Federal Register

6–16–10 Wednesday
Vol. 75 No. 115 June 16, 2010

Pages 33983–34318

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Presidential Documents

Title 3—

The President

Executive Order 13544 of June 10, 2010

Establishing the National Prevention, Health Promotion, and Public Health Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 4001 of the Patient Protection and Affordable Care Act (Public Law 111–148), it is hereby ordered as follows:

Section 1. *Establishment.* There is established within the Department of Health and Human Services, the National Prevention, Health Promotion, and Public Health Council (Council).

Sec. 2. *Membership.*

(a) The Surgeon General shall serve as the Chair of the Council, which shall be composed of:

(1) the Secretary of Agriculture;

(2) the Secretary of Labor;

(3) the Secretary of Health and Human Services;

(4) the Secretary of Transportation;

(5) the Secretary of Education;

(6) the Secretary of Homeland Security;

(7) the Administrator of the Environmental Protection Agency;

(8) the Chair of the Federal Trade Commission;

(9) the Director of National Drug Control Policy;

(10) the Assistant to the President and Director of the Domestic Policy Council;

(11) the Assistant Secretary of the Interior for Indian Affairs;

(12) the Chairman of the Corporation for National and Community Service; and

(13) the head of any other executive department or agency that the Chair may, from time to time, determine is appropriate.

(b) The Council shall meet at the call of the Chair.

Sec. 3. *Purposes and Duties.* The Council shall:

(a) provide coordination and leadership at the Federal level, and among all executive departments and agencies, with respect to prevention, wellness, and health promotion practices, the public health system, and integrative health care in the United States;

(b) develop, after obtaining input from relevant stakeholders, a national prevention, health promotion, public health, and integrative health-care strategy that incorporates the most effective and achievable means of improving the health status of Americans and reducing the incidence of preventable illness and disability in the United States, as further described in section 5 of this order;

(c) provide recommendations to the President and the Congress concerning the most pressing health issues confronting the United States and changes in Federal policy to achieve national wellness, health promotion, and public health goals, including the reduction of tobacco use, sedentary behavior, and poor nutrition;

(d) consider and propose evidence-based models, policies, and innovative approaches for the promotion of transformative models of prevention, integrative health, and public health on individual and community levels across the United States;

(e) establish processes for continual public input, including input from State, regional, and local leadership communities and other relevant stakeholders, including Indian tribes and tribal organizations;

(f) submit the reports required by section 6 of this order; and

(g) carry out such other activities as are determined appropriate by the President.

Sec. 4. *Advisory Group.*

(a) There is established within the Department of Health and Human Services an Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (Advisory Group), which shall report to the Chair of the Council.

(b) The Advisory Group shall be composed of not more than 25 members or representatives from outside the Federal Government appointed by the President and shall include a diverse group of licensed health professionals, including integrative health practitioners who are representative of or have expertise in:

(1) worksite health promotion;

(2) community services, including community health centers;

(3) preventive medicine;

(4) health coaching;

(5) public health education;

(6) geriatrics; and

(7) rehabilitation medicine.

(c) The Advisory Group shall develop policy and program recommendations and advise the Council on lifestyle-based chronic disease prevention and management, integrative health care practices, and health promotion.

Sec. 5. *National Prevention and Health Promotion Strategy.* Not later than March 23, 2011, the Chair, in consultation with the Council, shall develop and make public a national prevention, health promotion, and public health strategy (national strategy), and shall review and revise it periodically. The national strategy shall:

(a) set specific goals and objectives for improving the health of the United States through federally supported prevention, health promotion, and public health programs, consistent with ongoing goal setting efforts conducted by specific agencies;

(b) establish specific and measurable actions and timelines to carry out the strategy, and determine accountability for meeting those timelines, within and across Federal departments and agencies; and

(c) make recommendations to improve Federal efforts relating to prevention, health promotion, public health, and integrative health-care practices to ensure that Federal efforts are consistent with available standards and evidence.

Sec. 6. *Reports.* Not later than July 1, 2010, and annually thereafter until January 1, 2015, the Council shall submit to the President and the relevant committees of the Congress, a report that:

(a) describes the activities and efforts on prevention, health promotion, and public health and activities to develop the national strategy conducted by the Council during the period for which the report is prepared;

(b) describes the national progress in meeting specific prevention, health promotion, and public health goals defined in the national strategy and further describes corrective actions recommended by the Council and actions taken by relevant agencies and organizations to meet these goals;

(c) contains a list of national priorities on health promotion and disease prevention to address lifestyle behavior modification (including smoking cessation, proper nutrition, appropriate exercise, mental health, behavioral health, substance-use disorder, and domestic violence screenings) and the prevention measures for the five leading disease killers in the United States;

(d) contains specific science-based initiatives to achieve the measurable goals of the Healthy People 2020 program of the Department of Health and Human Services regarding nutrition, exercise, and smoking cessation, and targeting the five leading disease killers in the United States;

(e) contains specific plans for consolidating Federal health programs and centers that exist to promote healthy behavior and reduce disease risk (including eliminating programs and offices determined to be ineffective in meeting the priority goals of the Healthy People 2020 program of the Department of Health and Human Services);

(f) contains specific plans to ensure that all Federal health-care programs are fully coordinated with science-based prevention recommendations by the Director of the Centers for Disease Control and Prevention; and

(g) contains specific plans to ensure that all prevention programs outside the Department of Health and Human Services are based on the science-based guidelines developed by the Centers for Disease Control and Prevention under subsection (d) of this section.

Sec. 7. *Administration.*

(a) The Department of Health and Human Services shall provide funding and administrative support for the Council and the Advisory Group to the extent permitted by law and within existing appropriations.

(b) All executive departments and agencies shall provide information and assistance to the Council as the Chair may request for purposes of carrying out the Council's functions, to the extent permitted by law.

(c) Members of the Advisory Group shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701–5707), consistent with the availability of funds.

Sec. 8. *General Provisions.*

(a) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C App.) may apply to the Advisory Group, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Secretary of Health and Human Services in accordance with the guidelines that have been issued by the Administrator of General Services.

(b) Nothing in this order shall be construed to impair or otherwise affect:

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

(2) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

THE WHITE HOUSE,
June 10, 2010.

[FR Doc. 2010–14613
Filed 6–15–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Memorandum of June 10, 2010

Disposing of Unneeded Federal Real Estate—Increasing Sales Proceeds, Cutting Operating Costs, and Improving Energy Efficiency

Memorandum for the Heads of Executive Departments and Agencies

My Administration is committed to eliminating all forms of Government waste and to leading by example as our Nation transitions to a clean energy economy. For decades, the Federal Government, the largest property owner and energy user in the United States, has managed more real estate than necessary to effectively support its programs and missions. Both taxpayer dollars and energy resources are being wasted to maintain these excess assets. In addition, many of the properties necessary for the Government's work are not operated efficiently, resulting in wasted funds and excessive greenhouse gas pollution. For example, over the past decade, the private sector reduced its data center footprint by capitalizing on innovative technologies to increase efficiencies. However, during that same period, the Federal Government experienced a substantial increase in the number of data centers, leading to increased energy consumption, real property expenditures, and operations and maintenance costs. Past attempts at reducing the Federal Government's civilian real property assets produced small savings and had a minor impact on the condition and performance of mission-critical properties. These efforts were not sufficiently comprehensive in disposing of excess real estate and did not emphasize making more efficient use of existing assets.

To eliminate wasteful spending of taxpayer dollars, save energy and water, and further reduce greenhouse gas pollution, I hereby direct executive departments and agencies (agencies) to accelerate efforts to identify and eliminate excess properties. Agencies shall also take immediate steps to make better use of remaining real property assets as measured by utilization and occupancy rates, annual operating cost, energy efficiency, and sustainability. To the extent permitted by law, agency actions shall include accelerating cycle times for identifying excess assets and disposing of surplus assets; eliminating lease arrangements that are not cost effective; pursuing consolidation opportunities within and across agencies in common asset types (such as data centers, office space, warehouses, and laboratories); increasing occupancy rates in current facilities through innovative approaches to space management and alternative workplace arrangements, such as telework; and identifying offsetting reductions in inventory when new space is acquired. Agency actions taken under this memorandum shall align with and support the actions to measure and reduce resource use and greenhouse gas emissions in Federal facilities pursuant to Executive Order 13514 of October 5, 2009 (Federal Leadership in Environmental, Energy, and Economic Performance), and the Federal Data Center Consolidation Initiative, which was announced by the Office of Management and Budget (OMB) in February 2010.

In total, agency efforts required by this memorandum should produce no less than $3 billion in cost savings by the end of fiscal year 2012, yielded from increased proceeds from the sale of assets and reduced operating, maintenance, and energy expenses from disposals or other space consolidation efforts, including leases that are ended. This is in addition to the Department of Defense's Base Realignment and Closure efforts that are expected to achieve $9.8 billion in savings from fiscal year 2010 to fiscal

year 2012, of which $5 billion is a direct result of reduced operating and maintenance from disposals or other consolidation efforts. In addition, in order to address the growth of data centers across the Federal Government, agencies shall immediately adopt a policy against expanding data centers beyond current levels, and shall develop plans to consolidate and significantly reduce data centers within 5 years. Agencies shall submit their plans to OMB for review by August 30, 2010.

To achieve these goals, the Director of the OMB shall develop, in consultation with the Administrator of General Services and the Federal Real Property Council established pursuant to Executive Order 13327 of February 4, 2004 (Federal Real Property Asset Management), within 90 days of the date of this memorandum, guidance for actions agencies should take to carry out the requirements of this memorandum. The guidance shall include agency-specific targets to achieve $3 billion in cost savings and shall be developed in consultation with the agencies. The Administrator of General Services, in consultation with the Director of the OMB, shall coordinate agency efforts to satisfy the requirements of this memorandum and shall submit to the President periodic reports on the results achieved.

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

The Director of the OMB is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, June 10, 2010

[FR Doc. 2010–14616
Filed 6–15–10; 8:45 am]
Billing code 3110–01–P

Rules and Regulations

Federal Register
Vol. 75, No. 115
Wednesday, June 16, 2010

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

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

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 0907271167–0246–02]

RIN 0694–AE69

Export Administration Regulations: Technical Corrections

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; correcting amendments.

