.500(m).

Section 5.792 Institutional Awards

Proposed § 5.792(a) is based on current § 3.852(a), pertaining to payments to the chief officer of a facility housing an incompetent veteran. However, we propose to track language from 38 CFR 13.61 instead of tracking the current part 3 language. Under current § 3.852, institutional awards may be made only when no fiduciary has been appointed, when payments to an unsatisfactory fiduciary have been discontinued, or when a fiduciary is not furnishing funds required for the veteran's comforts and desires. These conditions reflect limitations on VA's statutory authority to appoint fiduciaries that existed prior to 1974. In 1974, Public Law 93–295 liberalized the provisions for payments to and appointment of fiduciaries. *See* Public Law 93–295, section 301, 88 Stat. 180, 183–84. Under § 13.61, an institutional award may be made if it would adequately provide for the veteran's needs and eliminate the need for appointment of another fiduciary. Because VA's authority to make an institutional awards is no longer limited to the circumstances provided in § 3.852(a), we propose that § 5.792(a) should reflect VA's current practice as stated in § 13.61.

Current § 3.852(b) likewise no longer reflects current VA practice. Accordingly, in proposed § 5.792(b), which is based upon § 3.852(b), we have stated the current practice. Current § 3.852(b) contains obsolete monthly limits on amounts payable to chief officers of VA or non-VA institutions that house incompetent veterans. Those limits conflict with 38 CFR 13.61, which states that "all or part" of an institutionalized veteran's award may be paid to the chief officer if certain conditions are met. Under § 13.61, the amount of an institutional award is based on a determination by the Veterans Service Center Manager regarding the amount necessary to provide for the veteran's needs. We believe that is the appropriate standard for institutional awards, and we therefore would not repeat the monetary limits in § 3.852(b). Rather, in proposed § 5.792(b)(1), we refer to § 13.61.

Proposed § 5.792(b)(2) is based on the first sentence of § 3.852(d). We have included the rule as part of paragraph (b) of § 5.792 because, like the rest of § 5.792(b), it pertains to non-VA institutional awards.

In proposed § 5.792(b)(3), which is based upon § 3.852(b)(1), we would clarify that the paragraph applies to non-VA institutional awards to reflect current VA practice.

We propose not to include equivalents to § 3.852(b)(2) and (3) in part 5 because those provisions are obsolete. They state procedures necessary because of limits on the amount of institutional awards that, as discussed above, are obsolete. The procedures described in § 3.852(b)(2) and (3) are likewise obsolete.

We propose to include the second sentence of current § 3.852(d) as § 5.792(c) with only minor changes for readability.

Proposed § 5.792(d) is based on current § 3.852(c), which states, "Where there arises a situation as enumerated in paragraph (a)(1) of this section, apportionment to dependents will be under § 3.451." Dependents may apply for an apportionment of any institutionalized incompetent veteran's benefits and are not limited to the circumstances in § 3.852(a)(1). We therefore propose to state in § 5.792(d), "An institutionalized incompetent veteran's benefits may be apportioned to his or her dependents under § 5.771, Special apportionments."

Proposed paragraphs (e) and (f) are the part 5 counterparts to current §§ 3.401(d) and 3.501(j) respectively. We note that proposed § 5.792(e) provides the effective-date rule for payments to the chief officer of both VA and non-VA institutions and uses the phrasing of § 3.401(d)(2). In current, § 3.401, paragraph (d)(1) provides the effective-date rule for non-VA institutions, and paragraph (d)(2) provides the effective-date rule for VA institutions. Although paragraphs (d)(1) and (d)(2) are phrased differently, the rule provided in both is the same. Proposed § 5.792(e) follows the phrasing of § 3.401(d)(2) because that paragraph is clearer than § 3.401(d)(1).

Since the sections on incompetency and payments to fiduciaries and minors were written in 38 CFR parts 3 and 13, VA has established Pension Management Centers to process pension claims. The Pension Management Center Manager has the same authority as a Veterans Service Center Manager regarding these matters. We therefore propose to add "Pension Management Center Manager" to "Veterans Service Center Manager" in the following paragraphs: §§ 5.790(b)(2) and (b)(3), 5.791(a)(2)–(4), 5.792(a), and 5.794(a)(2) and (a)(3).

Section 5.793 Limitation on Payments for a Child

Proposed § 5.793 is based on current § 3.854. The second sentence of proposed § 5.793(a), stating that VA will retroactively pay the child any benefits that were not paid for a period before

the child attained the age of majority, is based on current § 3.403(a)(2).

Section 5.794 Beneficiary Rated or Reported Incompetent

Proposed § 5.794 is based on current § 3.855, "Beneficiary rated or reported incompetent."

Section 5.795 Change of Name of Fiduciary

Proposed § 5.795 is a plain language restatement of current § 3.856, with changes to make the regulation gender-neutral.

We propose not to include paragraph (l) of current § 3.500 in part 5. This paragraph indicates that VA would suspend a payment because of a fiduciary's name change and provides the effective date therefore. This provision is obsolete. It refers to § 3.856. When VA amended § 3.856 to remove the rule about suspending benefits, VA failed to amend § 3.500(l) accordingly. *See* VA Compensation and Pension Transmittal Sheet 203 (May 29, 1959).

Section 5.796 Child's Benefits to a Fiduciary of an Incompetent Surviving Spouse

Proposed § 5.796 is a plain language restatement of current § 3.857.

Section 5.797 Testamentary Capacity for VA Insurance Purposes

Proposed § 5.797 is a plain language rewrite of current § 3.355, which involves the testamentary capacity of an insured to execute designations or changes of beneficiary or designations or changes of option. We also made the regulation gender-neutral.

Current § 3.355(c) begins, "Lack of testamentary capacity should not be confused with insanity or mental incompetence. An insane person might have a lucid interval during which he would possess testamentary capacity. On the other hand, a sane person might suffer a temporary mental aberration during which he would not possess testamentary capacity." We propose to omit this guidance about the relationship between testamentary capacity and insanity or mental incompetence. Elsewhere in proposed part 5, we have substantially revised the definition of insanity from the current definition in § 3.354. *See* 71 FR 16464, 16468–69 (Mar. 31, 2006) (discussing the proposed definition of "insanity" in § 5.1); *see also* 69 FR 4820, 4830 (Jan. 30, 2004) (discussing use of "lack of mental capacity to contract" versus use of "insane" in proposed § 5.38). The guidance in § 3.355(c) is not essential to understanding and applying the general rule that there is a rebuttable presumption that every insured person possesses testamentary capacity when performing a testamentary act. Given the proposed revisions to the definition of insanity, we have not included this additional guidance in proposed § 5.797(c). We believe that retaining the guidance from § 3.355(c) would only confuse readers about how to apply the general rule. At the end of proposed § 5.797(c), we have added a cross reference to the benefit-of-the-doubt rule in § 5.3(b)(2), which was published as proposed on March 31, 2006. *See* 71 FR at 16475. We believe that the cross reference will aid readers in understanding the last sentence of § 5.797(c), which states, "[R]easonable doubt should be resolved in favor of testamentary capacity."

Section 5.798 Payment of Disability Compensation Previously Not Paid Because an Incompetent Veteran's Estate Exceeded $25,000

Proposed § 5.798 is based on current § 3.853(c). Under § 3.853, VA discontinued disability compensation to an incompetent veteran who had no dependents and had an estate that exceeded $25,000. There are no part 5 equivalents to § 3.853(a) and (b). Paragraph (a) of § 3.853 limits the discontinuance of disability compensation to the period from November 1, 1990, through September 30, 1992. Part 5, as proposed, will not apply to the payment of benefits for that period. (Accordingly, we also propose not to include § 3.501(n), which provides the effective date for a discontinuance under § 3.856(a) in part 5.) Paragraph (b) of § 3.853 pertains to the resumption of benefits prior to October 1, 1992, and is likewise unnecessary. However, the first sentence of paragraph (c) of § 3.853 provides that disability compensation that has been withheld under § 3.853 must be paid to the veteran in a lump-sum if the veteran is subsequently rated competent for a continuous period of more than 90 days. It is possible that a veteran whose disability compensation was discontinued under § 3.853(a) and has not yet been paid under § 3.853(c) will regain competency for more than 90 days. Therefore, proposed § 5.798 provides for the lump-sum payment of that withheld disability compensation under such circumstances. We propose not to include the second sentence of § 3.853(c), which states, "However, a lump-sum payment shall not be made to or on behalf of a veteran who, within such 90-day period, dies or is again rated incompetent." This sentence is unnecessary because, any veteran "who, within such 90-day period, dies or is again rated incompetent" could not possibly satisfy the requirements of the first sentence of paragraph (c).

Payments to Incarcerated Beneficiaries

The next seven regulations in this NPRM include general provisions relating to payments to incarcerated beneficiaries. Throughout these seven regulations, we propose to use the term "incarcerated" rather than "imprisoned". Although the relevant pension statute uses the term "imprisoned" (*see* 38 U.S.C. 1505) and the relevant compensation statute uses the term "incarcerated" (38 U.S.C. 5313), we have determined that the terms are synonymous. We propose to use "incarceration" because we believe it is the term more commonly used by the public.

Section 5.810 Incarcerated Beneficiaries—General Provisions and Definitions

Proposed § 5.810(a) defines terms for the purposes of the rules regarding incarcerated beneficiaries. Proposed paragraph (a)(1) defines the term "incarceration". The first sentence of proposed § 5.810(a)(1) provides that confinement in a privately owned and privately managed penal institution pursuant to a contract with a Federal, State, or local unit of government will be considered to be "incarceration." This clarification has become necessary because Federal, State, and local governments have become increasingly reliant on private contractors to provide prison services. In August 2006, VA's General Counsel held that incarceration in a private facility under a contract with a State is incarceration in a "State penal institution". VAOPGCPREC 5–2006, 72 FR 5801 (Feb. 7, 2007). Subsequently, the authorizing statutes, 38 U.S.C. 1505 and 5313, were amended from "Federal, State, or local penal institution" to "Federal, State, local, or other penal institution." *See* Public Law 109–461, section 1002, 120 Stat. 3403, 3464–65 (Dec. 22, 2006).

The next sentence of proposed § 5.810(a)(1) describes types of internment not considered to be "incarceration" and is derived from current § 3.665(b). The current regulation defines the term "release from incarceration" and includes a list of programs within this definition. The list includes participation in a work release or halfway house program, parole, and completion of sentence. By defining participation in work release and similar programs as "release from incarceration", the current rule implicitly excludes those programs from the definition of incarceration. Proposed

§ 5.810(a)(1) explicitly states that work release, parole, and residence in a halfway house are not included in the definition of incarceration. Proposed § 5.810(a)(1) includes residential re-entry centers. "Residential re-entry center" is a term now used by the Federal Bureau of Prisons as an alternative to the traditional term, "halfway house". *See* Federal Bureau of Prisons, Community Corrections, *http://www.bop.gov/locations/cc/index.jsp.*

The proposed rule also lists two forms of confinement that VA's General Counsel has determined are not "incarceration". First, we adopt the rationale set out in VAOPGCPREC 59–91, 56 FR 50149, 50151 (Oct. 3, 1991), holding that participating in a community control program is not incarceration. Second, the proposed rule codifies the holding of VA's General Counsel that a veteran is not subject to reduction of compensation and pension benefits under 38 U.S.C. 1505 and 5313 while the veteran is incarcerated in a foreign prison. VAOPGCPREC 10–2001, 66 FR 33309, 33313 (June 21, 2001). Although that General Counsel opinion only addressed veterans, its rationale would apply likewise to all beneficiaries whose benefits are subject to reduction or discontinuance because of incarceration. This is so because 38 U.S.C. 1505 and 5313 apply to any VA beneficiary who is incarcerated, not only to veterans.

Proposed paragraph (a)(2) defines the term "felony" and is derived from the definition contained in current § 3.665(b). Although the definitions of "incarceration" and "felony" are derived from current § 3.665, which pertains only to disability compensation, the proposed definitions would apply to pension, and dependency and indemnity compensation (DIC), as well as disability compensation. Current § 3.666, as it pertains to incarcerated beneficiaries and pension benefits, does not define "felony" or "incarceration". The definitions in current § 3.665 are generic, however, and in the interest of consistency and uniformity, we propose to apply them to compensation and to pension cases.

Proposed § 5.810(b) explains how to categorize foreign offenses and states that a felony includes an offense that is prosecuted by a foreign country if the offense is equivalent to a felony under the laws of the United States. Likewise, a misdemeanor includes an offense that is prosecuted by a foreign country if the offense is equivalent to a misdemeanor under the laws of the United States. This proposed paragraph is new and reflects an additional conclusion of VA's General Counsel in VAOGCPREC 10–2001 (discussed above regarding incarceration in a foreign prison). The General Counsel concluded that if a veteran is transferred to a Federal, State, or local penal institution in the United States to serve the remainder of a sentence for a foreign conviction of an offense that is equivalent to a felony (or a misdemeanor under 38 U.S.C. 1505) under the laws of the United States, then the veteran is thereafter subject to reduction of pension and compensation benefits under 38 U.S.C. 1505 and 5313. As explained above regarding incarceration in a foreign prison, although the opinion only addressed veterans, the rationale of the opinion would apply to all beneficiaries whose benefits are subject to reduction or discontinuance because of incarceration.

Proposed § 5.810(c) states that VA begins counting the 60-day period of incarceration that must precede a reduction under §§ 5.811 through 5.813 on the day after the beneficiary is convicted of a felony (or of a misdemeanor for pension). This explains that time served prior to conviction will not be considered as part of the 60-day period. In addition, paragraph (c) would state that VA begins counting the 60-day period even if the beneficiary is not sentenced on the same day that he or she is convicted, if the beneficiary is incarcerated as of that date, and that a new 60-day period begins on the first full day of reincarceration after a conditional release. This accords with 38 U.S.C. 1505 and 5313, which are concerned with the time spent imprisoned for a felony, or for a misdemeanor in pension cases, and not with the amount of time that the beneficiary is sentenced to serve. It also accords with VAOPGCPREC 3–2005, 72 FR 5801, 5802 (Feb. 7, 2007), and current VA policy.

Proposed § 5.810(d) is a new paragraph that explicitly states the requirement that claimants or beneficiaries inform VA if they are incarcerated. We think that this is logical, fair, and consistent with other current provisions that require claimants or beneficiaries to inform VA of changes in circumstances affecting entitlement to benefits. *See* § 3.652, "Periodic certification of continued eligibility", and § 3.660(a)(1), "Dependency, income and estate". In addition, enabling VA to adjust benefits promptly on the 61st day would be advantageous to claimants, beneficiaries, and VA because if benefits are not promptly adjusted, VA must establish an overpayment and recoup the debt.

Proposed § 5.810(e) restates portions of current § 3.665(a) and the introductory language of current § 3.666 pertaining to notice to incarcerated beneficiaries regarding potential apportionees and conditions under which VA may resume benefits. We intend no substantive change.

Section 5.811 Limitation on Disability Compensation During Incarceration

Proposed § 5.811 pertains to the limitations on the amount of disability compensation payable to a veteran who has been incarcerated for more than 60 days following conviction of a felony.

Proposed § 5.811(a) restates current § 3.665(a) and (c), but where the current rule refers to a reduction of disability compensation, in part 5 we would refer to a "limit" on disability compensation, because the rule affects ongoing awards as well as awards of increased disability compensation based on increased disability. Moreover, because the amount of unpaid disability compensation may be apportioned, *see* § 5.814, it is not entirely accurate to characterize VA's actions as a "reduction". Finally, we also note that the applicable statute, 38 U.S.C. 5313, also uses the term "limitation". We intend no substantive change.

In a parenthetical sentence in § 5.811(a)(2), we propose to clarify that the limitation of payment amounts under that paragraph applies only to the payment of disability compensation after September 30, 1980.

Similarly, a parenthetical sentence in proposed § 5.811(a)(3) states that the payment limitation under paragraph (a)(3) applies only to the payment of disability compensation after March 31, 2002. This language incorporates the applicability date of Public Law 107–103, § 506(c), 115 Stat. 976, 996 (2001), which states, "This section shall apply with respect to the payment of compensation for months beginning on or after the end of the 90-day period beginning on the date of the enactment of this Act." The Act was enacted on December 27, 2001, the 90-day period from the date of enactment ended on March 26, 2002, and the first month thereafter was April 2002. No similar provision is shown in current § 3.665(c)(3). We are correcting this omission in part 5.

Proposed § 5.811(b) repeats current § 3.665(k) as it pertains to retroactive payments of disability compensation during incarceration.

Proposed § 5.811(c) states the maximum rates of disability compensation payable to an

incarcerated veteran. It is based on paragraphs (d) and (j) of § 3.665. Although current § 3.665 addresses increased disability compensation in § 3.665(j)(2) and existing or initial awards in § 3.665(d)(1) and (2), the resulting rate of payment is the same whether the award is an existing, initial, or increased award. VA will not pay veterans covered by this rule more than the 10-percent disability rate or one-half the 10-percent rate. To assist the reader, we propose to specify that for such veterans, the rate of disability compensation payable under 38 U.S.C. 1114(a) may not exceed the rate payable for a veteran rated 10 percent disabled.

In paragraph (c)(2), we propose to restate the parenthetical statement from current § 3.665(d)(2), "(even though the rate for 38 U.S.C. 1114(k) or (q) is paid)", by stating that the rate provided in proposed (c)(2) applies "even if such a veteran is entitled to special monthly compensation under 38 U.S.C. 1114(k) or (q)." The parenthetical in current § 3.665(d)(2) clarifies that, even if a veteran with a disability rating of less than 20 percent is entitled to receive compensation in an amount equal to or greater than the 20 percent rate, the veteran's rate of compensation would nevertheless be reduced under current § 3.665 (proposed § 5.811) to one-half the 10-percent rate. Such a situation could arise if a veteran with a disability rating of less than 20 percent were also entitled to special monthly compensation under 38 U.S.C. 1114(k) or (q). We have restated the language from the parenthetical to be clearer.

Current § 3.665(j)(3) pertains to additional circumstances in which VA will withhold increased disability compensation that is awarded to a veteran after he or she is incarcerated—generally, circumstances involving veterans who committed felonies before October 8, 1980, but were not incarcerated on October 1, 1980. Section 5313 specifies the circumstances under which VA may limit disability compensation to incarcerated veterans. Those circumstances are stated in proposed § 5.811(a). We are therefore not incorporating the provisions of § 3.665(j)(3) in part 5.

Section 5.812 Limitation on Dependency and Indemnity Compensation During Incarceration

Proposed § 5.812(a), derived from current § 3.665(a) and (c), states the general rule that VA will limit dependency and indemnity compensation (DIC) if the beneficiary has been incarcerated for more than 60 days following conviction of a felony. We have not included any reference to death compensation in proposed § 5.812 or in proposed § 5.815, which pertains to the resumption of benefits and is also based on § 3.665. As explained above regarding proposed § 5.770, VA does not expect to receive any more claims for death compensation, and the provisions concerning death compensation do not need to be carried forward to part 5. Any action pertaining to death compensation will be processed or adjudicated under part 3.

In the second sentence of § 5.812(a)(2), we propose to clarify that the limitation of payment amounts under that paragraph applies only to the payment of DIC after September 30, 1980.

Proposed § 5.812(b), derived from current § 3.665(d)(3), establishes that VA will not pay DIC at a rate greater than one-half of the amount of disability compensation payable to a veteran rated 10 percent disabled. The current rule requires VA to pay that amount but does not recognize that one-half of the 10 percent disability compensation rate could be higher than the parents' DIC rate. Therefore, the proposed rule clarifies that the rate cannot be "more than" one-half of the 10 percent disability compensation rate.

Proposed § 5.812(c), restates with no substantive changes current § 3.665(l) concerning parents' DIC rates when one parent is incarcerated.

Proposed § 5.812(d) repeats current § 3.665(k) as it pertains to retroactive payments of DIC during incarceration.

Section 5.813 Discontinuance of Pension During Incarceration

Proposed § 5.813, derived from the first sentence and paragraph (d) of current § 3.666, pertains to the discontinuance of pension to or for a person who is incarcerated for more than 60 days following conviction of a felony or of a misdemeanor. No substantive changes are intended.

Section 5.814 Apportionment When a Primary Beneficiary is Incarcerated

Proposed § 5.814 addresses apportionment of benefits not paid to an incarcerated beneficiary. It is based on several provisions in current §§ 3.665 and 3.666. Proposed paragraph (a) restates in plain language the part 3 rules regarding notice. It is derived from the third sentence of current § 3.665(a) and from § 3.665(h), which apply to disability compensation and to dependency and indemnity compensation (DIC). Proposed § 5.814(a)(1) provides for VA notice to dependents of their potential entitlement to an apportionment and proposed paragraph (a)(2) provides for VA notice to apportionees that VA immediately discontinues an apportionment when the primary beneficiary is released. Although current § 3.666, regarding pension, does not contain similar provisions, VA's long-standing practice has been to provide the same notice when a beneficiary is incarcerated, regardless of the type of benefit. Accordingly, notice under proposed § 5.814(a) is provided regardless of whether the benefit is disability compensation, DIC, or pension.

Proposed paragraph (b) pertains to apportionments of disability compensation and DIC and is based on current § 3.665(e). The net worth of the apportionee claimants has been included as a factor in determining individual need. Net worth is not listed as a factor in current § 3.665(e); however, its inclusion in proposed § 5.814(b) will help VA determine individual need more accurately.

Proposed paragraph (c) restates current paragraphs (a)(1), (a)(2), and (a)(3) of current § 3.666 concerning apportionments of pension to a veteran's spouse or child when the veteran is incarcerated. Section 9 of the Veterans' Pension Act of 1959, Public Law 86–211, 73 Stat. 432, repealed Old-Law Pension and replaced it with Section 306 Pension, effective July 1, 1960. Public Law 95–588, 92 Stat. 2497 (1978), repealed Section 306 Pension and replaced it with Improved Pension, effective January 1, 1979. Under these changes in law, no one may become entitled under a pension program once it has been repealed. Therefore, VA can only apportion Old-Law Pension or Section 306 Pension to a dependent who was recognized by VA as a dependent while those pension programs were still in effect. We have stated this limitation in proposed paragraph (c). Further, we clarify that references in § 3.666(a)(2) and (3) to "death pension" refer to Improved Death Pension because VA does not make new eligibility or rate determinations for the repealed pension programs.

Proposed § 5.814(d) is based on current § 3.666(b)(1), (2), and (4). When a surviving spouse or child is incarcerated and thereby disqualified from receiving pension, an unincarcerated surviving spouse or child may receive the pension amount that would be payable to him or her if the incarcerated surviving spouse or child did not exist. *See* 38 U.S.C. 1505(c). Under 38 U.S.C. 1505(c), this payment is not characterized as an apportionment; however, the effective-date provisions of proposed §§ 5.814(e)

and 5.816(c) apply just as they would if the payment were an apportionment.

Proposed § 5.814(e) is based on current § 3.665(f) and paragraphs (a)(4) and (b)(3) of current § 3.666, which pertain to the effective date of apportionment of a beneficiary's unpaid disability compensation, DIC, or pension benefits. Note that the rule in current § 3.666(b)(3), pertaining to death pension, differs from the rule contained in current §§ 3.665(f), pertaining to disability compensation and DIC, and 3.666(a)(4), pertaining to disability pension. Therefore, proposed § 5.814(e)(2)(ii), pertaining to death pension, provides that the effective date of the apportionment is the 61st day of the primary beneficiary's incarceration following conviction if evidence of income is received no later than 1 year after the date of VA's request for the evidence; whereas, proposed § 5.814(e)(2)(i), pertaining to disability compensation, DIC, and disability pension, provides that the retroactive effective date applies only if a claim for an apportionment is received no later than 1 year after the notice to the incarcerated beneficiary required by proposed § 5.810(e) and if any necessary evidence is received no later than 1 year after the date it is requested by VA. The proposed rule is consistent with the effective dates provided in the respective part 3 provisions.

Additionally, proposed § 5.813(e)(3) would clarify that VA will not re-pay an apportionee any benefits already paid to an incarcerated primary beneficiary. This is the meaning of the phrase in the current part 3 paragraphs, "subject to payments made to the [primary beneficiary] over the same period". If VA paid the primary beneficiary a portion of payments that it should have paid the apportionee beginning on the effective date of the apportionment award and ending on the first day of the month that follows the month for which VA last paid the primary beneficiary, then the benefits are considered as having been paid to the apportionee. In this manner, the family unit retains appropriate benefits and the primary beneficiary's overpayment is lessened or in some cases eliminated. Recouping an overpayment from the incarcerated beneficiary to then pay the same funds to the beneficiary's family would impose an unnecessary administrative burden on VA. Proposed § 5.813(e)(3) is consistent with the purpose of 38 U.S.C. 1505 and 5313(b) of eliminating a double burden on the taxpayers because the incarcerated veteran is already being supported by government funds provided for the operation of the penal institution. *See* VAOPGCPREC 3–2005, 72 FR 5801 (Feb. 7, 2007).

Section 5.815 Resumption of Disability Compensation or Dependency and Indemnity Compensation Upon a Beneficiary's Release From Incarceration

Proposed § 5.815 is derived from paragraphs (i) and (m) of current § 3.665 and pertains to resumptions of disability compensation or dependency and indemnity compensation (DIC) when a beneficiary is released from incarceration. Proposed paragraph (a) states that VA will resume payment to a beneficiary effective the date of release if VA is informed of the release less than 1 year after the date of release; otherwise, VA will resume payments effective the date VA is informed of the release. Proposed paragraph (a) states that VA will resume payments to the beneficiary upon release "if the beneficiary remains entitled * * *." This clause makes explicit an obvious point, which part 3 left implicit.

The rules in proposed § 5.815(a) are subject to proposed paragraphs (b) and (c), which pertain to resumption of benefits where benefits were apportioned during the beneficiary's incarceration.

Current § 3.665(i)(3) provides the rule for resumption of benefits when an apportionment has been made to a dependent parent. This rule differs from the rule in § 3.665(i)(2) for resumptions of benefits involving apportionments to a dependent spouse or child who has not been reunited with the incarcerated beneficiary. Section 3.665(i)(3) provides that an apportionment to a dependent parent made solely because the beneficiary is incarcerated will be discontinued after the veteran has been released from incarceration—essentially treating the parent as having been reunited with the released beneficiary, regardless of whether that is the case. Accordingly, in the introductory paragraphs of proposed § 5.815(b) and (c), we have stated that for purposes of those paragraphs, a dependent parent apportionee, receiving an apportionment under § 5.814(b), will be considered as having been reunited with the released beneficiary. No substantive change from current § 3.665(i)(3) is intended.

Section 5.816 Resumption of Pension Upon a Beneficiary's Release From Incarceration

Proposed § 5.816 governs the resumption of pension benefits when a beneficiary whose benefits were discontinued is released from incarceration. The proposed regulation is derived from current § 3.666(c). We propose to make it clear that the beneficiary must show entitlement to the benefit for VA to resume it.

In proposed § 5.816(b), we provide rules for resumptions of disability pension involving apportionments. In proposed § 5.816(c), we provide separate rules for resumptions of death pension involving an allocation. In current § 3.666(c), the same rules describes both situations, but we believe that the separate paragraphs clarify that payments of death pension under § 5.814(d) may be made to a surviving spouse or surviving child who has entitlement to death pension that is independent from that of the incarcerated beneficiary. While it is appropriate to refer to the reduction or discontinuance of death pension, such a reference is confusing in the context of disability pension. For disability pension, the apportionment of pension will be discontinued, not reduced. Further, with regard to disability pension, slightly different rules apply because the veteran may elect disability compensation while incarcerated if he or she is dually entitled to pension and disability compensation. By providing separate paragraphs in the proposed rule, we intend to eliminate confusion over differences between disability pension and death pension.

Section 5.817 Fugitive Felons

Proposed § 5.817 restates in plain language current §§ 3.665(n) and 3.666(e), which implement 38 U.S.C. 5313B, prohibiting the payment of VA benefits based on the entitlement of a fugitive felon.

Proposed paragraph (a) would specify that the prohibition on payment of benefits to, for, or on behalf of fugitive felons applies to "Improved Pension", whereas § 3.666(e) states "pension" and "death pension". Accordingly, proposed § 5.817 would not bar payment of Old-Law Pension or Section 306 Pension. The authorizing statute precludes, in pertinent part, payment of any benefit under 38 U.S.C. chapter 15. VA construes the statute to mean current chapter 15, which authorizes the payment of Improved Pension. Old-Law Pension and Section 306 Pension are not benefits under current chapter 15. The proposed regulation accurately states current VA practice.