SUMMARY: This rule corrects two typographical errors that appeared in a rule published on June 4, 2010. One error is in the License Requirements section of Export Control Classification Number 2B001 and the other is in the Technical Note on Adjusted Peak Performance ("APP") found at the end of Category 4 on the Commerce Control List.

DATES: This rule is effective June 16, 2010.

FOR FURTHER INFORMATION CONTACT: William H. Arvin, Regulatory Policy Division, e-mail *warvin@bis.doc.gov,* telephone (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2010, the Bureau of Industry and Security published a final rule that, *inter alia,* clarified language regarding certain performance criteria of turning machines covered by Export Control Classification Number (ECCN) 2B001 and replaced a subscript with a superscript to properly express exponentiation in the definition of Adjusted Peak Performance in a technical note at the end of Category 4 on the Commerce Control List (75 FR 31678, June 4, 2010). That notice contained two typographical errors. The first described the national security control for ECCN 2B001 as NS Column 1 on the EAR Country Chart (15 CFR part 738, Supp. No. 1). The correct national security control for ECCN 2B001 is NS Column 2. The second did not enclose the abbreviation "APP" in double quotation marks. This rule corrects both errors.

Rulemaking Requirements

1. This rule is not a significant rule for purposes of Executive Order 12866.

2. 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 Office of Management and Budget Control Number. This rule involves a collection of information that has been approved by the OMB under control number 0694–0088, which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. BIS believes that this rule will make no change to the number of submissions or to the burden imposed by this collection.

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

4. BIS finds that there is good cause under 5 U.S.C. 553(b)(3)(B) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because these revisions are administrative in nature and do not affect the rights and obligations of the public; therefore allowing prior notice and comment on these rules is unnecessary. In addition, the 30-day delay in effectiveness required by 5 U.S.C. 553(d) is not applicable here because this rule is not a substantive rule, but merely makes technical changes to the regulations. No other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule; therefore, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009 (74 FR 41,325 (August 14, 2009)).

■ 2. In Supplement No. 1 to part 774:

■ a. In Category 2, Export Control Classification Number 2B001, revise the "Controls" paragraph of the "License Requirements" section.

■ b. In Category 4, the Technical Note on "Adjusted Peak Performance" ("APP") that appears at the end of Category 4, revise the definition of "APP" that appears under the heading "Abbreviations Used in This Technical Note".

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

2B001 Machine tools and any combination thereof, for removing (or cutting) metals, ceramics or "composites", which, according to the manufacturer's technical specifications, can be equipped with electronic devices for "numerical control"; and specially designed components as follows (*see* List of Items Controlled).

License Requirements

Reason for Control: NS, NP, AT

Control(s)	*Country Chart*
NS applies to entire entry	NS Column 2

Control(s)	*Country Chart*
NP applies to 2B001.a, .b, .c, and .d, EXCEPT: (1) Turning machines under 2B001.a with a capacity no greater than 35 mm diameter; (2) bar machines (Swissturn), limited to machining only bar feed through, if maximum bar diameter is equal to or less than 42 mm and there is no capability of mounting chucks. (Machines may have drilling and/or milling capabilities for machining parts with diameters less than 42 mm); or (3) milling machines under 2B001.b.with x-axis travel greater than two meters and overall "positioning accuracy" on the x-axis more (worse) than 0.030 mm	NP Column 1
AT applies to entire entry	AT Column 1

* * * * *

Category 4—Computers

* * * * *

Technical Note on "Adjusted Peak Performance" ("APP")

* * * * *

Abbreviations Used in This Technical Note

* * * * *

"APP" is expressed in Weighted TeraFLOPS (WT) in units of 10^{12} adjusted floating point operations per second.

* * * * *

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2010–14432 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9487]

RIN 1545–BG03

Built-in Gains and Losses Under Section 382(h)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that apply to loss corporations that have undergone an ownership change within the meaning of section 382. These regulations provide guidance regarding the treatment of prepaid income under the built-in gain provisions of section 382(h).

DATES: *Effective Date:* These regulations are effective on June 11, 2010.

Applicability Date: For dates of applicability see § 1.382–7(b).

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On June 14, 2007, temporary regulations (TD 9330; 72 FR 32792) regarding the treatment of prepaid income under the built-in gain provisions of section 382(h) were published in the **Federal Register**. A notice of proposed rulemaking (NPRM) (REG–144540–06) cross-referencing to temporary regulations was published in the **Federal Register** for the same day (72 FR 32828). The temporary regulations provided that prepaid income is not recognized built-in gain ("RBIG") for purposes of section 382(h). They further provided that *prepaid income* means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples of prepaid income include, but are not limited to, income received prior to the change date that is deferred until the five year section 382 recognition period under section 455, § 1.451–5, or Rev. Proc. 2004–34 (2004–1 CB 991 (June 1, 2004)) (or any successor revenue procedure) (*see* § 601.601(d)(2)(ii)(*b*)). These prepaid income provisions permit deferral in order to better match the taxpayer's income with the expenses incurred to earn that income and, as a result, to more clearly reflect the taxpayer's income both in the year of receipt and in the year of performance. The IRS and the Treasury Department therefore view such income to be properly attributable to the period when included in gross income, which may be within the recognition period. Accordingly, such income is not "attributable to periods before the change date" and so is not RBIG under section 382(h)(6)(A).

One comment was received and no public hearing was requested or held. The public comment focused on companies in the business of providing extended warranty coverage for automobiles or other products. The commenter presented an example under the facts of which the commenter argued that a portion of the prepaid income deferred to the recognition period should be treated as RBIG.

After giving consideration to the comment, the IRS and Treasury continue to believe that none of the prepaid income taken into account during the recognition period in the example should be RBIG. As noted above, where prepaid income is properly deferred from gross income under a permissible method of accounting, such deferral reflects a judgment that the income has not been earned, or, in the parlance of section 382(h)(6)(A), is not "attributable to" prior performance. The premise of this Treasury decision is that, for purposes of section 382, there is not a compelling policy underlying section 382(h) that warrants a different timing answer for the treatment of properly deferred prepaid income.

Accordingly, the proposed regulations set forth in the NPRM (REG–144540–06), which cross-referenced to the temporary regulations for their substance, are adopted with no substantive change by this Treasury decision, and the corresponding temporary regulations are removed.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to 5 U.S.C. 553(d)(3), it has been determined that good cause exists to dispense with a delayed effective date on grounds that this regulation, which is substantively identical to currently effective temporary regulations, merely continues to provide necessary guidance to taxpayers with respect to the treatment of prepaid income under the built-in gain provisions of section 382(h). It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations only apply in the rare circumstance in which a qualifying loss corporation that uses a particular accounting method undergoes an ownership change. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Keith E. Stanley of the Office of Associate Chief Counsel (Corporate). Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.382–7 also issued under 26 U.S.C 382(m). * * *

■ **Par. 2.** Section 1.382–1T is added to read as follows:

§ 1.382–1T Table of contents (temporary).

This section lists the captions that appear in the regulations for § 1.382–2T.

1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

(a) *Ownership change.* (1) In general.
(2) Events requiring a determination of whether an ownership change has occurred.
(i) Testing dates prior to November 5, 1992.
(ii) [Reserved]
(iii) Records to be maintained by loss corporation.
(b) *Nomenclature and assumptions.*
(c) *Computing the amount of increases in percentage ownership.* (1) In general.
(2) Example.
(3) Related and unrelated increases in percentage stock ownership.
(4) Example.
(d) *Testing period.* (1) In general.
(2) Effect of a prior ownership change.
(3) Commencement of the testing period.
(i) In general.
(ii) Exception for corporations with net unrealized built-in loss.
(4) Disregarding testing dates.
(5) Example.
(e) *Owner shift and equity structure shift.*
(1) Owner shift.
(i) Defined.
(ii) Transactions between persons who are not 5-percent shareholders disregarded.
(iii) Examples.
(2) Equity structure shift.
(i) Tax-free reorganizations.
(ii) Transactions designated under section 382(g)(3)(B) treated as equity structure shifts.
(iii) Overlap of owner shift and equity structure shift.
(iv) Examples.
(f) *Definitions.* (1) Loss corporation.
(2) Old loss corporation.
(3) New loss corporation.
(4) Successor corporation.
(5) Predecessor corporation.
(6) Shift.
(7) Entity.
(8) Direct ownership interest.
(9) First tier entity.
(10) 5-percent owner.
(11) Public shareholder.
(12) Public owner.
(13) Public group.
(14) Higher tier entity.
(15) Indirect ownership interest.
(16) Highest tier entity.
(17) Next lower tier entity.
(18) Stock.
(i) In general.
(ii) Treating stock as not stock.
(iii) Treating interests not constituting stock as stock.
(iv) Stock of the loss corporation.
(19) Change date.
(20) Year.
(21) Old section 382.
(22) Pre-change loss.
(23) Unrelated.
(24) Percentage ownership interest.
(g) *5-percent shareholder.* (1) In general.
(2) Determination of whether a person is a 5-percent shareholder.
(3) Determination of the percentage stock ownership interest of a 5-percent shareholder.
(4) Examples.
(5) Stock ownership presumptions in connection with certain acquisitions and dispositions of loss corporation stock.
(i) In general.
(ii) Example.
(h) *Constructive ownership of stock.*
(1) In general.
(2) Attribution from corporations, partnerships, estates and trusts.
(i) In general.
(ii) Limitation on attribution from entities with respect to certain interests.
(iii) Limitation on attribution from certain entities.
(iv) Examples.
(3) Attribution to corporations, partnerships, estates and trusts.
(4) Option attribution.
(i) In general.
(ii) Examples.
(iii) Contingencies.
(iv) Series of options.
(v) Interests that are similar to options.
(vi) Actual exercise of options.
(A) In general.
(B) Actual exercise within 120 days of deemed exercise.
(vii) Effect of deemed exercise of options on the outstanding stock of the loss corporation.
(A) Right of obligation to issue stock.
(B) Right or obligation to acquire outstanding stock by the loss corporation.
(C) Effect on value of old loss corporation.
(viii) Options that lapse or are forfeited.
(ix) Option rule inapplicable if pre-change losses are de minimis.
(x) Options not subject to attribution
(A) Long-held options with respect to actively traded stock.
(B) Right to receive or obligation to issue a fixed dollar amount of value of stock upon maturity of certain debt.
(C) Right or obligation to redeem stock of the loss corporation.
(D) Options exercisable only upon death, disability or mental incompetency.
(E) Right to receive or obligation to issue stock as interest or dividends.
(F) Options outstanding following an ownership change.
(*1*) In general.
(*2*) Example.
(G) Right to acquire loss corporation stock pursuant to a default under loan agreement.
(H) Agreement to acquire or sell stock owned by certain shareholders upon retirement.
(I) [Reserved]
(J) Title 11 of similar case.
(K)–(Y) [Reserved]
(xi) Certain transfers of options disregarded.
(xii) Exercise of an option that has not been treated as stock.
(xiii) Effective date.
(5) Stock transferred under certain agreements.
(6) Family attribution.
(i) [Reserved]
(j) *Aggregation and segregation rules.*
(1) Aggregation of public shareholders and public owners into public groups.
(i) Public group.
(ii) Treatment of public group that is a 5-percent shareholder.
(iii) Presumption of no cross-ownership.
(iv) Identification of the public groups treated as 5-percent shareholders.
(A) Analysis of highest tier entities.
(B) Analysis of other higher tier entities and first tier entities.
(C) Aggregation of the public shareholders.