We propose not to include in part 5 current § 3.665(n)(4) or the identical definition from § 3.666(e)(4), which state, "For the purposes of paragraph (n) [or (e)] of this section, the term *dependent* means a spouse, surviving spouse, child, or dependent parent of a veteran." When combined with veterans,

this definition describes all potential beneficiaries and apportionees of compensation or pension benefits. Proposed § 5.817(a) is clear in providing, "VA will not pay or apportion disability compensation, dependency and indemnity compensation, or Improved Pension to, for, or on behalf of a person for any period during which that person is a fugitive felon." Therefore, we do not think the definition of "dependent" is needed for the purposes of the fugitive felon regulation.

Non-Inclusion of Certain Part 3 Rules in Part 5

We now discuss current part 3 regulations or portions of regulations that we propose not to include in part 5. Before turning to a specific regulation, however, we describe two overall non-inclusions in part 5.

References to Emergency Officers' Retirement Pay and Service Pension

Proposed part 5 would not include references to emergency officers' retirement pay or to "retirement pay." Emergency officers' retirement pay is an obsolete World War I benefit. There are no longer any veterans receiving this benefit, and we propose not to include references to it in part 5. VA no longer pays a benefit called retirement pay.

Proposed part 5 would not include references to service pension. There are no known surviving veterans of the Spanish-American War.

All of Current § 3.851

We propose not to include in part 5 the provisions in current § 3.851, "St. Elizabeths Hospital, Washington, DC." Under former 24 U.S.C. 191 *et seq.* and its implementing regulation, current § 3.851, current and former members of the Armed Forces who had become insane were to be admitted to St. Elizabeths Hospital, which was the only Federal hospital dedicated to the treatment of the insane. In 1984, Congress transferred the pertinent Federal duties relating to the treatment of persons institutionalized at St. Elizabeths to the District of Columbia. *See* Public Law 98–621, 98 Stat. 3369. The District of Columbia government was charged to fully assume those responsibilities no later than October 1, 1993. *See* 24 U.S.C. 225(b)(1). Because St. Elizabeths is no longer a Federal facility dedicated to the treatment of insane veterans, there is no longer any reason to provide specialized rules relating to care at St. Elizabeths. We now treat a veteran in that hospital as we would any other institutionalized veteran.

Endnote Regarding Amendatory Language

We intend ultimately to remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act of 1995

All collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) referenced in this proposed rule have existing OMB approval. No changes are made in these proposed rules to those collections of information.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 28, 2011, for publication.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Dated: January 5, 2011.

William F. Russo,

Director, Regulations Management, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 5, as proposed to be added at 69 FR 4832, January 30, 2004, and as

amended at 73 FR 65223, October 31, 2008, as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

1. Revise Subpart L, as proposed to be added at 73 FR 65223, October 31, 2008, to read as follows:

Subpart L—Payments and Adjustments to Payments

Hospital, Domiciliary, and Nursing Home Care Reductions and Resumptions

Sec.

5.720 Adjustments to special monthly compensation based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care.
5.721 Resumption of special monthly compensation based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.
5.722 Reduction of Improved Pension while a veteran is receiving domiciliary or nursing home care.
5.723 Reduction of Improved Pension while a veteran, surviving spouse, or child is receiving Medicaid-covered care in a nursing facility.
5.724 Reduction or discontinuance of Improved Pension based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care.
5.725 Resumption of Improved Pension and Improved Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.
5.726 Reduction of Section 306 Pension while a veteran is receiving hospital, domiciliary, or nursing home care.
5.727 Reduction of Old-Law Pension while a veteran is receiving hospital, domiciliary, or nursing home care.
5.728 Reduction of Old-Law Pension or Section 306 Pension based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care.
5.729 Resumption of Section 306 Pension and Section 306 Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.
5.730 Resumption of Old-Law Pension and Old-Law Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.
5.731–5.739 [Reserved]

Subpart L—Payments and Adjustments to Payments

Hospital, Domiciliary, and Nursing Home Care Reductions and Resumptions

§ 5.720 Adjustments to special monthly compensation based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care

(a) *Definitions.* For purposes of this section and §§ 5.721 through 5.730:

(1) *Hospital care.* Except as provided in paragraphs (c)(1) and (f)(1) of this section, *hospital care* means treatment provided in a VA hospital or provided in any hospital at VA expense.

(2) *Domiciliary or nursing home care* means treatment provided in a VA domiciliary or nursing home or in any domiciliary or nursing home at VA expense.

Note to paragraphs (a)(1) and (2): When multiple types of care are referred to consecutively (for example, "hospital, domiciliary, or nursing home care"), VA will consider transfers between the different types of care as a continuous period of all such care.

(3) *Regular discharge or release* means a veteran, surviving spouse, or child is discharged or released at the order of a medical professional based on that professional's opinion that there is no medical reason to continue care.

(4) *Irregular discharge or release* means a veteran, surviving spouse, or child is discharged or released for any of the following reasons:

(i) Refusal to accept treatment;

(ii) Neglect of treatment;

(iii) Obstruction of treatment;

(iv) Disciplinary reasons;

(v) Refusal to accept transfer to another facility;

(vi) Leaving the facility against medical advice; or

(vii) Failure to return from unauthorized or authorized absence.

(5) *Temporary absence* means a veteran, surviving spouse, or child is placed on non-bed care status or authorized absence. A temporary absence is not a discharge or release. When calculating a period of temporary absence, VA includes the day on which the temporary absence begins.

(b) *Adjustment of special monthly compensation while receiving hospital, domiciliary, or nursing home care.* VA will discontinue special monthly compensation (SMC) payable because a veteran needs regular aid and attendance or a higher level of care if the veteran is admitted to hospital, domiciliary, or nursing home care and the veteran remains in such care on the first day of the second calendar month after the date of admission. In such cases, VA will reduce SMC to a rate specified in paragraph (c) of this section. The effective date of the reduced rate of SMC will be the first day of the second calendar month after the date of admission. However, VA will make no reduction or discontinuance under this paragraph if:

(1) The rate of special monthly compensation payable would be the same with or without an award for regular aid and attendance; or

(2) An exception in paragraph (d) of this section applies.

(c) *Calculating reduction of the rate of special monthly compensation.* If appropriate under paragraph (b) of this section, VA will reduce a veteran's SMC rate as follows:

(1) *Discontinuance of special monthly compensation under § 5.332.* VA will discontinue SMC paid under § 5.332, Additional allowance for regular aid and attendance under 38 U.S.C. 1114(r)(1) or for a higher level of care under 38 U.S.C. 1114(r)(2). For the purposes of this paragraph (c)(1), "hospital care" means treatment in any hospital, including a private hospital, at United States Government expense. The discontinuance required by this paragraph (c)(1) is made only for hospital care; it is not made for domiciliary or nursing home care. VA will also make a reduction under paragraph (c)(3) of this section, if the veteran's circumstances meet any of those criteria.

(2) *Reduction of special monthly compensation under §§ 5.324 and 5.331.* VA will reduce the following payments to the rate payable under § 5.333, Special monthly compensation under 38 U.S.C. 1114(s):

(i) Special monthly compensation paid at the rate under § 5.324, Special monthly compensation under 38 U.S.C. 1114(*l*), if entitlement is based on the need for regular aid and attendance.

(ii) Special monthly compensation paid under § 5.331(d)(1) or (e)(1), Special monthly compensation under 38 U.S.C. 1114(p), because a veteran is entitled to the rate under § 5.324 based on the need for regular aid and attendance and has been awarded the intermediate or next higher rate based on additional disability that is independently ratable.

(3) *Reduction of special monthly compensation under § 5.330(e).* Special monthly compensation paid at the rate under § 5.330(e), Special monthly compensation under 38 U.S.C. 1114(*o*), based on the need for regular aid and attendance will be reduced as follows:

(i) If the veteran is entitled to the rate under § 5.324 both for the need for regular aid and attendance and for some other disability or combination of disabilities without considering any disabilities twice, then VA will reduce the special monthly compensation to the rate payable under § 5.326, Special monthly compensation under 38 U.S.C. 1114(m).

(ii) If the veteran is entitled to the rate under § 5.324 based on the need for regular aid and attendance and is entitled to the rate under § 5.326 without considering any disabilities twice, then VA will reduce the special monthly compensation to the rate payable under § 5.328, Special monthly compensation under 38 U.S.C. 1114(n).

(iii) If the veteran is entitled to the rate under § 5.324 based on the need for regular aid and attendance and is entitled to the rate under § 5.328 without considering any disabilities twice, then VA will not reduce the SMC rate payable under § 5.330.

(4) *Reduction of special monthly compensation under § 5.326(i).* VA will reduce SMC paid under § 5.326(i) to the rate payable under § 5.324.

(5) *Additional disability compensation based on having dependents.* In addition to the rates specified in paragraphs (c)(1) through (c)(4) of this section, VA will pay the additional amount of disability compensation payable to a veteran for dependents if he or she is entitled to disability compensation based on disabilities evaluated at 30 percent or more disabling.

(6) *Additional ratings under § 5.323.* In addition to the rates specified in paragraphs (c)(1) through (c)(4) of this section, SMC under § 5.323, Special monthly compensation under 38 U.S.C. 1114(k), based on independently ratable disability, is payable subject to the statutory ceiling on the total amount of compensation specified in § 5.323(b).

(d) *Exceptions.* Except for the discontinuances required by paragraph (c)(1) and (f)(1) of this section, VA will not reduce or discontinue SMC under this section if the need for regular aid and attendance is caused by disability resulting from:

(1) Loss of use of both lower extremities and loss of anal and bladder sphincter control; or

(2) Hansen's disease.

(e) *Readmission after discharge or release.* (1) *Regular discharge or release.* If a veteran is readmitted to hospital, domiciliary, or nursing home care after a regular discharge or release, VA will consider the readmission to be a new admission subject to the provisions of paragraph (b) of this section.

(2) *Irregular discharge or release.* (i) *Readmission less than 6 months after a period of hospital, domiciliary, or nursing home care.* VA will pay a reduced rate of SMC under paragraph (c) of this section effective on the date of readmission if all of the following are true:

(A) SMC is reduced or discontinued under paragraph (b) of this section;

(B) The veteran is given an irregular discharge or release from hospital, domiciliary, or nursing home care; and

(C) The veteran is readmitted to hospital, domiciliary, or nursing home care less than 6 months after discharge or release.

(ii) *Readmission 6 months or more after a period of hospital, domiciliary, or nursing home care.* If a veteran described in paragraph (e)(2)(i)(A) and (B) of this section is readmitted to hospital, domiciliary, or nursing home care 6 months or more after discharge or release, VA will consider the readmission to be a new admission subject to the provisions of paragraph (b) of this section.

(f) *Entitlement to special monthly compensation based on the need for regular aid and attendance established while a veteran is receiving hospital, domiciliary, or nursing home care.* (1) If a veteran becomes entitled to SMC under § 5.332 while receiving hospital care effective on or after the date of admission into such care, then VA will not pay that benefit until the date of discharge or release from hospital care. This does not affect payments for periods prior to admission. For the purposes of this paragraph (f)(1), "hospital care" means treatment in any hospital, including a private hospital, at United States Government expense.

(2) If a veteran becomes entitled to SMC under any other provision of this part based on the need for regular aid and attendance while receiving hospital, domiciliary, or nursing home care effective on or after the date of admission into such care, then VA will pay reduced SMC under paragraphs (c)(2) through (c)(4) of this section unless entitlement is based on one of the exceptions in paragraph (d) of this section. This does not affect payments for periods prior to admission.

(Authority: 38 U.S.C. 501(a), 5503)

§ 5.721 Resumption of special monthly compensation based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.

(a) *Temporary absence from hospital, domiciliary, or nursing home care*— (1) *Temporary absence for 30 days or more.* If a veteran is on temporary absence from hospital, domiciliary, or nursing home care for 30 days or more, VA will resume any payment reduced or discontinued under § 5.720. The effective date of the resumed payment is the date the temporary absence begins. If the veteran returns to hospital, domiciliary, or nursing home care, then VA will reduce or discontinue special monthly compensation under § 5.720 effective the date that the veteran returns to such care.

(2) *Temporary absence for less than 30 days.* If a veteran is on temporary absence from hospital, domiciliary, or nursing home care for less than 30 consecutive days, VA will not resume any payments reduced or discontinued under § 5.720. If the veteran is later discharged or released, VA will retroactively pay the amounts that were unpaid during any such temporary absence.

(b) *Discharge or release.* If a veteran is discharged or released from hospital, domiciliary, or nursing home care, VA will resume any payment reduced or discontinued under § 5.720 effective the date the veteran was discharged or released. Payment will be resumed at the rate in effect before the reduction based on hospital, domiciliary, or nursing home care, unless the evidence of record shows that a different rate is required.

(Authority: 38 U.S.C. 501(a), 5503)

§ 5.722 Reduction of Improved Pension while a veteran is receiving domiciliary or nursing home care.

(a) *General provisions*— (1) *Veterans affected.* Except as provided in paragraph (b) or (f) of this section, VA will reduce Improved Pension paid to a veteran who receives domiciliary or nursing home care continuously for 3 full calendar months or who receives such care along with hospital care, as provided in paragraph (e)(2) of this section, and who:

(i) Does not have a spouse or child; or

(ii) Is married or has a child but is receiving Improved Pension as a veteran without dependents.

(2) *Rate payable.* VA will reduce Improved Pension under this section to $90 per month.

(3) *Effective date of reduction.* Except as provided in paragraph (f) of this section, a reduction under paragraph (a)(1) of this section will be effective on the first day of the fourth calendar month after the month of admission to domiciliary or nursing home care.

(b) *Exceptions.* VA will not reduce Improved Pension under this section if a veteran is:

(1) Receiving domiciliary or nursing home care for Hansen's disease;

(2) Maintained in a State soldiers' home;

(3) Receiving domiciliary or nursing home care in a State home and the only payment made by VA to the State for the State home is the per diem rate under 38 U.S.C. 1741; or

(4) Receiving pension as a veteran without a dependent because it is reasonable that part of his or her child's net worth be consumed for the child's maintenance before the child can be established as a dependent. See § 5.414(e), Net worth determinations for Improved Pension.

(c) *Apportionment of benefits to a spouse.* Improved pension in excess of the $90 may be apportioned to the veteran's spouse under § 5.772(c)(2)(ii), Veteran's benefits apportionable.

(d) *Readmission*—(1) *Less than 6 months after prior period of domiciliary or nursing home care.* If a veteran is readmitted to domiciliary or nursing home care less than 6 months after a period of domiciliary or nursing home care for which Improved Pension was reduced under this section, VA will reduce Improved Pension to $90 per month effective the first day of the month after the month of readmission.

(2) *Six months or more after prior period of domiciliary or nursing home care.* If a veteran is readmitted 6 months or more after a period of domiciliary or nursing home care for which Improved Pension was reduced under this section, the readmission will be considered a new admission subject to the provisions of paragraph (a) of this section.

(e) *Transfers*—(1) *Transfer from hospital care.* If a veteran is receiving hospital care and is transferred to domiciliary or nursing home care, VA will not consider the period of hospital care as domiciliary or nursing home care.

(2) *Transfers from domiciliary or nursing home care.* (i) If a veteran is transferred from domiciliary or nursing home care to hospital care then back to domiciliary or nursing home care, VA will consider the entire period as continuous domiciliary or nursing home care unless the period of hospital care exceeds 6 months.

(ii) If a veteran is transferred from domiciliary or nursing home care to hospital care and then dies while hospitalized, VA will consider the entire period as continuous domiciliary or nursing home care unless the period of hospital care exceeds 6 months.

(iii) VA will consider domiciliary or nursing home care completed on the date of transfer to hospital care if a veteran is discharged or released from VA care after his or her hospital stay.

(iv) VA will consider domiciliary or nursing home care completed on the date of transfer to hospital care if the period of hospital care exceeds 6 months.

(f) *Nursing home care for a prescribed program of rehabilitation*—(1) *Delay in reduction.* The reduction required by this section for a veteran receiving nursing home care will be delayed for up to 3 additional calendar months after the first day of the fourth calendar month referred to in paragraph (a)(3) of this section, or the first day of the month following the month of readmission referred to in paragraph (d)(1), if the Under Secretary for Health, or his or her designee, certifies that the primary purpose for the veteran's additional period of nursing home care is to provide a prescribed program of rehabilitation, under 38 U.S.C. chapter 17, designed to restore the veteran's ability to function within the veteran's family and community.

(2) *Continued nursing home care for rehabilitation.* The delay in reduction may be extended beyond the 3-month period provided by paragraph (f)(1) of this section if both of the following are true:

(i) The veteran continues to receive nursing home care; and

(ii) The Under Secretary for Health, or his or her designee, certifies that the primary purpose for the veteran's continued nursing home care is to provide a prescribed program of rehabilitation, under 38 U.S.C. chapter 17, designed to restore the veteran's ability to function within the veteran's family and community.

(3) *Rehabilitation ends.* The veteran's Improved Pension will be reduced under this section effective the first day of the calendar month after the date on which the program of rehabilitation ends.

(g) *Entitlement to Improved Pension established while a veteran is receiving domiciliary or nursing home care.* If a veteran becomes entitled to Improved Pension while receiving domiciliary or nursing home care, VA will reduce pension, or pay a reduced rate of pension, in accordance with this section.

(Authority: 38 U.S.C. 501(a), 5503)

§ 5.723 Reduction of Improved Pension while a veteran, surviving spouse, or child is receiving Medicaid-covered care in a nursing facility.

(a) *General provision.* Until September 30, 2011, VA will reduce Improved Pension being paid to a veteran without a spouse or child, to a surviving spouse without a child, or to a child, to $90 per month when that veteran or surviving spouse is receiving Medicaid-covered care in a nursing facility. VA will not reduce Improved Pension under this section if a veteran is receiving Medicaid-covered care in a State home to which VA makes per diem payments under 38 U.S.C. 1741.

(b) *Effective date of reduction.* Except as provided in paragraph (c) of this section, the effective date of reduction of Improved Pension payments under this section will be the latest of:

(1) The first day of the month after the month in which Medicaid-covered care begins;

(2) The first day of the month after the month during which the 60-day period prescribed in § 5.83(b) expires; or

(3) The first day of the month after the month for which VA last paid benefits.

(c) *Willful concealment.* If a veteran, surviving spouse, or child willfully conceals information that would lead to a reduction of Improved Pension payments under this section, and VA subsequently reduces Improved Pension under this section, the effective date of the reduction will be the first day of the month after the month in which the willful concealment occurred. In such a case, the beneficiary will be liable for any payments in excess of $90 per month made after the effective date of the reduction if the willful concealment prevented VA from reducing benefits during that period.

(d) *Entitlement to Improved Pension established while a veteran, surviving spouse, or child is receiving Medicaid-covered care in a nursing facility.* If a veteran, surviving spouse, or child described in paragraph (a) of this section becomes entitled to Improved Pension while receiving Medicaid-covered care in a nursing facility, then VA will not pay more than $90 per month while he or she receives such care.

(Authority: 38 U.S.C. 5503(d))

§ 5.724 Reduction or discontinuance of Improved Pension based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care.

(a) *Reduction or discontinuance of Improved Pension.* (1) If a veteran who is receiving Improved Pension based on the rate for regular aid and attendance receives hospital, domiciliary, or nursing home care for at least 1 full calendar month, VA will pay Improved Pension based on the housebound rate.

(2) The resulting reduction or discontinuance of Improved Pension will be effective the first day of the

second calendar month after the date of admission.

(3) VA will not reduce or discontinue Improved Pension under this paragraph (a) if an exception in paragraph (b) of this section applies.

Cross Reference: §§ 5.400(b) and (c) for the housebound and regular aid and attendance rates; 5.722 for reductions of Improved Pension after 3 full calendar months of domiciliary or nursing home care.

(b) *Exceptions.* VA will not reduce or discontinue Improved Pension under this section if:

(1) The need for regular aid and attendance is caused by disability resulting from:

(i) Loss of use of both lower extremities and loss of anal and bladder sphincter control;

(ii) Hansen's disease; or

(iii) Blindness pursuant to § 5.390(b)(1) or (2); or

(2) The veteran is receiving hospital, domiciliary, or nursing home care for Hansen's disease.

(c) *Readmission after discharge or release*—(1) *Regular discharge or release.* If a veteran is readmitted to hospital, domiciliary, or nursing home care after a regular discharge or release, then VA will consider the readmission to be a new admission subject to the provisions of paragraph (a) of this section.

(2) *Irregular discharge or release.* (i) If a veteran whose Improved Pension was reduced or discontinued under this section is readmitted to hospital, domiciliary, or nursing home care less than 6 months after an irregular discharge or release, then VA will pay Improved Pension based on the housebound rate effective on the date of the readmission.

(ii) If a veteran is readmitted to hospital, domiciliary, or nursing home care 6 months or more after an irregular discharge or release, then VA will consider the readmission to be a new admission subject to the provisions of paragraph (a) of this section.

(d) *Entitlement to Improved Pension based on the need for regular aid and attendance established while a veteran is admitted to hospital, domiciliary, or nursing home care.* If a veteran who is admitted to hospital, domiciliary, or nursing home care becomes entitled to Improved Pension based on the need for regular aid and attendance, with an effective date on or after the date of admission, then VA will pay Improved Pension based on the housebound rate. VA will not reduce or discontinue benefits under this paragraph (d) if an exception in paragraph (b) of this section applies.

(Authority: 38 U.S.C. 501(a), 5503)

§ 5.725 Resumption of Improved Pension and Improved Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.

(a) *Temporary absence from hospital, domiciliary, or nursing home care for 30 days or more*—(1) *Improved Pension based on the need for regular aid and attendance.* If a veteran is on temporary absence from hospital, domiciliary, or nursing home care for 30 days or more, VA will resume any payment discontinued under § 5.724. The effective date of the resumed payment is the date the temporary absence began. If the veteran returns to hospital, domiciliary, or nursing home care, then VA will discontinue Improved Pension based on the need for regular aid and attendance under § 5.724 effective the date that the temporary absence ends.

(2) *Improved Pension.* (i) *General.* If a beneficiary is on temporary absence from any domiciliary or nursing home care facility, or a Medicaid-covered nursing facility, for 30 days or more, VA will resume any payment reduced under § 5.722 or § 5.723. The payment will be resumed at the rate that is appropriate based on the beneficiary's income. The effective date of the resumed payment is the date that the temporary absence began. If the beneficiary returns to such facility, then VA will reduce Improved Pension under § 5.722 or § 5.723 effective the date that the temporary absence ends.

(ii) *Apportionment of benefits to a spouse.* If benefits reduced under § 5.722 have been apportioned to a veteran's spouse, the apportionment will be discontinued on the day that the temporary absence began, unless it is determined that the apportionment will continue under § 5.771, Special apportionments.

(b) *Temporary absence for less than 30 days.* (1) *Improved Pension based on the need for regular aid and attendance.* If a veteran is on temporary absence from hospital, domiciliary, or nursing home care for less than 30 consecutive days, VA will not resume any payments discontinued under § 5.724. If the veteran is later discharged or released from hospital, domiciliary, or nursing home care, VA will retroactively pay the amounts that were unpaid during any such temporary absence.

(2) *Improved Pension.* If a beneficiary is on temporary absence from domiciliary care, nursing home care, or Medicaid-covered nursing facility care, for less than 30 consecutive days, VA will not resume any payments reduced under § 5.722 or § 5.723. If the beneficiary is later discharged or released from domiciliary care, nursing home care, or Medicaid-covered nursing facility care, VA will retroactively pay the amounts that were unpaid during any such temporary absence.

(c) *Discharge or release*—(1) *Improved Pension based on the need for regular aid and attendance.* If a veteran is discharged or released from hospital, domiciliary, or nursing home care, VA will resume any payment reduced or discontinued under § 5.724 effective the date the veteran is discharged or released. Payment will be resumed at the rate in effect before the reduction or discontinuance based on such care unless the evidence of record shows that a different rate is required.

(2) *Improved Pension.* If a beneficiary is discharged or released from domiciliary care, nursing home care, or Medicaid-covered nursing facility care, VA will resume any payment reduced under § 5.722 or § 5.723 effective the date the beneficiary is discharged or released. Payment will be resumed at the rate in effect before the reduction or discontinuance based on domiciliary care, nursing home care, or Medicaid-covered nursing facility care, unless the evidence of record shows that a different rate is required.

(3) *Apportionment of benefits to a spouse.* If benefits reduced under § 5.722 have been apportioned to a veteran's spouse, the apportionment will be discontinued on the day that the veteran is discharged or released from domiciliary or nursing home care, unless it is determined that the apportionment will continue under § 5.771, Special apportionments.

(Authority: 38 U.S.C. 5503)

§ 5.726 Reduction of Section 306 Pension while a veteran is receiving hospital, domiciliary, or nursing home care.

(a) *General provisions*— (1) *Veterans affected.* Except as provided in paragraph (b) of this section, VA will reduce Section 306 Pension paid to a veteran who receives hospital, domiciliary, or nursing home care continuously for 2 full calendar months and who:

(i) Does not have a spouse or child; or

(ii) Is married or has a child, but is receiving Section 306 Pension as a veteran without dependents.

(2) *Proof of dependents.* If VA requests evidence about a spouse or child but such evidence is not received before the effective date of the reduction, then VA will reduce the veteran's Section 306 Pension under this section on the basis of no dependents. If the evidence is received

within 1 year after the date of VA's request, VA will pay the full rate from the date of reduction.

(3) *Rate payable.* VA will reduce Section 306 Pension under this section to $50 per month.

(4) *Effective date of reduction.* A reduction under paragraph (a) of this section will be effective on the first day of the third calendar month after the month of admission to hospital, domiciliary, or nursing home care.

(5) *Calculation of period.* For purposes of calculating continuous periods of hospital, domiciliary, or nursing home care under this section, authorized absences for periods of 96 hours or less will be included as periods of hospital, domiciliary, or nursing home care. For authorized absences for periods of more than 96 hours, the entire period will be excluded from the total number of days, but will not be considered a break in the continuous period of hospital, domiciliary, or nursing home care. Sixty total days of hospital, domiciliary, or nursing home care will be considered 2 calendar months of such care.

(b) *Exceptions.* VA will not reduce Section 306 Pension under this section if a veteran is:

(1) Receiving hospital, domiciliary, or nursing home care for Hansen's disease;

(2) Maintained in a State soldiers' home; or

(3) Receiving hospital, domiciliary, or nursing home care in a State home and the only payment made by VA to the State for the State home is the per diem rate under 38 U.S.C. 1741.

(c) *Apportionment of benefits to a spouse.* Benefits in excess of the $50 per month may be apportioned to the veteran's spouse under § 5.772(c)(2)(i), Veteran's benefits apportionable.

(d) *Readmission*—(1) *Less than 6 months after admission.* If a veteran is readmitted to hospital, domiciliary, or nursing home care less than 6 months after a period of hospital, domiciliary, or nursing home care for which Section 306 Pension was reduced under this section, VA will reduce Section 306 Pension effective the first day of the month after the month of readmission.

(2) *Six months or more after admission.* If a veteran is readmitted 6 months or more after a period of hospital, domiciliary, or nursing home care for which Section 306 Pension was reduced under this section, the readmission will be considered a new admission subject to the provisions of paragraph (a) of this section.

(Authority: 38 U.S.C. 5503; Pub. L. 95–588, Sec. 306, 92 Stat. 2497)

§ 5.727 Reduction of Old-Law Pension while a veteran is receiving hospital, domiciliary, or nursing home care.

(a) *General provisions*—(1) *Veterans affected.* Except as provided in paragraph (b) of this section, VA will reduce Old-Law Pension being paid to a veteran who has received hospital, domiciliary, or nursing home care continuously for 6 full calendar months and who does not have a spouse or child.

(2) *Proof of dependents.* If VA requests evidence about a spouse or child but such evidence is not received within 60 days, then VA will reduce the veteran's Old-Law Pension under this section on the basis of no dependents. If the evidence is received within 1 year after the date of VA's request, VA will pay the full rate from the date of reduction.