(v) Appropriate adjustments.
(vi) Examples.
(2) Segregation rules applicable to transactions involving the loss corporation.
(i) In general.
(ii) Direct public group.
(iii) Transactions to which segregation rules apply.
(A) In general.
(B) Certain equity structure shifts and transactions to which section 1032 applies.
(*1*) In general.
(*2*) Examples.
(C) Redemption-type transactions.
(*1*) In general.
(*2*) Examples.
(D) Acquisition of loss corporation stock as the result of the ownership of a right to acquire stock.
(*1*) In general.
(*2*) Example.
(E) Transactions identified in the Internal Revenue Bulletin.
(F) Issuance of rights to acquire loss corporation stock.
(*1*) In general.
(*2*) Example.
(iv) Combination of de minimis public groups.
(A) In general.
(B) Example.
(v) Multiple transactions.
(A) In general.
(B) Example.
(vi) Acquisitions made by either a 5-percent shareholder or the loss corporation following application of the segregation rules.
(3) Segregation rules applicable to transactions involving first tier entities or higher tier entities.
(i) Dispositions.
(ii) Example.
(iii) Other transactions affecting direct public groups of a first tier entity or higher tier entity.
(iv) Examples.
(v) Acquisitions made by a 5-percent shareholder, a higher tier entity, or a first tier entity following application of the segregation rules.
(k) *Operating rules.* (1) Presumptions regarding stock ownership.
(i) Stock subject to regulation by the Securities and Exchange Commission.
(ii) Statements under penalties of perjury.
(2) Actual knowledge regarding stock ownership.
(3) Duty to inquire as to actual stock ownership in the loss corporation.
(4) Ownership interests structured to avoid the section 382 limitation.
(5) Example.
(6) First tier entity or higher tier entity that is a foreign corporation or entity. [Reserved.]
(l) *Changes in percentage ownership which are attributable to fluctuations in value.* [Reserved]
(m) *Effective date.* (1) In general.
(2) Plan of reorganization.
(3) Earliest commencement of the testing period.
(4) Transitional rules.
(i) Rules provided in paragraph (j) of this section for testing dates before September 4, 1987.
(ii) Example.
(iii) Rules provided in paragraph (j) of this section for testing dates on or after September 4, 1987.
(iv) Rules provided in paragraphs (f)(18)(ii) and (iii) of this section.
(v) Rules provided in paragraph (a)(2)(ii) of this section.
(vi) Rules provided in paragraph (h)(4) of this section.
(vii) Rules provided in paragraph (a)(2)(i) of this section.
(5) Bankruptcy proceedings.
(i) In general.
(ii) Example.
(6) Transactions of domestic building and loan associations.
(7) Transactions not subject to section 382.
(i) Application of old section 382.
(ii) Effect on testing period.
(iii) Termination of old section 382. [Reserved]
(8) Options issued or transferred before January 1, 1987.
(i) Options issued before May 6, 1986.
(ii) Options issued on or after May 6, 1986 and before September 18, 1986.
(iii) Options issued on or after September 18, 1986 and before January 1, 1987.
(9) Examples.

■ **Par. 3.** Section 1.382–1 is amended by:
■ 1. Revising the introductory text.
■ 2. Removing the entry for § 1.382–1T.
■ 3. Removing the entries for § 1.382–2T.
■ 4. Adding the entries for § 1.382–7.

The revisions and the additions read as follows:

§ 1.382–1 Table of contents.

This section lists the captions that appear in the regulations for §§ 1.382–2 through 1.382–11.

* * * * *

§ 1.382–7 Built-in gains and losses.

(a) Treatment of prepaid income.
(b) Effective/applicability dates.

* * * * *

■ **Par. 4.** Section 1.382–7 is added to read as follows:

§ 1.382–7 Built-in gains and losses.

(a) *Treatment of prepaid income.* For purposes of section 382(h), prepaid income is not recognized built-in gain. The term *prepaid income* means any amount received prior to the change date that is attributable to performance occurring on or after the change date. Examples to which this paragraph (a) will apply include, but are not limited to, income received prior to the change date that is deferred under section 455, § 1.451–5, or Rev. Proc. 2004–34 (2004–1 CB 991 (June 1, 2004)) (or any successor revenue procedure) (see § 601.601(d)(2)(ii)(*b*)).

(b) *Effective/applicability dates.* This section applies to loss corporations that have undergone an ownership change on or after June 11, 2010. For loss corporations that have undergone an ownership change before June 11, 2010, see § 1.382–7T as contained in 26 CFR part 1, revised April 1, 2009.

§ 1.382–7T [Removed]

■ **Par. 5.** Section 1.382–7T is removed.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

Approved: June 8, 2010.

Michael Mundaca,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010–14431 Filed 6–11–10; 4:15 pm]
BILLING CODE 4820–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9488]

RIN 1545–BE07

Interest and Penalty Suspension Provisions Under Section 6404(g) of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 6404(g)(2)(E) of the Internal Revenue Code on the suspension of any interest, penalty, addition to tax, or additional amount with respect to listed transactions or undisclosed reportable transactions. The final regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, the Tax Relief and Health Care Act of 2006, and the Small Business and Work Opportunity Tax Act of 2007. The

regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions.

DATES: *Effective Date:* These regulations are effective on June 16, 2010.

Applicability Date: These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

FOR FURTHER INFORMATION CONTACT: Matthew Lucey, (202) 622–3630 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules under section 6404(g) relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to listed transactions or undisclosed reportable transactions. Section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685, 743) (RRA 98), added section 6404(g) to the Code, effective for taxable years ending after July 22, 1998. Section 6404(g) generally suspends interest and certain penalties if the IRS does not contact a taxpayer regarding possible adjustments to the taxpayer's liability within a specified period of time. Section 903(c) of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418, 1652) (AJCA), excepted from the general interest suspension rules any interest, penalty, addition to tax, or additional amount with respect to a listed transaction or an undisclosed reportable transaction, effective for interest accruing after October 3, 2004. Section 303 of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577, 2608–09) (GOZA), modified the effective date of the exception from the suspension rules for certain listed and reportable transactions. Section 426(b) of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922, 2975), provided a technical correction regarding the authority to exercise the "reasonably and in good faith" exception to the effective date rules. Section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28 (121 Stat. 190, 200), extended the current eighteen-month period within which the IRS can, without suspension of interest, contact a taxpayer regarding possible adjustments to the taxpayer's liability to thirty-six months, effective for notices provided after November 25, 2007.

On June 21, 2007, the Treasury Department and the IRS published in the **Federal Register** temporary regulations (TD 9333), 2007–33 IRB 350 (72 FR 34176) and a notice of proposed rulemaking (REG–149036–04), 2007–33 IRB 365 (72 FR 34204) by cross-reference to temporary regulations. No written comments were received, and no public hearing was requested or held. Accordingly, the final regulations adopt the rules of the temporary regulations and the temporary regulations are removed. *See* § 601.601(d)(2)(ii)(b).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. A regulatory assessment is therefore not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM by cross-reference to temporary regulations preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

Drafting Information

The principal author of these regulations is Matthew Lucey of the Office of Associate Chief Counsel (Procedure and Administration).

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

■ **Par. 2.** Section 301.6404–0 is amended by adding an entry for § 301.6404–4 to read as follows:

§ 301.6404–0 Table of Contents.

* * * * *

§ 301.6404–4 Suspension of interest and certain penalties when the Internal Revenue Service does not timely contact the taxpayer.

(a) [Reserved].

(b)(1) through (b)(4) [Reserved].

(5) Listed transactions and undisclosed reportable transactions.

(i) In general.

(ii) Special rule for certain listed or undisclosed reportable transactions.

(A) Participant in a settlement initiative.

(*1*) Participant in a settlement initiative who as of January 23, 2006, had not reached agreement with the IRS.

(*2*) Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.

(B) Taxpayer acting in good faith.

(*1*) In general.

(*2*) Presumption.

(*3*) Examples.

(C) Closed transactions.

(c) [Reserved].

(d) Effective date.

■ **Par. 3.** Section 301.6404–4 is added to read as follows:

§ 301.6404–4 Suspension of interest and certain penalties when the Internal Revenue Service does not timely contact the taxpayer.

(a) [Reserved].

(b)(1) through (4) [Reserved].

(5) *Listed transactions and undisclosed reportable transactions*—(i) *In general.* The general rule of suspension under section 6404(g)(1) does not apply to any interest, penalty, addition to tax, or additional amount with respect to any listed transaction as defined in section 6707A(c) or any undisclosed reportable transaction. For purposes of this section, an *undisclosed reportable transaction* is a reportable transaction described in the regulations under section 6011 that is not adequately disclosed under those regulations and that is not a listed transaction. The date that the IRS provides notice to the taxpayer specifically stating the taxpayer's liability regarding a listed transaction or an undisclosed reportable transaction and the basis for that liability is the controlling date for determining whether the transaction is a listed transaction or an undisclosed reportable transaction for purposes of the suspension rules under section 6404(g).