(3) *Rate payable.* VA will reduce Old-Law Pension under this section to either $30 per month or 50 percent of the amount of Old-Law Pension otherwise payable to the veteran, whichever amount is greater.

(4) *Effective date of reduction*—(i) *General.* The effective date of reduction under paragraph (a) of this section is the first day of the seventh calendar month after the month of admission to hospital, domiciliary, or nursing home care. VA excludes any month (others than the month of admission) that contains an authorized absence from its calculation of the effective date.

(ii) *Effect of irregular discharge prior to reduction.* The reduction will be effective on that date even if a veteran is irregularly discharged or released from hospital, domiciliary, or nursing home care and is readmitted to such care before that effective date. If the veteran is readmitted after the first day of the seventh calendar month after the month of admission to hospital, domiciliary, or nursing home care, the readmission will be considered a new admission subject to the provisions of paragraph (a) of this section.

(b) *Exceptions.* VA will not reduce Old-Law Pension under this section if a veteran is:

(1) Receiving hospital, domiciliary, or nursing home care for Hansen's disease;

(2) Maintained in a State soldiers' home; or

(3) Receiving hospital, domiciliary, or nursing home care in a State home and the only payment made by VA to the State for the State home is the per diem rate under 38 U.S.C. 1741.

(c) *Readmission*—(1) *Readmission after regular discharge or release.* If a veteran is readmitted to hospital, domiciliary, or nursing home care after a regular discharge or release, VA will consider the readmission to be a new admission subject to the provisions of paragraph (a) of this section unless the veteran was discharged or released for purposes of admission to another facility for hospital, domiciliary, or nursing home care.

(2) *Readmission after irregular discharge or release*—(i) *Less than 6 months after discharge or release.* If a veteran is readmitted to hospital, domiciliary, or nursing home care less than 6 months after being irregularly discharged or released from a prior period of hospital, domiciliary, or nursing home care for which Old-Law Pension was reduced under this section, VA will reduce Old-Law Pension effective the first day of the month after the month of readmission.

(ii) *Six months or more after discharge or release.* If a veteran is readmitted 6 months or more after being irregularly discharged or released from a prior period of hospital, domiciliary, or nursing home care for which Old-Law Pension was reduced under this section, the readmission will be considered a new admission subject to the provisions of paragraph (a) of this section.

(Authority: Pub. L. 95–588, Sec. 306, 92 Stat. 2497)

§ 5.728 Reduction of Old-Law Pension or Section 306 Pension based on the need for regular aid and attendance while a veteran is receiving hospital, domiciliary, or nursing home care.

(a) *Reduction of Old-Law Pension or Section 306 Pension*—(1)(i) *Old-Law Pension.* If a veteran who is receiving Old-Law Pension at the regular aid and attendance rate ($135.45 monthly) receives hospital, domiciliary, or nursing home care for at least 1 full calendar month, VA will reduce benefits to the housebound rate ($100 monthly).

(ii) *Section 306 Pension*—(A) *General.* If a veteran who is receiving Section 306 Pension based on the regular aid and attendance rate receives hospital, domiciliary, or nursing home care for at least 1 full calendar month, VA will pay benefits based on the housebound rate. VA will reduce benefits by $104 per month, which is the difference between the aid and attendance allowance ($165) and the housebound allowance ($61).

(B) *Reduced aid and attendance allowance.* If a veteran who is receiving Section 306 Pension at a reduced regular aid and attendance rate (under former 38 U.S.C. 521(d)(2), as in effect on December 31, 1978) receives hospital, domiciliary, or nursing home care for at least 1 full calendar month, VA will reduce benefits to $61 per month.

(2) The resulting reduction of these benefits will be effective the first day of the second calendar month after the month of admission.

(3) VA will not reduce benefits under this paragraph (a) if an exception in paragraph (b) of this section applies.

Cross Reference: § 5.471 for the housebound and regular aid and attendance rates.

(b) *Exceptions.* VA will not reduce Old-Law Pension or Section 306 Pension under this section if:

(1) The need for regular aid and attendance is caused by disability resulting from:

(i) Loss of use of both lower extremities and loss of anal and bladder sphincter control;

(ii) Hansen's disease; or

(iii) 5/200 visual acuity or less in both eyes with corrective lenses or due to concentric contraction of the visual field to 5 degrees or less in both eyes; or

(2) The veteran is receiving hospital, domiciliary, or nursing home care for Hansen's disease.

(c) *Readmission after discharge or release*—(1) *Regular discharge or release.* If a veteran is readmitted to hospital, domiciliary, or nursing home care after a regular discharge or release, then VA will consider the readmission to be a new admission subject to the provisions of paragraph (a) of this section.

(2) *Irregular discharge or release.* (i) If a veteran whose Old-Law Pension or Section 306 Pension was reduced under this section is readmitted to hospital, domiciliary, or nursing home care less than 6 months after an irregular discharge or release, then VA will reduce Old-Law Pension or Section 306 Pension based on the need for regular aid and attendance effective on the date of the readmission.

(ii) If a veteran is readmitted to hospital, domiciliary, or nursing home care 6 months or more after an irregular discharge or release, then VA will consider the readmission to be a new admission subject to the provisions of paragraph (a) of this section.

(Authority: 38 U.S.C. 501(a); Pub. L. 95–588, Sec. 306, 92 Stat. 2497)

§ 5.729 Resumption of Section 306 Pension and Section 306 Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.

(a) *Temporary absence from hospital, domiciliary, or nursing home care for 30 days or more*—(1) *General.* If a veteran is on temporary absence from hospital, domiciliary, or nursing home care for 30 days or more, VA will resume any Section 306 Pension payment reduced under § 5.726 or § 5.728. The effective date of the resumed payment is the date that the temporary absence begins. If the veteran returns to hospital, domiciliary, or nursing home care, then VA will reduce Section 306 Pension effective the date that the temporary absence ends.

(2) *Apportionment of benefits to a spouse.* If benefits reduced under § 5.726 have been apportioned to a veteran's spouse, the apportionment will be discontinued on the day that the temporary absence begins, unless it is determined that the apportionment will continue under § 5.771, Special apportionments.

(b) *Temporary absence from hospital, domiciliary, or nursing home care for less than 30 days.* Except as provided in paragraph (c) of this section, if a veteran is on temporary absence from hospital, domiciliary, or nursing home care for less than 30 consecutive days, VA will not resume any Section 306 Pension payments reduced under § 5.726 or § 5.728. If the veteran is later discharged or released from hospital, domiciliary, or nursing home care, VA will retroactively pay the amounts that were unpaid during any such temporary absence.

(c) *Adjustment based on need.* (1) If a veteran has been under hospital, domiciliary, or nursing home care for more than 6 months and the combined periods of absence from such care exceed a total of 30 days, VA will retroactively pay the amounts that were unpaid under § 5.726 during such temporary absences if:

(i) The director of the facility providing hospital, domiciliary, or nursing home care requests payment on behalf of a veteran; and

(ii) Payment is necessary to meet the veteran's financial needs.

(2) If the conditions in paragraph (c)(1) of this section are met, payment will be restored even if the veteran has not been discharged or released from hospital, domiciliary, or nursing home care.

(d) *Discharge or release*—(1) *General.* If a veteran is discharged or released from hospital, domiciliary, or nursing home care, VA will resume any Section 306 Pension payment reduced under § 5.726 or § 5.728 effective the date the veteran was discharged or released. Payment will be resumed at the rate in effect before the reduction based on hospital, domiciliary, or nursing home care, unless the evidence of record shows that a different rate is required.

(2) *Apportionment of benefits to a spouse.* If benefits reduced under § 5.726 have been apportioned to a veteran's spouse, the apportionment will be discontinued on the day that the veteran is discharged or released from hospital, domiciliary, or nursing home care, unless it is determined that the apportionment will continue under § 5.771, Special apportionments.

(Authority: 38 U.S.C. 5503; Pub. L. 95–588, Sec. 306, 92 Stat. 2497)

§ 5.730 Resumption of Old-Law Pension and Old-Law Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care.

(a) *Temporary absence from hospital, domiciliary, or nursing home care for 30 days or more.* If a veteran is on temporary absence from hospital, domiciliary, or nursing home care for 30 days or more, VA will resume any Old-Law Pension payment reduced under § 5.727 or § 5.728. The effective date of the resumed payment for Old-Law Pension reduced under § 5.727 is the date of reduction. The effective date of the resumed payment for Old-Law Pension reduced under § 5.728 is the date the temporary absence begins. If the veteran returns to hospital, domiciliary, or nursing home care, then VA will reduce Old-Law Pension effective the date that the temporary absence ends.

(b) *Temporary absence from hospital, domiciliary, or nursing home care for less than 30 days.* If a veteran is on temporary absence from hospital, domiciliary, or nursing home care for less than 30 consecutive days, VA will not resume any Old-Law Pension payments reduced under § 5.727 or § 5.728. If the veteran is later discharged or released from hospital, domiciliary, or nursing home care, VA will retroactively pay the amounts that were unpaid during any such temporary absence.

(c) *Regular discharge or release.* If a veteran is regularly discharged or released from hospital, domiciliary, or nursing home care, VA will resume any Old-Law Pension payment reduced under § 5.727 or § 5.728 effective the date that the veteran was discharged or released. Payment will be resumed at the rate in effect before the reduction based on hospital, domiciliary, or nursing home care, unless the evidence of record shows that a different rate is required. VA will also pay any amounts that were unpaid during the veteran's hospital, domiciliary, or nursing home care.

(d) *Irregular discharge or release.* If a veteran is irregularly discharged or released from hospital, domiciliary, or nursing home care, VA will resume any

Old-Law Pension payment reduced under § 5.727 or § 5.728 effective the date the veteran was discharged or released. Payment will be resumed at the rate in effect before the reduction based on hospital, domiciliary, or nursing home care, unless the evidence of record shows that a different rate is required. If a veteran's irregular discharge or release is not changed to a regular discharge or release, VA will not pay any Old-Law Pension that was unpaid during the veteran's hospital, domiciliary, or nursing home care until 6 months after the date the veteran was discharged or released.

(Authority: Pub. L. 95–588, Sec. 306, 92 Stat. 2497)

§ 5.731–5.739 [Reserved]

2. Add subpart M to read as follows:

Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries

Determining Eligibility for Apportionments

Sec.
5.770 Apportionment claims.
5.771 Special apportionments.
5.772 Veteran's benefits apportionable.
5.773 Veterans disability compensation.
5.774 Benefits not apportionable.
5.775–5.779 [Reserved]
5.780 Eligibility for apportionment of pension.
5.781 Eligibility for apportionment of a surviving spouse's dependency and indemnity compensation.
5.782 Effective date of apportionment grant or increase.
5.783 Effective date of apportionment reduction or discontinuance.
5.784 Special rules for apportioned benefits on death of beneficiary or apportionee.
5.785–5.789 [Reserved]

Incompetency and Payments to Fiduciaries and Minors

5.790 Determinations of incompetency and competency.
5.791 General fiduciary payments.
5.792 Institutional awards.
5.793 Limitation on payments for a child.
5.794 Beneficiary rated or reported incompetent.
5.795 Change of name of fiduciary.
5.796 Child's benefits to a fiduciary of an incompetent surviving spouse.
5.797 Testamentary capacity for VA insurance purposes.
5.798 Payment of disability compensation previously not paid because an incompetent veteran's estate exceeded $25,000.
5.799–5.809 [Reserved]

Payments to Incarcerated Beneficiaries

5.810 Incarcerated beneficiaries—general provisions and definitions.
5.811 Limitation on disability compensation during incarceration.
5.812 Limitation on dependency and indemnity compensation during incarceration.
5.813 Discontinuance of pension during incarceration.
5.814 Apportionment when a primary beneficiary is incarcerated.
5.815 Resumption of disability compensation or dependency and indemnity compensation upon a beneficiary's release from incarceration.
5.816 Resumption of pension upon a beneficiary's release from incarceration.
5.817 Fugitive felons.
5.818–5.819 [Reserved]

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart M—Apportionments to Dependents and Payments to Fiduciaries and Incarcerated Beneficiaries

Determining Eligibility for Apportionments

§ 5.770 Apportionment claims.

(a) *General*—(1) *Veteran.* All or part of the pension or disability compensation payable to any veteran may be apportioned:

(i) For his or her spouse, child, or dependent parents if the veteran is incompetent and is being furnished hospital treatment, nursing home, or domiciliary care by the United States, or any political subdivision thereof.

(ii) If the veteran is not residing with his or her spouse, or if the veteran's child is not residing with the veteran and the veteran is not reasonably discharging his or her responsibility for the spouse's or child's support.

(2) *Surviving spouse.* Where a child of a deceased veteran is not living with the veteran's surviving spouse, the dependency and indemnity compensation (DIC) or pension otherwise payable to the surviving spouse may be apportioned.

(b) *Apportionment to a child on active duty.* Except as provided in § 5.774(e)(2), no apportionment of disability or death benefits will be made or changed solely because a child has entered active duty.

(c) *Apportionment if beneficiary providing for dependents.* No apportionment will be made where the veteran, the veteran's spouse when paid "as wife" or "as husband", surviving spouse, or fiduciary is providing for dependents. The additional benefits for such dependents will be paid to the veteran, spouse, surviving spouse, or fiduciary.

(d) *Apportionment of death benefits.* Any amounts payable for children under §§ 5.780, Eligibility for apportionment of pension, and 5.781, Eligibility for apportionment of a surviving spouse's dependency and indemnity compensation, will be equally divided among the children.

(e) *Apportionment to a child not residing with surviving spouse.* The amount payable for a child in custody of and residing with the surviving spouse shall be paid to the surviving spouse. Amounts payable to a surviving spouse for a child in his or her custody but residing with someone else may be apportioned if the surviving spouse is not reasonably contributing to the child's support.

(Authority: 38 U.S.C. 5307, 5502(d))

§ 5.771 Special apportionments.

(a) *General.* Without regard to any provision regarding apportionment other than § 5.774(b), (c), and (f), where hardship is shown to exist, pension, disability compensation, or dependency and indemnity compensation may be specially apportioned between the veteran and his or her dependent or between the surviving spouse and a child. Such an apportionment will be based on the facts in the individual case. The apportionment may not cause undue hardship to the other persons in interest.