(ii) *Special rule for certain listed or undisclosed reportable transactions.* With respect to interest relating to listed transactions and undisclosed reportable transactions accruing on or before October 3, 2004, the exception to the general rule of interest suspension will not apply to a taxpayer who is a participant in a settlement initiative with respect to that transaction, to any transaction in which the taxpayer has acted reasonably and in good faith, or to a closed transaction. For purposes of this special rule, a "participant in a settlement initiative," a "taxpayer acting in good faith," and a "closed

transaction" have the following meanings:

(A) *Participant in a settlement initiative*—(*1*) *Participant in a settlement initiative who, as of January 23, 2006, had not reached agreement with the IRS.* A *participant in a settlement initiative* includes a taxpayer who, as of January 23, 2006, was participating in a settlement initiative described in Internal Revenue Service Announcement 2005–80, 2005–2 C.B. 967. See § 601.601(d)(2)(ii)(b) of this chapter. A taxpayer participates in the initiative by complying with Section 5 of the Announcement. A taxpayer is not a participant in a settlement initiative if, after January 23, 2006, the taxpayer withdraws from or terminates participation in the initiative, or the IRS determines that a settlement agreement will not be reached under the initiative within a reasonable period of time.

(*2*) *Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.* A *participant in a settlement initiative* is a taxpayer who, as of January 23, 2006, had entered into a settlement agreement under Announcement 2005–80 or any other prior or contemporaneous settlement initiative either offered through published guidance or, if the initiative was not formally published, direct contact with taxpayers known to have participated in a tax shelter promotion.

(B) *Taxpayer acting in good faith*—(*1*) *In general.* The IRS may suspend interest relating to a listed transaction or an undisclosed reportable transaction accruing on or before October 3, 2004, if the taxpayer has acted reasonably and in good faith. The IRS's determination of whether a taxpayer has acted reasonably and in good faith will take into account all the facts and circumstances surrounding the transaction. The facts and circumstances include, but are not limited to, whether the taxpayer disclosed the transaction and the taxpayer's course of conduct after being identified as participating in the transaction, including the taxpayer's response to opportunities afforded to the taxpayer to settle the transaction, and whether the taxpayer engaged in unreasonable delay at any stage of the matter.

(*2*) *Presumption.* If a taxpayer and the IRS promptly enter into a settlement agreement with respect to a transaction on terms proposed by the IRS or, in the event of atypical facts and circumstances, on terms more favorable to the taxpayer, and the taxpayer has complied with the terms of that agreement without unreasonable delay, the taxpayer will be presumed to have acted reasonably and in good faith except in rare and unusual circumstances. Rare and unusual circumstances must involve specific actions involving harm to tax administration. Even if a taxpayer does not qualify for the presumption described in this paragraph (b)(5)(iii)(B)(*2*), the taxpayer may still be granted interest suspension under the general facts and circumstances test set forth in paragraph (b)(5)(iii)(B)(*1*) of this section.

(*3*) *Examples.* The following examples illustrate the rules the IRS uses in determining whether a taxpayer has acted reasonably and in good faith.

Example 1. The taxpayer participated in a listed transaction. The IRS, in a letter sent directly to the taxpayer in July 2005, proposed a settlement of the transaction. The taxpayer informed the IRS of his interest in the settlement within the prescribed time period. The revenue agent assigned to the taxpayer's case was not able to calculate the taxpayer's liability under the settlement or tender a closing agreement to the taxpayer until March 2006. The taxpayer promptly executed the closing agreement and returned it to the IRS with a proposal for arrangements to pay the agreed-upon liability. The IRS agreed with the proposed arrangements for full payment. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 2. The facts are the same as in *Example 1,* except that the letter was sent by the IRS in February 2006, and the closing agreement was tendered to the taxpayer in April 2006. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 3. The taxpayer participated in a listed transaction. In response to an offer of settlement extended by the IRS in August 2005, the taxpayer informed the IRS of her interest in entering into a closing agreement on the terms proposed by the IRS. The revenue agent assigned to the transaction calculated the taxpayer's liability under the settlement and tendered a closing agreement to the taxpayer in November 2005. The taxpayer executed the closing agreement but failed to make any arrangement for payment of the agreed-upon liability stated in the closing agreement. Taking into account all the facts and circumstances surrounding the transaction, the taxpayer did not act reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will not be suspended.

Example 4. The taxpayer participated in a listed transaction. In a letter sent by the IRS directly to the taxpayer in July 2005, the IRS extended an offer of settlement. The July 2005 letter informed the taxpayer that, absent atypical facts and circumstances, the taxpayer should not expect resolution of the tax issues on more favorable terms than proposed in the letter. The taxpayer declined the proposed settlement terms of the letter and proceeded to Appeals to present what the taxpayer claimed were atypical facts and circumstances. The administrative file did not contain sufficient information bearing on atypical facts and circumstances, and the taxpayer failed to provide additional information when requested by Appeals to explain how the transaction originally proposed to the taxpayer differed in structure or types of tax benefits claimed, from the transaction as implemented by the taxpayer. Appeals determined that the taxpayer's facts and circumstances were not significantly different from those of other taxpayers who participated in that listed transaction and thus, were not atypical. In September 2006, the taxpayer and Appeals entered into a closing agreement on terms consistent with those originally proposed in the July 2005 letter. The taxpayer has complied with the terms of that closing agreement. For purposes of the application of section 6404(g)(2)(E), this taxpayer is not presumed to have acted reasonably and in good faith; instead, the IRS will apply the general rule to determine whether to suspend interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

Example 5. The facts are the same as in *Example 4,* except that Appeals agrees that atypical facts were present that warrant additional concessions by the government. A settlement is reached on terms more favorable to the taxpayer than those proposed in the July 2005 letter. For purposes of the application of section 6404(g)(2)(E), this taxpayer is presumed to have acted reasonably and in good faith, and absent evidence of rare or unusual circumstances harmful to tax administration, is eligible for suspension of interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

(C) *Closed transactions.* A transaction is considered closed for purposes of this clause if, as of December 14, 2005, the assessment of all federal income taxes for the taxable year in which the tax liability to which the interest relates is prevented by the operation of any law or rule of law, or a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.

(c) [Reserved].

(d) *Effective/Applicability date.* Paragraph (b)(5) of these regulations applies to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

§ 301.6404–4T [Removed]

■ **Par. 4.** Section 301.6404–4T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: June 10, 2010.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2010–14536 Filed 6–15–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0496]

RIN 1625–AA00

Safety Zone; Michigan Orthopaedic Society 50th Anniversary Fireworks, Lake Huron, Mackinac Island, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on, Lake Huron, Mackinac Island, Michigan. This zone is intended to restrict vessels from a portion of Lake Huron during the Michigan Orthopaedic Society 50th Anniversary Fireworks display, June 19, 2010. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. until 11 p.m. on June 19, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0496 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0496 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 BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone 906–635–3222, e-mail *Gregory.C.Ford@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 the permit application was not received in time to publish an NPRM followed by a final rule before the effective date.

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

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Based on the explosive hazards of fireworks, the Captain of the Port Sault Sainte Marie has determined that fireworks launches proximate to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water presents a significant risk of serious injuries or fatalities. Establishing a temporary safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at this event and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup and launching of fireworks in conjunction with the Michigan Orthopaedic Society 50th Anniversary Fireworks display. The fireworks display will occur between 9:45 p.m. and 11 p.m. on June 19, 2010.

The safety zone will be enforced from 9 p.m. to 11 p.m. on June 19, 2010. The safety zone for the fireworks will encompass all waters of Lake Huron within a 500-foot radius of the fireworks launch site, approximately 460 yards south of Biddle Point, at position 45°50′32.82″ N., 084°37′03.18″ W: [DATUM: NAD 83].

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from enforcement of the zone.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of Lake Huron, Mackinac

Island, Michigan, between 9 p.m. and 11 p.m. on June 19, 2010.

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 in effect for two hours for one event. Vessel traffic can safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule establishes a safety zone and therefore paragraph (34)(g) of figure 2–1 applies. 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.T09–0496 to read as follows:

§ 165.T09–0496 Safety Zone; Michigan Orthopaedic Society 50th Anniversary Fireworks, Lake Huron, Mackinac Island, MI

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Huron within a 500-foot radius from the fireworks launch site, approximately 460 yards south of Biddle Point, at position 45°50′32.82″ N, 084°37′03.18″ W: [DATUM: NAD 83].

(b) *Effective period.* This regulation is effective from 9 p.m. until 11 p.m. on June 19, 2010. This rule will be enforced from 9 p.m. to 11 p.m. on June 19, 2010.

(1) The Captain of the Port, Sector Sault Sainte Marie, may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of a safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16.

Dated: June 2, 2010.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2010–14467 Filed 6–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0504]

RIN 1625–AA00

Safety Zone; McNary-John Day Transmission Line Project, Columbia River, Hermiston, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Columbia River near Hermiston, Oregon for the installation of new power lines across the river. The safety zone is necessary to help ensure the safety of the workers as well as the maritime public and will do so by prohibiting all persons and vessels from entering or remaining in the safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: *Effective Date:* This rule is effective in the CFR from June 16, 2010 until 11:59 p.m. on October 31, 2011. This rule is effective with actual notice for purposes of enforcement beginning 10 a.m. on June 10, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0504 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0504 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 MST1 Jaime Sayers, Waterways Management, Coast Guard Sector Portland; telephone 503–240–9319, e-mail *Jaime.A.Sayers@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) because the publishing of an NPRM would be impracticable and contrary to public interest since immediate action is needed to ensure the public's safety during construction activity. Delaying the implementation of the safety zone would subject the public to the hazards associated with the reconstruction of the transmission towers. The danger posed by marine traffic on the Columbia River makes safety zone regulations necessary to provide for the safety of construction support vessels, spectator craft and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during construction. The Coast Guard will issue broadcast notice to mariners to advise vessel operators of navigational restrictions.