(b) *Factors that determine a special apportionment.* In determining the basis for special apportionment, consideration will be given to such factors as:

(1) The amount of VA benefits payable;

(2) The net worth, income, and expenses of the beneficiary and any dependent on whose behalf apportionment is claimed; and

(3) The special needs of the veteran, his or her dependent, and the apportionment claimant.

(c) *Apportioned amount.* The amount apportioned should generally be consistent with the total number of dependents involved. Ordinarily, apportionment of more than 50 percent of the veteran's benefits would constitute undue hardship while apportionment of less than 20 percent of his or her benefits would not provide a reasonable amount for any apportionee.

(Authority: 38 U.S.C. 5307)

§ 5.772 Veteran's benefits apportionable.

A veteran's benefits may be apportioned:

(a) *General.* If the veteran is not residing with his or her spouse or his or her child, the veteran is not reasonably discharging his or her responsibility for the spouse's or child's support, and a claim for apportionment is filed by or for the spouse or child.

(b) *Pending appointment of fiduciary.* Pending the appointment of a guardian or other fiduciary.

(c) *Veteran receiving hospital, domiciliary, or nursing home care*—(1)

Incompetent veteran—(i) *Spouse or child.* Where an incompetent veteran without a fiduciary is receiving hospital treatment, nursing home, or domiciliary care provided by the United States or a political subdivision, his or her benefit may be apportioned for a spouse or child unless such benefit is paid to a spouse ("as wife" or "as husband") for the use of the veteran and his or her dependents.

(ii) *Dependent parent.* Where an incompetent veteran without a fiduciary is receiving hospital treatment, nursing home, or domiciliary care provided by the United States or a political subdivision, his or her disability compensation may be apportioned for a dependent parent, unless such benefit is paid to a spouse ("as wife" or "as husband") for the use of the veteran and his or her dependents.

(2) *Competent veteran*—(i) *Section 306 Pension.* Where the amount of Section 306 Pension payable to a married veteran is reduced to $50 monthly under § 5.726, Reduction of Section 306 Pension while a veteran is receiving hospital, domiciliary, or nursing home care, an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $50 and the total amount of pension payable on December 31, 1978.

(ii) *Improved Pension.* Where the amount of Improved Pension payable to a married veteran under 38 U.S.C. 1521(b) is reduced to $90 monthly under § 5.722, Reduction of Improved Pension while a veteran is receiving domiciliary or nursing home care, an apportionment may be made to such veteran's spouse upon an affirmative showing of hardship. The amount of the apportionment generally will be the difference between $90 and the rate payable if pension were being paid under 38 U.S.C. 1521(c), including the additional amount payable under 38 U.S.C. 1521(e) if the veteran is so entitled.

(d) *Apportionment of additional disability compensation for dependent parent.* Where additional disability compensation is payable for a parent and the veteran or his or her guardian neglects or refuses to contribute such an amount to the support of the parent, the additional disability compensation will be paid to the parent upon receipt of a claim.

(Authority: 38 U.S.C. 501(a), 5307, 5502, 5503(a); Pub. L. 95–588, *Sec.* 306, 92 Stat. 2497)

Cross Reference: §§ 5.711, Payment to dependents due to the disappearance of a veteran for 90 days or more; 5.722, Reduction of Improved Pension while a veteran is receiving domiciliary or nursing home care; 5.725, Resumption of Improved Pension and Improved Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care; 5.726, Reduction of Section 306 Pension while a veteran is receiving hospital, domiciliary, or nursing home care; 5.729, Resumption of Section 306 Pension and Section 306 Pension based on the need for regular aid and attendance after a veteran is on temporary absence from hospital, domiciliary, or nursing home care or is discharged or released from such care; 5.792, Institutional awards; 5.814, Apportionment when a primary beneficiary is incarcerated.

§ 5.773 Veterans disability compensation.

Rates of apportionment of disability compensation will be determined under § 5.771.

§ 5.774 Benefits not apportionable.

Benefits will not be apportioned:

(a) If the total benefit payable does not permit payment of a reasonable amount to any apportionee.

(b) If a court of proper jurisdiction has found the veteran's spouse guilty of adultery.

(c) If VA determines that the veteran's spouse has lived with another person and has openly held himself or herself out to the public to be the spouse of that person unless:

(1) The spouse subsequently reconciled with the veteran and later became estranged from the veteran; or

(2) The spouse had entered into the relationship with the other person in good faith. For purposes of this paragraph (c)(2), "good faith" means that the spouse had a reasonable basis to believe that the marriage to the veteran was legally terminated (for example, due to trickery on the part of the veteran).

(d) If another person legally adopts a veteran's child, except VA may apportion the additional disability compensation payable to a veteran for the child or the additional dependency and indemnity compensation payable to a surviving spouse for the child.

(e)(1) If the apportionment is claimed for a child who is on active duty.

(2) If a child is receiving apportioned benefits directly and then enters active duty. The apportionment will be discontinued and such benefits will be paid to the veteran. The effective date of the discontinuance will be the first day of the month after the month for which VA last paid the apportionment.

Note to paragraph (e)(2): In accordance with § 5.770(b), if a child is included in an existing apportionment to an estranged spouse and then enters active duty, no adjustment in the apportioned award will be made based on the child's entry into service.

(f)(1) To any beneficiary's dependent who:

(i) Is determined by VA to have been guilty of mutiny, treason, sabotage, or rendering assistance to an enemy of the United States or its allies; or

(ii) Participated in the acts that caused forfeiture for fraud or treasonable acts.

(2) If, after September 1, 1959, benefits were forfeited for fraud, treasonable acts, or subversive activity.

Cross Reference: §§ 5.676, Forfeiture for fraud, 5.677, Forfeiture for treasonable acts, and 5.678, Forfeiture for subversive activity.

(g) Unless the estranged spouse of a veteran files a claim for an apportionment. If there is a child of the veteran not in his or her custody, an apportionment will not be authorized unless a claim for an apportionment is filed by or for the child.

(Authority: 38 U.S.C. 5307, 6103(b), 6104(c), 6105(a))

§§ 5.775–5.779 [Reserved]

§ 5.780 Eligibility for apportionment of pension.

(a) *Disability pension.* Disability pension will be apportioned to the veteran's spouse or child, if the veteran is not residing with his or her spouse, or if the veteran's child is not residing with the veteran, and the veteran is not reasonably discharging his or her responsibility for the spouse's or child's support. Apportionment of these benefits will be made under § 5.771, Special apportionments.

(b) *Death pension*—(1) *Old-Law Death Pension or Section 306 Death Pension.* Old-Law Death Pension or Section 306 Death Pension will be apportioned to a child of a deceased veteran who is not in the custody of the surviving spouse. Apportionment of these benefits will be made at the rates approved by the Under Secretary for Benefits except when the facts and circumstances in a case warrant apportionment under § 5.771, Special apportionments.

(2) *Improved Death Pension.* Improved Death Pension will be apportioned to the veteran's child if a child of the deceased veteran is not in the custody of the surviving spouse. Apportionment of these benefits will be

made under § 5.771, Special apportionments.

(Authority: 38 U.S.C. 5307)

§ 5.781 Eligibility for apportionment of a surviving spouse's dependency and indemnity compensation.

(a) *Conditions under which apportionment may be made.* The surviving spouse's award of dependency and indemnity compensation (DIC) will be apportioned where there is a child under 18 years of age and not in the custody of the surviving spouse. The surviving spouse's award of DIC will not be apportioned under this paragraph (a) for a child over the age of 18 years.

(b) *Rates payable.* The DIC share for each child under 18 years of age, including those in the surviving spouse's custody as well as those who are not in such custody, will be the additional allowance payable for each dependent child, except when the facts and circumstances in a case warrant special apportionment under § 5.771, Special apportionments. Current and historical DIC rates can be found on the Internet at *http://www.va.gov* or are available from any Veterans' Service Center. The share for the surviving spouse will be the difference between the children's share and the total amount payable.

§ 5.782 Effective date of apportionment grant or increase.

(a) *General rule.* Except as provided in paragraph (b) of this section, the effective date of an apportionment or an increased apportionment is the first day of the month after the month in which VA receives an apportionment claim or a claim for an increased apportionment.

(b) *Exceptions to general rule*—(1) *Claim for VA benefits is pending.* This paragraph (b)(1) applies if a veteran or surviving spouse (primary beneficiary) has a claim for VA benefits pending on the date that VA receives an apportionment claim. If the primary beneficiary's claim is granted, then the effective date of the apportionment will be the same as the effective date of the primary beneficiary's award, if the apportionment claimant is otherwise shown to be entitled to an apportionment from that effective date.

(2) *Apportionment claimant not yet established as the beneficiary's dependent.* This paragraph (b)(2) applies if VA receives an apportionment claim within 1 year of the award of benefits to the primary beneficiary and the apportionment claimant has not been established as a dependent on the primary beneficiary's award. The effective date of the apportionment will be the same as the effective date of the primary beneficiary's award, if the apportionment claimant is otherwise shown to be entitled to an apportionment from that effective date.

(3) *Veteran's or surviving spouse's benefits are reduced or discontinued.* Except as provided in paragraph (b)(4) of this section, this paragraph (b)(3) applies if a veteran's or surviving spouse's benefits have been reduced or discontinued but an apportionment of the benefits that would otherwise be payable to the primary beneficiary is authorized. In this situation, the effective date of the apportionment is the same as the date on which the primary beneficiary's benefits were reduced or discontinued, if VA receives the apportionment claim within 1 year after that date and the apportionment claimant is otherwise shown to be entitled to an apportionment from that date.

(4) *The primary beneficiary is incarcerated.* The effective date of an apportionment or increased apportionment when the primary beneficiary is incarcerated is specified in § 5.814(e), Apportionment when a primary beneficiary is incarcerated.

(Authority: 38 U.S.C. 501(a), 5110)

§ 5.783 Effective date of apportionment reduction or discontinuance.

(a) *General rule.* Except as otherwise provided in this part, if VA reduces or discontinues an apportionment because the basis for the apportionment no longer exists, then the effective date of the reduction or discontinuance will be the first day of the month after the month in which the basis for the apportionment ceased to exist.

(b) *Exceptions to general rule.* (1) *Death, divorce, or marriage of an apportionee.* The effective date of discontinuance of an apportionment due to the death, divorce, or marriage of the apportionee is the first day of the month of the event, except the effective date of discontinuance of an apportionment of Old-Law Pension or Section 306 Pension will be January 1 of the calendar year immediately after the event.

Note to paragraph (b)(1): The effective date of discontinuance of the dependency allowance on the primary beneficiary's award due to the death, divorce, or marriage of the apportionee is determined in accordance with § 5.184, Effective dates for reductions or discontinuances based on changes in dependency status, or § 5.477, Effective dates for Old-Law Pension and Section 306 Pension reductions or discontinuances.

(2) *Death or marriage of dependent of apportionee.* The effective date of discontinuance of an apportionment due to the death or marriage of a child included in an existing apportionment to an estranged spouse or another custodian of the child is the first day of the month after the month of the event.

(3) *Primary beneficiary dies or entitlement ends.* The effective date of discontinuance of an apportionment because the primary beneficiary dies or loses entitlement to the primary benefit is the same effective date that applies to the discontinuance of the primary benefit.

(4) *Primary beneficiary no longer incarcerated.* The effective date of discontinuance or reduction of an apportionment because the primary beneficiary is no longer incarcerated is specified in § 5.815 or § 5.816, depending on the primary benefit being apportioned.

(Authority: 38 U.S.C. 501(a), 5112)

§ 5.784 Special rules for apportioned benefits on death of beneficiary or apportionee.

(a) *Payment to person receiving apportionment when the beneficiary dies.* If an apportionment has not been paid and the beneficiary dies, then VA will pay the apportionee the unpaid apportionment through the first day of the month of the beneficiary's death. Except as provided in paragraph (b) of this section, the unpaid apportionment is not subject to payment as accrued benefits.

(b) *Person receiving apportioned share of VA benefits dies*—(1) *Receiving apportionment of veteran's benefits.* If a person receiving an apportionment of a veteran's benefits dies, then VA will pay any unpaid apportionment to the veteran, if living. If the veteran is not living, then the unpaid apportionment is payable only as accrued benefits to dependents of the veteran, under § 5.551(b)(1), Persons entitled to accrued benefits. If there is no eligible dependent claimant, then the unpaid apportionment is payable only as accrued benefits to the person who bore the expense of the deceased apportionee's last sickness or burial under § 5.551(e), Persons entitled to accrued benefits.

(2) *Receiving apportionment of surviving spouse's death benefits.* If a child receiving an apportionment of a surviving spouse's dependency and indemnity compensation (DIC) or death pension dies, then the unpaid apportionment is payable only as accrued benefits to the veteran's surviving child who is entitled to death DIC or pension, under § 5.551(d)(1), Persons entitled to accrued benefits. If there is no eligible surviving child claimant, then the unpaid apportionment is payable only as

accrued benefits to the person who bore the expense of the deceased child's last sickness or burial under § 5.551(e), Persons entitled to accrued benefits.

(Authority: 38 U.S.C. 5112(b)(1), 5121(a), 5502(d))

§§ 5.785—5.789 [Reserved]

Incompetency and Payments to Fiduciaries and Minors

§ 5.790 Determinations of incompetency and competency.

(a) *Definition of mental incompetency.* A mentally incompetent person is one who because of injury or disease lacks the mental capacity to contract or to manage his or her own affairs, including disbursement of funds without limitation.

(b) *Authority.* (1) Agencies of original jurisdiction have sole authority to make official determinations of incompetency and competency for purposes of insurance (38 U.S.C. 1922) and, subject to § 13.56 of this chapter, disbursement of benefits. Such determinations are final and binding on field stations for these purposes.

(2) Where the beneficiary is rated incompetent, the Veterans Service Center Manager or Pension Management Center Manager will:

(i) Develop information as to the beneficiary's social, economic, and industrial adjustment;

(ii) Appoint or recommend appointment of a fiduciary as provided in § 13.55 of this chapter;

(iii) Select a method of disbursing payment as provided in § 13.56 of this chapter or, in the case of a married beneficiary, appoint the beneficiary's spouse to receive payments as provided in § 13.57 of this chapter; and

(iv) Authorize disbursement of the benefit.