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

Basis and Purpose

Wilson Construction Company (WCC) has been contracted to replace 12 power lines that cross the Columbia River and reconstruct four transmission towers on the banks of the Columbia River near Hermiston, Oregon between June 10, 2010 and October 31, 2011. The company will be using a helicopter to string the new lines and replace the towers. Due to the inherent dangers associated with this type of work, a safety zone is necessary to help ensure the safety of the workers involved as well as the maritime public in general.

Discussion of Rule

The safety zone created by this rule encompasses all waters of the Columbia River between two lines: The east line starting at the north bank at 45° 56′ 16.5″ N/119° 19′ 24″ W then across the river to the south bank at 45° 55′ 47″ N/119° 19′ 07″ W and the west line starting at the north bank at 45° 56′ 05″ N/119° 19′ 48″ W and then across the river to the south bank at 45° 55′ 44″ N/119° 19′ 38″ W. Geographically this location is from the West bridge of I–82 east approximately 1,200 feet toward the McNary Dam.

The safety zone will be in effect from 10 a.m. on June 10, 2010 through 11:59 p.m. on October 31, 2011. All persons and vessels are prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port or his designated representative. Vessels will be allowed to transit through the safety zone during designated times throughout the duration as coordinated by the on-scene designated representative of the Captain of the Port.

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. The Coast Guard has made this finding based on the fact that the Captain of the Port and/or his designated representative will allow maritime traffic to transit through the safety zone when it is safe to do so.

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 may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule between June 10, 2010 and October 31, 2011. The safety zone will not have a significant economic impact on a substantial number of small entities, however, because the Captain of the Port and/or his designated representative will allow maritime traffic to transit through the safety zone when it is safe to do so.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–149 to read as follows:

§ 165.T13–149 Safety Zone; McNary-John Day Transmission Line Project, Columbia River, Hermiston, OR

(a) *Location:* The following is a safety zone: All waters of the Columbia River between two lines with the first line starting at the north bank at 45° 56′ 16.5″ N/119° 19′ 24″ W then across the river to the south bank at 45° 55′ 47″ N/119° 19′ 07″ W and the second line starting at the north bank at 45° 56′ 05″ N/119° 19′ 48″ W and then across the river to the south bank at 45° 55′ 44″ N/119° 19′ 38″ W. Geographically this location is from the West bridge of I–82 east approximately 1200 feet toward the McNary Dam.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port or his designated representative. Designated representatives are Coast Guard personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. *See* 33 CFR part 165, subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zone created in this section will be in effect from 10 a.m.. on June 10, 2010 through 11:59 p.m. on October 31, 2011.

Dated: June 2, 2010.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port, Portland.

[FR Doc. 2010–14468 Filed 6–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0477]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks Event, Cape Charles City Harbor, Cape Charles, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 420-foot radius safety zone on the navigable waters of Cape Charles City Harbor in Cape Charles, VA, in support of the Fourth of July Fireworks event. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

DATES: This rule is effective from 8 p.m. to 10 p.m. on July 4, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0477 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0477 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 LT Tiffany Duffy, Waterways Management Division, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@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 any delay encountered in this regulation's effective date by publishing a NPRM would be contrary to public interest since immediate action is needed to provide for the safety of life and property on navigable waters. Additionally, this temporary safety zone will be enforced for approximately two hours on Sunday, July 4, 2010, while the fireworks display is in progress. This safety zone should have a minimal impact on transiting vessels because mariners are not precluded from using any portion of the waterway except the area within the safety zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property, and

the environment during the fireworks event; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

On July 4, 2010, the Cape Charles Fire Department will sponsor a fireworks display on the shoreline of the navigable waters of Cape Charles City Harbor centered on position 37°15′59″ N/ 076°01′12″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within 420 feet of the fireworks launch site.

Discussion of Rule

The Coast Guard is establishing a safety zone on the navigable waters of the Cape Charles City Harbor within the area bounded by a 420-foot radius circle centered on position 37°15′59″ N/ 076°01′12″ W (NAD 1983). This safety zone will be established in the vicinity of Cape Charles, VA, from 8 p.m. to 10 p.m. on July 4, 2010. In the interest of public safety, general navigation within the safety zone will be restricted during the specified date and times. Except for participants and vessels authorized by the Coast Guard Captain of the Port or his representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 the specified portion of the Cape Charles City Harbor from 8 p.m. to 10 p.m. on July 4, 2010. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will be enforced for only two hours on July 4, 2010; (2) vessel traffic will be able to navigate safely around the zone without significant impact to their transit plans; and (3) before the effective period begins, we will issue maritime advisories.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone around a fireworks display and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0477 to read as follows:

§ 165.T05–0477 Safety Zone; Fourth of July Fireworks Event, Cape Charles City Harbor, Cape Charles, VA.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of Cape Charles City Harbor in Cape Charles, VA and within 420 feet of position 37°15′59″ N/076°01′12″ W (NAD 1983).

(b) *Definition:* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

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

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

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

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 638–6641.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement Period: This regulation will be in effect from 8 p.m. to 10 p.m. on July 4, 2010.

Dated: June 3, 2010.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 2010–14469 Filed 6–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0470]

RIN 1625–AA00

Safety Zone; Grand Marais Splash-In, West Bay, Lake Superior, Grand Marais, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in West Bay, on Lake Superior, Grand Marais, MI. This safety zone is intended to restrict vessel traffic from a portion of West Bay during the Grand Marais Splash-In Sea Plane Competition.

DATES: This rule is effective from 2 p.m. to 5 p.m. on June 19, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0470 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0470 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 BMC Gregory Ford, Marine Event Coordinator, U.S. Coast Guard Sector Sault Sainte Marie; telephone 906–635–3222, e-mail *Gregory.C.Ford@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 the permit application was not received in time to publish an NPRM followed by a final rule before the effective date and immediate action is necessary to prevent possible loss of life or property due to the potential hazards associated with the sea plane competition.

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

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with sea planes taking-off, flying and landing in the area. The Captain of the Port Sault Sainte Marie has determined an aircraft competition with sea planes flying and landing in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels, congested waterways, alcohol use, and debris falling from the sky into the water presents a significant risk of serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the competition and landing area will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the performance of flight maneuvers and water landings in conjunction with the Grand Marias Splash In. This event will occur between 2 p.m. and 5 p.m. on June 19, 2010.

The safety zone for the Grand Marais Splash-In will encompass the southern portion of West Bay. The zone will be bound to the north by a line beginning 100 feet south-southeast of the Lake Street Boat Launch, extending 5280 feet to the east on a true bearing of 080 degrees. The eastern boundary will then be formed by a line drawn to the shoreline on a true bearing of 170 degrees. The western and southern boundaries of the zone will be bound by the shoreline of West Bay. The zone is bound by the coordinates 46°40′22.98″ N/ 085°59′00.78″ W, 46°40′32.04″ N 085°57′46.14″ W and 46°40′19.68″ N 085°57′43.08″ W [DATUM: NAD 83], with the West Bay shoreline forming the South and West boundaries of the zone.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Sault Sainte Marie, or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the minimal time of three hours that vessels will be restricted from the zone. The Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Lake Superior off Grand Marais, Michigan between 2 p.m. and 5 p.m. on June 19, 2010.

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 in effect for three hours on one day, and the majority of marinas, piers and wharfs in the area are located on the northern shoreline of West Bay. The Safety Zone will allow vessels to move freely between these areas and Lake Superior. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Sault Sainte Marie to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of

compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–0470 as follows:

§ 165.T09–0470 Safety Zone; Grand Marais Splash-In, West Bay, Lake Superior, Grand Marais, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of West Bay, Lake Superior, Grand Marais, MI bound to the north by a line beginning 100 feet south-southeast of the Lake Street Boat Launch, extending 5280 feet to the east on a true bearing of 080 degrees. The eastern boundary will then be formed by a line drawn to the shoreline on a true bearing of 170 degrees. The western and southern boundaries of the zone will be bound by the shoreline of West Bay. The zone is bound by the coordinates 46°40′22.98″ N 085°59′00.78″ W, 46°40′32.04″ N 085°57′46.14″ W, and 46°40′19.68″ N 085°57′43.08″ W [DATUM: NAD 83], with the West Bay shoreline forming the South and West boundaries of the zone.

(b) *Effective period.* This regulation will be enforced from 2 p.m. to 5 p.m. on June 19, 2010.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of any safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of a safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and Local Notice to Mariners.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within an enforced safety zone established by this section is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain

of the Port, Sector Sault Sainte Marie, to act on his behalf. The on-scene representative of the Captain of the Port, Sector Sault Sainte Marie, is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf.

(4) Vessel operators desiring to enter or operate within an enforced safety zone shall contact the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Sault Sainte Marie, or his on-scene representative.

Dated: June 2, 2010.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2010–14486 Filed 6–15–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 39

RIN 2900–AM96

State Cemetery Grants

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this final rule to amend regulations governing grants to States for the establishment, expansion, and improvement of State veterans cemeteries (Establishment, Expansion, and Improvement Projects). We are implementing through regulation new statutory authority to provide grants for the operation and maintenance of State veterans cemeteries (Operation and Maintenance Projects), as authorized by the Dr. James Allen Veteran Vision Equity Act of 2007 (the Act), enacted on December 26, 2007. The Act expands VA authority to provide grants to States for operating and maintaining State veterans cemeteries and limits to $5 million the aggregate amount of such grants VA may award in any fiscal year. VA is amending its regulations to outline the process, the criteria, and the priorities relating to the award of these Operation and Maintenance Project grants. This final rule will also amend our regulations by changing the arrangement and numbering of the current regulatory sections, incorporating some non-substantive changes to the regulations, and removing specific forms from this part that are available at *http://www.cem.va.gov/cem/scg_grants.asp.*

DATES: *Effective Date:* July 16, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 16, 2010.

Applicability Date: This final rule shall apply to all applications for State cemetery grant funds that are received by VA on or after the effective date of this final rule, and to all applications for State cemetery grant funds that were pending with VA on that date.

FOR FURTHER INFORMATION CONTACT: Frank Salvas, Director of State Cemetery Grants Service, National Cemetery Administration (NCA), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. Telephone: (202) 461–8947 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On December 31, 2009, VA published a proposed rule in the **Federal Register** (74 FR 69304) to amend regulations in 38 CFR part 39 governing grants to States for Establishment, Expansion, and Improvement Projects and to implement through regulation new statutory authority to provide grants for Operation and Maintenance Projects, as authorized by the Act (Pub. L. 110–157), enacted on December 26, 2007. VA provided a 60-day comment period for the proposed rule that ended March 1, 2010. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule with the following changes.

We made a non-substantive change to proposed §§ 39.35 and 39.85, so that those regulations refer to a Memorandum of Agreement, rather than a Notification of Award, to be consistent with the title of the corresponding VA Form 40–0895–11.

Also, although we proposed to update references to the architectural design codes that apply to grant applicants, we decided to update those references in a separate rulemaking. Therefore, we removed the references to the updated editions of the various codes in proposed § 39.63 and replaced them with references to the 2002 and 2003 editions of the codes, as appropriate, that were previously incorporated by reference into 38 CFR part 39. Similarly, we removed the references to the International Mechanical Code and International Plumbing Code in proposed § 39.63 and replaced them with references to the Uniform Mechanical Code and Uniform Plumbing Code, respectively, which were previously incorporated by reference into 38 CFR part 39. We did the same with an address from which copies of those two codes can be obtained. Therefore, the editions of codes that were previously incorporated by reference into 38 CFR part 39 will continue to be applicable to grant applicants until the references to the codes are updated or changed through rulemaking.

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), 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 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 final rule have been examined, and it has been determined not to be a significant regulatory action under the Executive Order.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule 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 final rule will directly affect only State government entities and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

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 an expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, or Tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule at §§ 39.31, 39.32, 39.34, 39.81, 39.82, 39.84, 39.120, and 39.122 contains new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). On December 31, 2009, in proposed rule published in the **Federal Register,** we requested public comments on the new collections of information. We received no comments. OMB has approved the additional collections in part 39 under OMB Control Number 2900–0559. We are adding a parenthetical statement after the authority citations to all of the sections in part 39 for which new collections have been approved so that the control number is displayed for each new collection.

Catalog of Federal Domestic Assistance Number and Title

The Catalog of Federal Domestic Assistance program number and title for this final rule is 64.203, State Cemetery Grants.

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, approved this document on June 7, 2010, for publication.

List of Subjects in 38 CFR Part 39

Cemeteries, Grants programs—veterans, Incorporation by reference, Veterans.

Dated: June 8, 2010.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel.

■ For the reasons set out in the preamble, 38 CFR part 39 is revised to read as follows:

PART 39—AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES

Subpart A—General Provisions

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39.1 Purpose.
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39.61 Site planning standards.
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39.81 Preapplication requirements.
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39.120 Documentation of grant accomplishments.
39.121 State responsibilities following project completion.
39.122 Inspections, audits, and reports.

Authority: 38 U.S.C. 101, 501, 2408, 2411.

Subpart A—General Provisions

§ 39.1 Purpose.

This part sets forth the mechanism for a State to obtain a grant to establish, expand, or improve a veterans cemetery that is or will be owned by the State or to obtain a grant to operate or maintain a State veterans cemetery to meet VA's national shrine standards of appearance.

(Authority: 38 U.S.C. 501, 2408)

§ 39.2 Definitions.

For the purpose of this part:

(a) *Establishment* means the process of site selection, land acquisition, design and planning, earth moving, landscaping, construction, and provision of initial operating equipment necessary to convert a tract of land to an operational veterans cemetery.

(b) *Expansion* means an increase in the burial capacity or acreage of an existing cemetery through the addition of gravesites and other facilities, such as committal service shelters, crypts (preplaced grave liners), and columbaria, necessary for the functioning of a cemetery.

(c) *Improvement* means the enhancement of a cemetery through landscaping, construction, or renovation of cemetery infrastructure, such as building expansion and upgrades to roads and irrigation systems, that is not directly related to the development of new gravesites; nonrecurring maintenance; and the addition of other features appropriate to cemeteries.

(d) *Establishment, Expansion, and Improvement Project* means an undertaking to establish, expand, or improve a site for use as a State-owned veterans cemetery.

(e) *Operation and Maintenance Project* means a project that assists a State to achieve VA's national shrine standards of appearance in the key cemetery operational areas of cleanliness, height and alignment of headstones and markers, leveling of gravesites, and turf conditions.

(f) *Secretary* means the Secretary of the United States Department of Veterans Affairs.

(g) *State* means each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(h) *State Cemetery Grants Service (SCGS)* means the State Cemetery Grants Service within VA's National Cemetery Administration (NCA).

(i) *VA* means the United States Department of Veterans Affairs or the State Cemetery Grants Service.

(j) *Veteran* means a person who served in the active military, naval, or air service and who died in line of duty

while in service or was discharged or released under conditions other than dishonorable.

(Authority: 38 U.S.C. 101, 501, 2408)

§ 39.3 Priority list.

(a) The priority groups, with Priority Group 1 having the highest priority and Priority Group 4 the lowest priority, are:

(1) *Priority Group 1*—Projects needed to avoid disruption in burial service that would otherwise occur at existing veterans cemeteries within 4 years of the date of the preapplication. Such projects would include expansion projects as well as improvement projects (such as construction of additional or replacement facilities) when such improvements are required to continue interment operations.

(2) *Priority Group 2*—Projects for the establishment of new veterans cemeteries.

(3) *Priority Group 3*—Expansion projects at existing veterans cemeteries when a disruption in burial service due to the exhaustion of existing gravesites is not expected to occur within 4 years of the date of the preapplication.

(4) *Priority Group 4*—Improvement projects for cemetery landscaping or infrastructure, such as building expansion and upgrades to roads and irrigation systems, that are not directly related to the development of new gravesites. Operation and Maintenance Projects that address NCA's national shrine standards of appearance are included in this group.

(b) Within Priority Groups 1, 2, and 3, highest priority will be given to projects in geographical locations with the greatest number of veterans who will benefit from the project as determined by VA. This prioritization system, based on veteran population data, will assist VA in maintaining and improving access to burial in a veterans cemetery to more veterans and their eligible family members. Within Priority Group 1, at the discretion of VA, higher priority may be given to a project that must be funded that fiscal year to avoid disruption in burial service.

(c) Grants for projects within Priority Group 4 will be awarded in any fiscal year only after grants for all project applications under Priority Groups 1, 2, and 3 that are ready for funding have been awarded. Within Priority Group 4, projects will be ranked in priority order based upon VA's determination of the relative importance of proposed improvements and the degree to which proposed Operation and Maintenance Projects achieve NCA national shrine standards of appearance. No more than $5 million in any fiscal year will be awarded for Operation and Maintenance Projects under Priority Group 4.

(d) By August 15 of each year, VA will make a list prioritizing all preapplications that were received on or before July 1 of that year and that were approved under § 39.31 or § 39.81, ranking them in their order of priority within the applicable Priority Group for funding during the fiscal year that begins the following October 1. Preapplications from previous years will be re-prioritized each year and do not need to be resubmitted.

(Authority: 38 U.S.C. 501, 2408)

§ 39.4 Decision makers, notifications, and additional information.

Decisions required under this part will be made by the VA Director, State Cemetery Grants Service (SCGS), National Cemetery Administration, unless otherwise specified in this part. The VA decision maker will provide to affected States written notice of approvals, denials, or requests for additional information under this part.

(Authority: 38 U.S.C. 501, 2408)

§ 39.5 Submission of information and documents to VA.

All information and documents required to be submitted to VA must be submitted to the Director of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All forms cited in this part are available at *http://www.cem.va.gov/cem/scg_grants.asp.*

(Authority: 38 U.S.C. 501, 2408)

§ 39.6 Amendments to grant application.

A State seeking to amend a grant application must submit revised Standard Forms 424 (Application for Federal Assistance) and 424C (Budget Information) with a narrative description of, and justification for, the amendment. Any amendment of an application that changes the scope of the application or increases the amount of the grant requested, whether or not the application has already been approved, shall be subject to approval by VA in the same manner as an original application.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 4040–0004 and 4040–0008).

§ 39.7 Line item adjustment to grants.

After a grant has been awarded, upon request from the State representative, VA may approve a change in one or more line items (line items are identified in Standard Form 424C) of up to 10 percent (increase or decrease) of the cost of each line item if the change would be within the scope or objective of the project and the aggregate adjustments would not increase the total amount of the grant.

(Authority: 38 U.S.C. 501, 2408)

§ 39.8 Withdrawal of grant application.

A State representative may withdraw an application by submitting to VA a written document requesting withdrawal.

(Authority: 38 U.S.C. 501, 2408)

§ 39.9 Hearings.

(a) No application for a grant under this part shall be disapproved until the applicant has been afforded an opportunity for a hearing.

(b) Whenever a hearing is requested under this section, notice of the hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall accord with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available.

(Authority: 38 U.S.C. 501, 2408)

§ 39.10 Cemetery requirements and prohibitions and recapture provisions.

(a) In order to qualify for a grant, a State veterans cemetery must be operated solely for the interment of veterans, their spouses, surviving spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support.

(b) Any grant under this part made on or after November 21, 1997, is made on the condition that, after the date of receipt of the grant, the State receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is awarded the interment of the remains or the memorialization of any person:

(1) Who has been convicted of a Federal capital crime, as defined in 38 CFR 38.600(b), and whose conviction is final, other than a person whose sentence was commuted by the President;

(2) Who has been convicted of a State capital crime, as defined in 38 CFR 38.600(b), and whose conviction is final, other than a person whose sentence was commuted by the Governor of a State.

(3) Who has been found by an appropriate State official, as defined in 38 CFR 38.600(b), under procedures to be established by the State, to have committed a Federal or State capital crime, as defined in 38 CFR 38.600(b), but to have not been convicted of such crime by reason of unavailability for trial due to death or flight to avoid prosecution.