(3) If, in the course of fulfilling the responsibilities assigned in paragraph (b)(2) of this section, the Veterans Service Center Manager or Pension Management Center Manager develops evidence indicating that the beneficiary may be capable of administering the funds payable without limitation, he or she will refer that evidence to the agency of original jurisdiction with a statement as to his or her findings. The agency of original jurisdiction will consider this evidence, together with all other evidence of record, to determine whether its prior determination of incompetency should remain in effect. Reexamination may be requested as provided in § 5.102, Meeting reexamination requirements, if necessary to properly evaluate the beneficiary's mental capacity to contract or manage his or her own affairs.

(c) *Medical opinion.* Unless the medical evidence is clear and convincing as to the person's incompetency, the agency of original jurisdiction will make no determination of incompetency without a definite expression regarding the question by the responsible medical authorities. Considerations of medical opinions will be in accordance with the principles in paragraph (a) of this section. A determination of incompetency should be based upon all evidence of record, and there should be a consistent relationship between the percentage of disability, facts relating to commitment or hospitalization, and the determination of incompetency.

(d) *Presumption in favor of competency.* Where reasonable doubt arises regarding a beneficiary's mental capacity to contract or to manage his or her own affairs, including the disbursement of funds without limitation, such doubt will be resolved in favor of competency. *See* § 5.3(b)(2), Standards of proof.

(e) *Due process.* Whenever it is proposed to make an incompetency determination, the beneficiary will be notified of the proposed action and of the right to a hearing as provided in § 5.83, Right to notice of decisions and proposed adverse actions. Such notice is not necessary if the beneficiary has been declared incompetent by a court of competent jurisdiction or if a guardian has been appointed for the beneficiary based upon a court finding of incompetency. If a hearing is requested, it must be held prior to a rating decision of incompetency. Failure or refusal of the beneficiary after proper notice to request or cooperate in such a hearing will not preclude a rating decision based on the evidence of record.

(f) *Effective date*—(1) *Incompetency determination.* The effective date of a determination of incompetency is the date of the rating decision finding incompetency. (This paragraph (f)(1) does not apply to an incompetency determination made for insurance purposes under 38 U.S.C. 1922.)

(2) *Competency determination.* If a beneficiary previously determined to be incompetent is later determined to be competent, the effective date of the determination of competency is the date the evidence of record shows the beneficiary regained competence.

(Authority: 38 U.S.C. 501(a), 5502)

§ 5.791 General fiduciary payments.

(a) *Payments to a fiduciary and to or on behalf of a beneficiary.* (1) *Payment to a fiduciary.* VA may pay benefits to a duly recognized fiduciary on behalf of a person who is mentally incompetent or who is a minor.

(2) *Direct payment to or on behalf of a beneficiary.* If the Veterans Service Center Manager or Pension Management Center Manager determines that it is in the best interest of a mentally incompetent or minor beneficiary, VA may pay benefits, regardless of any legal disability on the part of the beneficiary, directly to:

(i) The beneficiary; or

(ii) A relative of the beneficiary, or another person, for the use of the beneficiary.

(3) *Direct payment to certain minors.* Unless otherwise contraindicated by evidence of record, payment will be made directly to the following classes of minors without any referral to the Veterans Service Center Manager or Pension Management Center Manager:

(i) Those who are serving in or have been discharged from the military forces of the United States; and

(ii) Those who qualify for survivors benefits as a surviving spouse.

(4) *Immediate payment to spouse of incompetent veteran.* Unless otherwise contraindicated by evidence of record, if a veteran has no guardian, VA may immediately pay benefits to the spouse of an incompetent veteran for the use of the veteran and his or her dependents prior to referral to the Veterans Service Center Manager or Pension Management Center Manager. *See* § 13.57 of this chapter, Payment to the wife or husband of incompetent veteran.

Cross Reference: Part 13 of this title regarding VA fiduciary activities.

(b) *Payment to the parent of the child.* Where a child is in the custody of a natural parent, adoptive parent, or stepparent, benefits payable to the child may be paid to the parent as custodian of the child.

(c) *Payment to custodian-in-fact.* All or any part of a benefit due a minor or incompetent adult, payment of which is suspended or withheld because payment may not be properly made to an existing fiduciary, may be paid temporarily to the person having custody and control of the beneficiary. *See* § 13.63 of this chapter, Payment to custodian-in-fact.

(d) *Payment to bonded officer of Indian reservation.* Any benefits due an incompetent adult or minor Indian, who is a recognized ward of the Government, may be awarded to the superintendent or other bonded officer designated by the Secretary of the Interior to receive funds under 25 U.S.C. 14. *See* § 13.62 of this chapter, Payment to bonded officer of Indian reservation.

(e) *Effective date for payment to a fiduciary.* The effective date of payment

to a fiduciary is the first day of the month after the month for which VA last paid benefits.

Note to paragraph (e): The initial payment to the fiduciary shall include amounts withheld for possible apportionments as well as money in Personal Funds of Patients.

(Authority: 38 U.S.C. 5502)

§ 5.792 Institutional awards.

(a) *General.* When an incompetent veteran entitled to pension or disability compensation is a patient in a hospital or other institution, VA may pay all or part of the benefit to the chief officer of the hospital or institution for the veteran's use and benefit if the Veterans Service Center Manager or Pension Management Center Manager determines that such payment will:

(1) Adequately provide for the needs of the veteran; and

(2) Obviate the need for appointment of another type of fiduciary.

Cross Reference: § 13.61, Payment to the chief officer of institution.

(b) *Non-VA hospital or institution.* (1) In an institutional award of pension or disability compensation, VA may pay to the chief officer of a non-VA hospital or institution on behalf of the veteran an amount determined under § 13.61 of this chapter.

(2) Any excess funds held by the chief officer of a non-VA institution under this section that are not necessary for the benefit of the veteran will be returned to VA or to a fiduciary, if one has been appointed.

(3) If payments are being made to the chief officer of a non-VA hospital or institution, VA will deposit all sums otherwise payable in excess of the institutional award and any apportionments in Personal Funds of Patients.

(c) *Excess funds.* Upon the death of an institutionalized incompetent veteran with no surviving heirs, excess funds will be returned to VA.

(d) *Apportionment.* An institutionalized incompetent veteran's benefits may be apportioned to his or her dependents under § 5.771, Special apportionments.

(e) *Effective date for payment of institutional award.* The effective date of payment to the chief officer of a hospital or institution is:

(1) The first day of the month after the month for which VA last paid benefits; or

(2) On an initial or resumed award, the date of entitlement to benefits, subject to any amounts paid or withheld for apportionment of benefits.

(f) *Effective date for discontinuance of institutional award.* The effective date of discontinuance of payment to the chief officer of the hospital or institution is the first day of the month after the month:

(1) A fiduciary is appointed;

(2) The veteran is discharged from the hospital or institution; or

(3) The veteran is rated competent.

(Authority: 38 U.S.C. 501(a), 5307, 5502)

§ 5.793 Limitation on payments for a child.

If a fiduciary has been appointed for a child because the child is a minor, then VA will not pay benefits to that fiduciary for any period beginning on the date that the child attains the age of majority under the law of the State where the child resides. For any period beginning on that date, if payment is otherwise in order, then VA will pay benefits as follows:

(a) *Competent child reaches age of majority.* If the child is competent, then VA will pay benefits directly to the child. Under these circumstances, VA will retroactively pay the child any benefits that were not paid for a period before the child attained the age of majority.

(b) *Incompetent child reaches age of majority.* If the child is incompetent, then VA will pay benefits to a fiduciary appointed for the child as a mentally incompetent adult unless benefits are paid directly to the child under § 5.791(a)(2)(i), General fiduciary payments.

§ 5.794 Beneficiary rated or reported incompetent.

(a) *General.* VA will not routinely suspend payments directly to a beneficiary who is or may be incompetent while any of the following is pending:

(1) Development of the issue of incompetency;

(2) Certification of a fiduciary by the Veterans Service Center Manager or Pension Management Center Manager; or

(3) A recommendation by the Veterans Service Center Manager or Pension Management Center Manager that payments should be paid directly to the beneficiary.

(b) *Application.* This policy applies to all cases including, but not limited to, cases in which:

(1) Notice or evidence is received that a guardian has been appointed for the beneficiary;

(2) Notice or evidence is received that the beneficiary has been committed to a hospital; or

(3) The beneficiary has been rated incompetent by VA.

§ 5.795 Change of name of fiduciary.

If a fiduciary changes his or her name because of marriage or divorce, VA will accept the fiduciary's statement of the name change.

§ 5.796 Child's benefits to a fiduciary of an incompetent surviving spouse.

If benefits are payable to a surviving spouse for a child and the child is separated from the surviving spouse because of the surviving spouse's incompetency, no apportionment of benefits to the child is required. If the fiduciary is adequately taking care of the needs of the child from the surviving spouse's estate, either voluntarily or pursuant to a decree of court, VA may pay all amounts payable for the child to the fiduciary.

§ 5.797 Testamentary capacity for VA insurance purposes.

When VA refers a case to an agency of original jurisdiction involving the testamentary capacity of the insured to perform a testamentary act (execute a designation or change of beneficiary or execute a designation or change of option), the following considerations will apply:

(a) *Testamentary capacity* means that degree of mental capacity necessary to enable a person to perform a testamentary act. This generally requires that the insured:

(1) Reasonably comprehend the nature and significance of his or her testamentary act, that is, the subject and extent of his or her disposition;

(2) Recognize the object of his or her bounty; and

(3) Appreciate the consequences of his or her testamentary act, uninfluenced by any material delusion as to the property or persons involved.

(b) VA will consider all evidence of record, with emphasis being placed on evidence pertaining to the mental condition of the insured at the time, or nearest to the time, that the insured performed the testamentary act.

(c) There is a general but rebuttable presumption that every insured person possesses testamentary capacity when performing a testamentary act. Therefore, reasonable doubt should be resolved in favor of testamentary capacity. *See* § 5.3(b)(2), Standards of proof.

§ 5.798 Payment of disability compensation previously not paid because an incompetent veteran's estate exceeded $25,000.

If a veteran who was denied payment of disability compensation under § 3.853 of this title is subsequently rated competent for a continuous period of more than 90 days, the withheld disability compensation shall be paid to the veteran in a lump-sum.

Cross Reference: § 3.853 of this title, Incompetents; estate over $25,000 (denying payment of disability compensation to an incompetent veteran who had no dependents and had an estate that exceeded $25,000, during the period from November 1, 1990, through September 30, 1992).

(Authority: 38 U.S.C. 5505, as in effect before Nov. 2, 1994)

§§ 5.799–5.809 [Reserved]

Payments to Incarcerated Beneficiaries

§ 5.810 Incarcerated beneficiaries—general provisions and definitions.

(a) *Definitions*— (1) *Incarceration* means confinement in a Federal, State, or local prison, jail, or other penal institution, including a private detention facility pursuant to an agreement with a Federal, State, or local unit of government. "Incarceration" does not include house arrest, parole, probation, work release, participation in a community control program, commitment to a halfway house or residential re-entry center, or confinement in a foreign country's prison.

(2) *Felony,* for the purposes of §§ 5.811 through 5.817, means any offense punishable by death or incarceration for a term exceeding 1 year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction.

(b) *Classification of foreign offenses.* A felony includes an offense that is prosecuted by a foreign country if the offense is equivalent to a felony under the laws of the United States. A misdemeanor includes an offense that is prosecuted by a foreign country if the offense is equivalent to a misdemeanor under the laws of the United States.

(c) *Length of incarceration.* The 60-day periods of incarceration described in §§ 5.811 through 5.813 begin on the day after the beneficiary is convicted of a felony (or misdemeanor for pension), if the beneficiary is incarcerated as of that date, even if the beneficiary is not sentenced on that date. For beneficiaries who are reincarcerated, such as after conditional release on probation or parole, VA will begin counting a new 60-day period on the first full day of reincarceration.

(d) *Requirement to inform VA.* A claimant or beneficiary must inform VA when he or she becomes incarcerated for:

(1) Conviction of a felony if the person is claiming or receiving compensation, pension, or dependency or indemnity compensation; or

(2) Conviction of a misdemeanor if the person is claiming or receiving pension.

(e) *Notice to the incarcerated beneficiary.* VA will send notice to the incarcerated beneficiary that dependents may be entitled to an apportionment while the beneficiary is incarcerated. The notice will also include information explaining the conditions under which VA may resume payments to the incarcerated beneficiary after the beneficiary is released from incarceration.

(f) *Effective dates.* Payments of disability compensation, dependency and indemnity compensation, or pension will be reduced on the 61st day of incarceration after conviction of a felony. Payments of pension will also be reduced on the 61st day of incarceration after conviction of a misdemeanor.

(Authority: 38 U.S.C. 501, 1505, 5313)

§ 5.811 Limitation on disability compensation during incarceration.

(a) *General.* VA will limit the amount of disability compensation paid to a veteran who has been incarcerated for more than 60 days after conviction of a felony if:

(1) The veteran committed the felony after October 7, 1980;

(2) The veteran was incarcerated on October 1, 1980, for conviction of the felony and was awarded disability compensation after September 30, 1980 (This paragraph (a)(2) applies only to the payment of disability compensation after September 30, 1980.); or

(3) The veteran was incarcerated on October 7, 1980, for conviction of the felony and remained incarcerated for that felony on December 27, 2001. (This paragraph (a)(3) applies only to the payment of disability compensation after March 31, 2002.)

(b) *Retroactive awards.* Whenever disability compensation is awarded to an incarcerated person, any amounts due for periods prior to the date of reduction under this section shall be paid to the incarcerated person.

(c) *Amount payable during incarceration*— (1) *Veteran rated 20 percent or more disabled.* For an incarcerated veteran who is rated 20 percent or more disabled for service-connected disabilities, VA will limit disability compensation to no more than the rate payable under 38 U.S.C. 1114(a) for a veteran rated 10 percent disabled.

(2) *Veteran rated less than 20 percent disabled.* For an incarcerated veteran who is rated less than 20 percent disabled for service-connected disabilities, VA will limit disability compensation to no more than one-half the rate payable under 38 U.S.C. 1114(a) for a veteran rated 10 percent disabled. This paragraph (c)(2) applies even if such a veteran is entitled to special monthly compensation under 38 U.S.C. 1114(k) or (q).

Cross Reference: For the rule on total-disability ratings based on individual unemployability that would first become effective while a veteran is incarcerated, *see* § 5.284(b).