(c) If a State which has received a grant under this part ceases to own the cemetery for which the grant was made, ceases to operate such cemetery as a veterans cemetery in accordance with paragraph (a) of this section, violates the prohibition in paragraph (b) of this section, or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from the State the total of all grants made to the State under this part in connection with such cemetery.

(d) If, within 3 years after VA has certified to the Department of the Treasury an approved grant application, not all funds from the grant have been used by the State for the purpose for which the grant was made, the United States shall be entitled to recover any unused grant funds from the State.

(Authority: 38 U.S.C. 501, 2408, 2411)

§ 39.11 State to retain control of operations.

Neither the Secretary nor any employee of VA shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State veterans cemetery that receives a grant under this program except as prescribed in this part.

(Authority: 38 U.S.C. 501, 2408)

Subpart B—Establishment, Expansion, and Improvement Projects

Grant Requirements and Procedures

§ 39.30 General requirements for a grant.

(a) For a State to obtain a grant for the establishment, expansion, or improvement of a State veterans cemetery:

(1) Its preapplication for the grant must be approved by VA under § 39.31(e);

(2) Its project must be ranked sufficiently high on the priority list in § 39.3 for the applicable fiscal year so that funds are available for the project;

(3) Its plans and specifications for the project must be approved by VA under § 39.32;

(4) The State must meet the application requirements in § 39.34; and

(5) Other requirements specified in §§ 39.6, 39.10, and 39.33 must be satisfied.

(b) VA may approve under § 39.35 any application under this subpart up to the amount of the grant requested once the requirements under paragraph (a) of this section have been satisfied, provided that sufficient funds are available. In determining whether sufficient funds are available, VA shall consider the project's priority ranking, the total amount of funds available for cemetery grant awards during the applicable fiscal year, and the prospects of higher ranking projects being ready for the award of a grant before the end of the applicable fiscal year.

(Authority: 38 U.S.C. 501, 2408)

§ 39.31 Preapplication requirements.

(a) A State seeking a grant of more than $100,000 for the establishment, expansion, or improvement of a State veterans cemetery must submit a preapplication to the Director, State Cemetery Grants Service, through *http://www.cem.va.gov/cem/scg_grants.asp.*

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State must submit each of the following:

(1) Standard Form 424 (Application for Federal Assistance) and Standard Form 424C (Budget Information) signed by the authorized representative of the State. These forms document the amount of the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) A program narrative describing the objectives of the project, the need for a grant, the method of accomplishment, the projected interment rate, and the results or benefits expected to be obtained from the assistance requested.

(3) If a site has been selected, a description of the geographic location of the project (*i.e.,* a map showing the location of the project and all appropriate geographic boundaries, and any other supporting documentation, as needed).

(4) A design concept describing the major features of the project including the number and types of gravesites, such as columbarium niches.

(5) Any comments or recommendations made by the State's "Single Point of Contact" reviewing agency.

(6) VA Form 40–0895–2 (Certification of Compliance with Provisions of the Davis-Bacon Act) to certify that the State has obtained the latest prevailing wage rates for Federally funded projects. Any construction project fully or partially funded with Federal dollars must comply with those rates for specific work by trade employees (*e.g.,* electricians, carpenters).

(7) VA Form 40–0895–3 (State or Tribal Government Cemetery Grants Service Space Program Analysis—Buildings) to provide information on the proposed size of cemetery buildings, based on VA guidance on the net and gross square footage standards for cemetery buildings. This standard is based on a workload of 1–6 burials per day.

(8) VA Form 40–0895–6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State has legislative authority to support the project and the resources necessary to initially fund the architectural and engineering portion of the project development. Once the grant is awarded, VA will reimburse the applicant for all allowable architectural and engineering costs.

(9) VA Form 40–0895–7 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions (State or Tribal Government)) to ensure that the applicant has not been debarred or suspended, and is eligible to participate in the VA grant process and receive Federal funds.

(10) VA Form 40–0895–8 (Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals) to ensure that the applicant complies with the Drug-Free Workplace Act of 1988 at the location where the construction will occur.

(11) VA Form 40–0895–9 (Certification Regarding Lobbying) to ensure that the applicant complies with Public Law 101–121 regarding the prohibition against any payments to anyone that influences or attempts to influence an officer or Member of Congress in connection with the award of a grant.

(12) VA Form 40–0895–10 (Certification of Compliance with Federal Requirements—State or Tribal Government Construction Grant) to ensure that the applicant complies with all requirements of Part 39.

(13) VA Form 40–0895–15 (Certification of Cemetery Maintained in Accordance with National Cemetery Administration Standards) to ensure that any cemetery established, expanded, or improved through a grant will be operated and maintained in accordance with the operational standards of NCA.

(c) In addition, the State must submit written assurance of each of the following conditions:

(1) Any cemetery established, expanded, or improved through a grant will be used exclusively for the interment or memorialization of eligible persons, as set forth in § 39.10(a), whose interment or memorialization is not contrary to the conditions of the grant (*see* § 39.10(b) and 38 U.S.C. 2408(d) and 2411).

(2) Title to the site is or will be vested solely in the State.

(3) The State possesses legal authority to apply for the grant and to finance and construct the proposed facilities; *i.e.,* legislation or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.

(4) The State will assist VA in assuring that the grant complies with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

(5) The State will obtain approval by VA of the final construction drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause the project to be constructed, to completion in accordance with the application and approved plans and specifications; it will submit to the Director of the State Cemetery Grants Service, for prior approval, changes that alter any cost of the project, use of space, or functional layout; and it will not enter into a construction contract for the project or undertake other activities until the requirements of the grant program have been met.

(6) The State will comply with the Federal requirements in 2 CFR parts 180 and 801 and 38 CFR part 43 and submit Standard Form 424D (Assurances—Construction Programs).

(7) The State will prepare an Environmental Assessment to determine whether an Environmental Impact Statement is necessary, and certify that funds are available to finance any costs related to preparation of the Environmental Assessment.

(d) The State must submit a copy of the legislation, as enacted into law, authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery in accordance with 38 CFR 39.10(a).

(e) Upon receipt of a complete preapplication for a grant, including all necessary assurances and all required supporting documentation, VA will determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State of any nonconformity. If the preapplication does conform, VA shall notify the State that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.3(d).

(Authority: 38 U.S.C. 501, 2408, 2411)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 4040–0004, 4040–0008, 4040–0009, and 2900–0559.)

§ 39.32 Plan preparation.

The State must prepare Establishment, Expansion, and Improvement Project plans and specifications in accordance with the requirements of this section for review by the SCGS. The plans and specifications must be approved by the SCGS prior to the State's solicitation for construction bids. Once SCGS approves the plans and specifications, the State must obtain construction bids and determine the successful bidder prior to submission of the application. The State must establish procedures for determining that costs are reasonable and necessary and can be allocated in accordance with the provisions of Office of Management and Budget (OMB) Circular No. A–87. Once the Establishment, Expansion, and Improvement Project preapplication and the project's plans and specifications have been approved, an application for assistance must be submitted in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by OMB Circular No. A–102, Revised.

(a) *General.* These requirements have been established for the guidance of the State agency and the design team to provide a standard for preparation of drawings, specifications, and estimates.

(b) *Technical requirements.* The State should meet these technical requirements as soon as possible after VA approves the Establishment, Expansion, and Improvement Project preapplication.

(1) *Boundary and site survey.* The State agency shall provide a survey of the site and furnish a legal description of the site. A boundary and site survey need not be submitted if one was submitted for a previously approved project and there have been no changes. Relevant information may then be shown on the site plan. If required, the site survey shall show each of the following items:

(i) The outline and location referenced to boundaries of all existing buildings, streets, alleys (whether public or private), block boundaries, easements, encroachments, the names of streets, railroads, and streams, and other information as specified. If there is nothing of this character affecting the property, the Surveyor shall so state on the drawings.

(ii) The point of beginning, bearing, distances, and interior angles. Closure computations shall be furnished with the survey, and error of closure shall not exceed 1 foot for each 10,000 feet of lineal traverse. Boundaries of an unusual nature (curvilinear, off-set, or having other change or direction between corners) shall be referenced with curve data (including measurement chord) and other data sufficient for replacement, and such information shall be shown on the map. For boundaries of such nature, coordinates shall be given for all angles and other pertinent points.

(iii) The area of the parcel in acres or in square feet.

(iv) The location of all monuments.

(v) Delineation of 100-year floodplain and source.

(vi) The signature and certification of the Surveyor.

(2) *Soil investigation.* The State shall provide a soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements and utility service connections. A new soil investigation is not required if one was done for a previously approved project on the same site and information from the previous investigation is adequate and unchanged. Soil investigation, when done, shall be documented in a signed report. The investigation shall be adequate to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions. The following information will be covered in the report:

(i) Thickness, consistency, character, and estimated safe bearing value where needed for structural foundation design of the various strata encountered in each pit or boring.

(ii) Amount and elevation of ground water encountered in each pit or boring, its probable variation with the seasons, and effect on the subsoil.

(iii) The elevation of rock, if known, and the probability of encountering quicksand.

(iv) If the site is underlaid with mines, the elevations and location of the tops of the mine workings relative to the site, or old workings located in the vicinity.

(3) *Topographical survey.* A topographical survey in 1-foot contour intervals shall be prepared for projects establishing new cemeteries and for significant expansion projects in previously undeveloped land.

(c) *Master plan.* A master plan showing the proposed layout of all facilities—including buildings, roadways, and burial sections—on the selected site shall be prepared for all new cemetery establishment projects for approval by the SCGS. If the project is to be phased into different year programs, the phasing shall be indicated. The master plan shall analyze all factors affecting the design, including climate, soil conditions, site boundaries, topography, views, hydrology, environmental constraints, transportation access, etc. It should provide a discussion of alternate designs that were considered. In the case of an expansion project or improvement project, the work contemplated should be consistent with the VA-approved master plan or a justification for the deviation should be provided.