(Authority: 38 U.S.C. 501(a), 1114, 5313; Pub. L. 107–103, Sec. 506, 115 Stat. 996–97)

§ 5.812 Limitation on dependency and indemnity compensation during incarceration.

(a) *General.* VA will limit dependency and indemnity compensation (DIC) paid to a beneficiary who has been incarcerated for more than 60 days after conviction of a felony if:

(1) The beneficiary committed the felony after October 7, 1980; or

(2) The beneficiary was incarcerated on October 1, 1980 for conviction of the felony and was awarded DIC after September 30, 1980. (This paragraph (a)(2) applies only to the payment of DIC after September 30, 1980.)

(b) *Amount payable during incarceration.* VA will limit DIC to no more than one-half the rate of disability compensation payable under 38 U.S.C. 1114(a) to a veteran rated 10 percent disabled.

(c) *Parents' DIC—Effect on non-incarcerated parent.* If two parents are both entitled to DIC and were living together before the benefits payable to one were reduced due to incarceration, VA will determine entitlement to DIC for the other parent as if they were not living together.

(d) *Retroactive awards.* Whenever DIC is awarded to an incarcerated person, any amounts due for periods prior to the date of reduction under this section shall be paid to the incarcerated person.

(Authority: 38 U.S.C. 501(a), 1114, 5313)

§ 5.813 Discontinuance of pension during incarceration.

(a) *General provision.* VA will discontinue pension payments to or for a person who has been incarcerated for more than 60 days after conviction of a felony or of a misdemeanor. This section applies to any pension that VA administers under a public or private law.

(b) *Veteran entitled to pension and disability compensation.* When an incarcerated veteran is disqualified from receiving pension payments under this section but is also entitled to disability compensation, VA will pay disability compensation in lieu of pension under either of the circumstances described in paragraphs (b)(1) or (b)(2) of this section.

(1) If the veteran does not have a spouse or child, then the award of

disability compensation in such cases will be effective on the date pension is discontinued under this section.

(2) If the veteran has a spouse or child but elects to receive disability compensation after VA has notified the veteran of the effect of electing disability compensation on the amount available for apportionment, then the award of disability compensation will be effective on the later of the date VA received the veteran's election or the date of discontinuance of pension under paragraph (a) of this section. (If the veteran does not elect disability compensation, pension will nevertheless be discontinued under paragraph (a) of this section.)

(Authority: 38 U.S.C. 501(a), 1505)

§ 5.814 Apportionment when a primary beneficiary is incarcerated—

(a) *Notice to dependents of incarcerated beneficiary.* (1) When VA limits or discontinues benefits under §§ 5.811 through 5.813, VA will send notice to any dependent of the right to apply for an apportionment if VA is aware of the dependent's existence and can obtain the necessary address.

(2) If an apportionment is awarded, VA will send notice to the apportionee that VA will immediately discontinue the apportionment when the incarcerated beneficiary is released. The notice will also inform the apportionee that if the apportionee and the incarcerated beneficiary do not live together when the incarcerated beneficiary is released, the apportionee may submit a new apportionment claim.

(b) *Apportionment of disability compensation or dependency and indemnity compensation*—(1) *Eligibility for apportionment.* (i) VA may apportion an incarcerated veteran's unpaid disability compensation to the veteran's spouse, child, or dependent parent.

(ii) VA may apportion an incarcerated surviving spouse's unpaid dependency and indemnity compensation (DIC) to a child.

(iii) VA may apportion an incarcerated child's unpaid DIC to the surviving spouse or to another child.

(2) *Amount of apportionment.* The apportionment amount of a beneficiary's unpaid disability compensation or DIC benefits will be based on individual need. In determining individual need, VA will consider factors such as:

(i) The amount of VA benefits available to be apportioned;

(ii) The net worth, income, and expenses of the apportionment claimant(s); and

(iii) The special needs of the apportionment claimant(s).

(c) *Apportionment of veteran's pension*—(1) *Requirements.* VA may apportion an incarcerated veteran's unpaid pension to the veteran's spouse or child if all of the following conditions are met:

(i) The veteran would continue to be entitled to pension if not for the incarceration;

(ii) The annual income of the spouse or child is such that Improved Death Pension would be payable;

(iii) If the veteran was receiving Old-Law Pension, the spouse or child was recognized by VA as the veteran's dependent before July 1, 1960; and

(iv) If the veteran was receiving Section 306 Pension, the spouse or child was recognized by VA as the veteran's dependent before January 1, 1979.

(2) *Amount of apportionment.* VA will apportion an amount of such unpaid pension equal to the lesser of:

(i) The amount of Improved Death Pension that would be payable to the apportionee; or

(ii) The amount of pension that the veteran received for the month before incarceration.

(d) *Allocation of death pension.* The effective date rules in paragraph (e) of this section and in § 5.816(c) apply to the allocation of death pension under this paragraph (d).

(1) If a surviving spouse is disqualified from receiving pension payments under § 5.813, VA may pay a child the rate of Improved Death Pension that would be payable if the incarcerated surviving spouse did not exist.

(2) If a surviving child is disqualified from receiving pension payments under § 5.813, VA may pay a surviving spouse or another child the rate of Improved Death Pension that would be payable if the incarcerated child did not exist.

(e) *Effective date of apportionment because of incarceration*—(1) *General.* Except as provided in paragraph (e)(2) of this section, the effective date of an apportionment or allocation is the date VA receives an apportionment claim.

(2) *Specific effective dates*—(i) *Disability compensation, dependency and indemnity compensation, and disability pension.* The effective date of an apportionment of disability compensation, dependency and indemnity compensation (DIC), or disability pension is the date of the reduction or discontinuance of benefits to the incarcerated primary beneficiary (that is, the 61st day of incarceration following conviction) if VA receives an apportionment claim no later than 1 year after the notice required by § 5.810(e) (notifying the incarcerated beneficiary that his or her dependents may be entitled to an apportionment) and if any necessary evidence is received by VA no later than 1 year after the date of VA's request for the evidence.

(ii) *Death pension.* The effective date of an allocation of death pension is the date of the discontinuance of benefits to the incarcerated primary beneficiary (that is, the 61st day of incarceration following conviction) if evidence of income is received by VA no later than 1 year after the date of VA's request for the evidence.

(3) *Retroactive awards.* If VA retroactively grants an apportionment or allocation under this section, VA will:

(i) Not re-pay to the apportionee any benefits previously paid to the primary beneficiary; and

(ii) Consider any amounts that were paid to the primary beneficiary, but were due to the apportionee, as having been paid to the apportionee.

(Authority: 38 U.S.C. 501, 1505, 5313)

§ 5.815 Resumption of disability compensation or dependency and indemnity compensation upon a beneficiary's release from incarceration.

(a) *Effective date of benefit resumption.* Except as provided in paragraph (d) of this section, if the beneficiary remains entitled to disability compensation or dependency and indemnity compensation (DIC):

(1) The effective date of resumption of the full benefit rate upon a beneficiary's release from incarceration is the date of release if VA is informed of the release less than 1 year after the release. Payment of the full benefit rate is subject to paragraphs (b) and (c) of this section.

(2) The effective date of resumption of the full benefit rate is the date VA is informed of the release if VA is informed of the release 1 year or more after the release. Payment of the full benefit rate is subject to paragraphs (b) and (c) of this section.

(b) *Benefits were apportioned and all apportionees reunited.* This paragraph (b) applies if VA apportioned benefits under § 5.814(b) and the released beneficiary is reunited with all apportionees. For purposes of paragraphs (b) and (c) of this section, a dependent parent apportionee, receiving an apportionment under § 5.814(b), will be considered as having been reunited with the beneficiary.

(1) *Effective date of apportionment discontinuance.* As soon as VA is informed that the beneficiary has been released, VA will discontinue the apportionment effective the first day of the month after the month for which VA last paid the apportionment.

(2) *Retroactive payments to released beneficiary.* For the period from the effective date of resumption of the full benefit rate to the effective date of the discontinuance of the apportionment, VA will retroactively pay the released beneficiary the full benefit rate minus an amount equal to the sum of:

(i) The apportionment rate paid to the apportionee for that period; and

(ii) The incarcerated rate paid to the beneficiary for that period.

(c) *Released beneficiary not reunited with all apportionees.* This paragraph (c) applies if VA apportioned benefits under § 5.814(b) and the released beneficiary is not reunited with all apportionees. For purposes of paragraphs (b) and (c) of this section, a dependent parent apportionee, receiving an apportionment under § 5.814(b), will be considered as having been reunited with the beneficiary.

(1) *Effective date of apportionment reduction or discontinuance.* As soon as VA is informed that the beneficiary has been released, VA will:

(i) Discontinue the apportionment to an apportionee with whom the beneficiary is reunited effective the first day of the month after the month for which VA last paid the apportionment; and

(ii) Reduce an apportionment to an apportionee with whom the beneficiary is not reunited to the additional amount payable to the beneficiary for the apportionee effective the first day of the month after the month for which VA last paid the apportionment. VA will pay the beneficiary the full benefit rate minus the new apportionment amount effective on date of the apportionment reduction.

(2) *Retroactive payments to released beneficiary.* For the period from the effective date of resumption of the full benefit rate to the effective date of the discontinuance or reduction of the apportionment, VA will retroactively pay the released beneficiary the full benefit rate minus an amount equal to the sum of:

(i) The apportionment rate paid to the apportionee for that period; and

(ii) The incarcerated rate paid to the beneficiary for that period.

(d) *Conviction overturned on appeal.* If a conviction is overturned on appeal and the beneficiary remains entitled to disability compensation or DIC, the effective date of resumption of the full benefit rate is the date of reduction of benefits. Payment of the full benefit rate is subject to paragraphs (b) and (c) of this section.

(Authority: 38 U.S.C. 501(a), 5313)

§ 5.816 Resumption of pension upon a beneficiary's release from incarceration.

(a) *Effective date of benefit resumption.* If the beneficiary remains entitled to pension:

(1) The effective date of resumption of pension upon a beneficiary's release from incarceration is the date of release if VA is informed of the release less than 1 year after the release. Payment of pension is subject to paragraphs (b) and (c) of this section.

(2) The effective date of resumption of pension is the date VA is informed of the release if VA is informed of the release 1 year or more after the release. Payment of pension is subject to paragraphs (b) and (c) of this section.

(b) *Disability pension was apportioned.* This paragraph (b) applies if VA apportioned a veteran's disability pension under § 5.814(c) or disability compensation under § 5.814(b) because the veteran elected to receive disability compensation in lieu of disability pension under § 5.813(b)(2).

(1) *Effective date of apportionment discontinuance.* As soon as VA is informed that the beneficiary has been released, VA will discontinue the apportionment effective the first day of the month after the month for which VA last paid the apportionment.

(2) *Retroactive payments to released beneficiary.* For the period from the effective date of resumption of pension to the effective date of the discontinuance of the apportionment, VA will retroactively pay the released beneficiary the full benefit rate minus an amount equal to the sum of:

(i) The apportionment rate paid to the apportionee for that period; and

(ii) The incarcerated rate paid to the beneficiary for that period (under § 5.813(b) if the veteran was entitled to disability compensation at the incarcerated rate).

(c) *Death pension was allocated.* This paragraph (c) applies if VA allocated death pension under § 5.814(d).

(1) *Effective date of reduction or discontinuance.* As soon as VA is informed that the beneficiary has been released, VA will reduce or discontinue the rate of Improved Death Pension paid to a surviving spouse or surviving child under § 5.814(d), effective the first day of the month after the month for which VA last allocated Improved Death Pension.

(2) *Retroactive pension payments to released beneficiary.* For the period from the effective date of resumption of pension to the effective date of the reduction or discontinuance of pension to a surviving spouse or surviving child, VA will retroactively pay the released beneficiary the full benefit rate minus an amount equal to the difference between:

(i) The rate paid to the surviving spouse or surviving child under § 5.814(d) for that period; and

(ii) The rate that would have been payable to the surviving spouse or surviving child for that period if the released beneficiary's pension had not been discontinued under § 5.813.

(Authority: 38 U.S.C. 501(a), 1505)

§ 5.817 Fugitive felons.

(a) *General rule.* VA will not pay or apportion disability compensation, dependency and indemnity compensation, or Improved Pension to, for, or on behalf of a person for any period during which that person is a fugitive felon.

(b) *Definitions.* (1) *Fugitive felon* means a person who is:

(i) Fleeing to avoid prosecution for a felony or for an attempt to commit a felony;

(ii) Fleeing custody or confinement after conviction of a felony or conviction of an attempt to commit a felony; or

(iii) Fleeing to avoid custody or confinement for violating a condition of probation or parole imposed for commission of a felony under Federal or State law.

(2) *Felony.* For purposes of this § 5.817, *felony* refers to an offense that is classified as a felony under the laws of the place from which the person flees; however, it also includes an offense classified as a high misdemeanor that would be a felony offense under Federal law.

(Authority: 38 U.S.C. 5313B)

§§ 5.818–5.819 [Reserved]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 118/P.L. 111–372
Section 202 Supportive Housing for the Elderly Act of 2010 (Jan. 4, 2011; 124 Stat. 4077)

S. 841/P.L. 111–373
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S. 3036/P.L. 111–375
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S. 3243/P.L. 111–376
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S. 3447/P.L. 111–377
Post-9/11 Veterans Educational Assistance Improvements Act of 2010 (Jan. 4, 2011; 124 Stat. 4106)

S. 3481/P.L. 111–378
To amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution. (Jan. 4, 2011; 124 Stat. 4128)

S. 3592/P.L. 111–379
To designate the facility of the United States Postal Service located at 100 Commerce Drive in Tyrone, Georgia, as the "First Lieutenant Robert Wilson Collins Post Office Building". (Jan. 4, 2011; 124 Stat. 4130)

S. 3874/P.L. 111–380
Reduction of Lead in Drinking Water Act (Jan. 4, 2011; 124 Stat. 4131)

S. 3903/P.L. 111–381
To authorize leases of up to 99 years for lands held in trust for Ohkay Owingeh Pueblo. (Jan. 4, 2011; 124 Stat. 4133)

S. 4036/P.L. 111–382
To clarify the National Credit Union Administration authority to make stabilization fund expenditures without borrowing from the Treasury. (Jan. 4, 2011; 124 Stat. 4134)

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