(d) *Preliminary or "design development" drawings.* Following VA approval of the master plan, the State must submit design development drawings that show all current phase construction elements to be funded by the grant. The drawings must comply with the following requirements:

(1) Site development and environmental plans must include locations of structures, demolition, parking, roads, service areas, walks, plazas, memorial paths, other paved areas, landscape buffer and major groupings, and interment areas (including quantity of gravesites in each area). A grading plan including existing and proposed contours at 1-foot intervals of the entire area affected by the site work must be submitted. A site plan of the immediate area around each building shall be drawn to a convenient scale and shall show the building floor plan, utility connections, walks, gates, walls or fences, flagpoles, drives, parking areas, indication of handicapped provisions, landscaping, north arrow, and any other appropriate items.

(2) Floor plans of all levels at a convenient scale shall be double-line drawings and shall show overall dimensions, construction materials, door swings, names and square feet for each space, toilet room fixtures, and interior finish schedule.

(3) Elevations of the exteriors of all buildings shall be drawn to the same scale as the plan and shall include all material indications.

(4) Preliminary mechanical and electrical layout plans shall be drawn at a convenient scale and shall have an equipment and plumbing fixture schedule.

(e) *Final construction drawings and specifications.* Funds for the construction of any project being assisted under this program will not be released until VA approves the final construction drawings and specifications. If VA approves them, VA shall send the State a written letter of approval indicating that the project's plans and specifications comply with the terms and conditions as prescribed by VA. This does not constitute approval of the contract documents. It is the responsibility of the State to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

(1) *General.* The State shall prepare final working drawings so that clear and distinct prints may be obtained. These drawings must be accurately dimensioned to include all necessary explanatory notes, schedules, and legends. Working drawings shall be complete and adequate for VA review and comment. The State shall prepare separate drawings for each of the following types of work: architectural, equipment, layout, structural, heating and ventilating, plumbing, and electrical.

(2) *Architectural drawings.* The State shall submit drawings which include: All structures and other work to be removed; all floor plans if any new work is involved; all elevations which are affected by the alterations; building sections; demolition drawings; all details to complete the proposed work and finish schedules; and fully dimensioned floor plans at 1/8″ or 1/4″ scale.

(3) *Equipment drawings.* The State shall submit a list of all equipment to be provided under terms of the grant in the case of an Establishment Project. Large-scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment shall be included.

(4) *Layout drawings.* The State shall submit a layout plan that shows:

(i) All proposed features such as roads, buildings, walks, utility lines, burial layout, etc.

(ii) Contours, scale, north arrow, and legend showing existing trees.

(iii) A graphic or keyed method of showing plant types as well as quantities of each plant.

(iv) Plant list with the following: key, quantity, botanical name, common name, size, and remarks.

(v) Typical tree and shrub planting details.

(vi) Areas to be seeded or sodded.

(vii) Areas to be mulched.

(viii) Gravesite section layout with permanent section monument markers and lettering system.

(ix) Individual gravesite layout and numbering system. If the cemetery is existing and the project is expansion or renovation, show available, occupied, obstructed, and reserved gravesites.

(x) Direction the headstones face.

(5) *Structural drawings.* The State shall submit complete foundation and framing plans and details, with general notes to include: governing code, material strengths, live loads, wind loads, foundation design values, and seismic zone.

(6) *Mechanical drawings.* The State shall submit:

(i) Heating and ventilation drawings showing complete systems and details of air conditioning, heating, ventilation, and exhaust; and

(ii) Plumbing drawings showing sizes and elevations of soil and waste systems, sizes of all hot and cold water piping, drainage and vent systems, plumbing fixtures, and riser diagrams.

(7) *Electrical drawings.* The State shall submit separate drawings for lighting and power, including drawings of:

(i) Service entrance, feeders, and all characteristics;

(ii) All panel, breaker, switchboard, and fixture schedules;

(iii) All lighting outlets, receptacles, switches, power outlets, and circuits; and

(iv) Telephone layout, fire alarm systems, and emergency lighting.

(8) *Final specifications.* Final specifications (to be used for bid purposes) shall be in completed format. Specifications shall include the invitations for bids, cover or title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and sections describing materials and workmanship in detail for each class of work.

(9) *Cost estimates.* The State shall show in convenient form and detail the estimated total cost of the work to be performed under the contract, including provisions of fixed equipment shown by

the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work. Estimates shall also be provided for each building structure and other important features such as the assembly area and shall include burial facilities.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0559).

§ 39.33 Conferences.

(a) *Predesign conference.* A predesign conference is required for all Establishment, Expansion, and Improvement Projects requiring major construction, primarily to ensure that the State agency becomes oriented to VA procedures, requirements, and any technical comments pertaining to the project. This conference will take place at an appropriate location near the proposed site and should include a site visit to ensure that all parties to the process, including NCA staff, are familiar with the site and its characteristics.

(b) *Additional conferences.* At any time, VA may recommend an additional conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State and its architects to discuss with VA officials the requirements for a grant.

(Authority: 38 U.S.C. 501, 2408)

§ 39.34 Application requirements.

(a) For an Establishment, Expansion, and Improvement Project to be considered for grant funding under this subpart, the State must submit an application (as opposed to a preapplication) consisting of the following:

(1) Standard Form 424 (Application for Federal Assistance) with the box labeled "application" marked;

(2) Standard Form 424C (Budget Information), which documents the amount of funds requested based on the construction costs as estimated by the successful construction bid;

(3) A copy of itemized bid tabulations (If there are non-VA participating areas, these shall be itemized separately.); and

(4) Standard Form 424D (Assurances—Construction Program).

(5) VA Form 40–0895–11 (Memorandum of Agreement for a Grant to Construct or Modify a State or Tribal Government Veterans Cemetery) to identify the parties (VA and applicant), identify the scope of the project, and indicate how the grant award funds will be paid to the applicant.

(6) VA Form 40–0895–12 (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (Contractor)) to ensure that the contractor has not been debarred or suspended, and is eligible to participate in the VA grant process and receive Federal funds.

(b) Prior to submission of the application, the State must submit a copy of an Environmental Assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332). The Environmental Assessment must briefly describe the project's possible beneficial and harmful effects on the following impact categories:

(1) Transportation;
(2) Air quality;
(3) Noise;
(4) Solid waste;
(5) Utilities;
(6) Geology (Soils/Hydrology/Floodplains);
(7) Water quality;
(8) Land use;
(9) Vegetation, Wildlife, Aquatic, Ecology/Wetlands, etc.;
(10) Economic activities;
(11) Cultural resources;
(12) Aesthetics;
(13) Residential population;
(14) Community services and facilities;
(15) Community plans and projects; and
(16) Other.

(c) If an adverse environmental impact is anticipated, the State must explain what action will be taken to minimize the impact. The assessment shall comply with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 4040–0004, 4040–0008, 4040–0009, and 2900–0559).

§ 39.35 Final review and approval of application.

Following VA approval of bid tabulations and cost estimates, VA will review the complete Establishment, Expansion and Improvement Project grant application for approval in accordance with the requirements of § 39.30. If the application is approved, the grant will be awarded by a Memorandum of Agreement of Federal grant funds.

(Authority: 38 U.S.C. 501, 2408)

Award of Grant

§ 39.50 Amount of grant.

(a) The amount of an Establishment, Expansion, and Improvement Project grant awarded under this subpart may not exceed 100 percent of the total cost of the project, but may be less than the total cost of the project.

(b) The total cost of a project under this subpart may include:

(1) Administration and design costs, *e.g.,* architectural and engineering fees, inspection fees, and printing and advertising costs.

(2) The cost of cemetery features, *e.g.,* entry features, flag plaza and assembly areas, columbaria, preplaced liners or crypts, irrigation systems, committal-service shelters, and administration/maintenance buildings.

(3) In the case of an establishment grant, the cost of equipment necessary for the operation of the State veterans cemetery. This may include the cost of non-fixed equipment such as grounds maintenance equipment, burial equipment, and office equipment.

(4) In the case of an improvement or expansion grant, the cost of equipment necessary for operation of the State veterans cemetery, but only if such equipment:

(i) Was included in the construction contract;

(ii) Was installed during construction; and

(iii) Is permanently affixed to a building or connected to the heating, ventilating, air conditioning, or other service distributed through a building via ducts, pipes, wires, or other connecting device, such as kitchen and intercommunication equipment, built-in cabinets, and equipment lifts.

(5) A contingency allowance not to exceed five percent of the total cost of a project that involves new construction or eight percent of the total cost of an improvement project that does not involve new construction.

(c) The total cost of a project under this subpart may not include the cost of:

(1) Land acquisition;

(2) Building space that exceeds the space guidelines specified in this part;

(3) Improvements not on cemetery land, such as access roads or utilities;

(4) Maintenance or repair work;

(5) Office supplies or consumable goods (such as fuel and fertilizer) that are routinely used in a cemetery; or

(6) Fully enclosed, climate-controlled, committal-service facilities, freestanding chapels, or chapels that are part of an administrative building or information center.

(d) VA shall certify approved applications to the Secretary of the Treasury in the amount of the grant, and shall designate the appropriation from which it shall be paid. Funds paid for the establishment, expansion, or improvement of a veterans cemetery must be used solely for carrying out approved projects.

(Authority: 38 U.S.C. 501, 2408)

§ 39.51 Payment of grant award.

The amount of an Establishment, Expansion, and Improvement Project grant award will be paid to the State or, if designated by the State representative, the State veterans cemetery for which such project is being carried out, or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement, and in installments that are consistent with the progress of the project, as the Director of the State Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved Establishment, Expansion, and Improvement Project shall be used solely for carrying out such project as approved. As a condition for the final payment, the State representative must submit to VA the following:

(a) Standard Form 271 (Outlay Report and Request for Reimbursement for Construction Programs);

(b) A request in writing for the final architectural/engineering inspection, including the name and telephone number of the local point of contact for the project;

(c) The written statement, "It is hereby agreed that the monetary commitment of the Federal government will have been met and the project will be considered terminated upon payment of this voucher."; and

(d) Evidence that the State has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.122, if applicable.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0002).

Standards and Requirements

§ 39.60 General requirements for site selection and construction of veterans cemeteries.

(a) The various codes, requirements, and recommendations of State and local authorities or technical and professional organizations, to the extent and manner in which those codes, requirements, and recommendations are referenced in this subpart, are applicable to grants involving construction of veterans cemeteries. Additional information concerning these codes, requirements, and recommendations may be obtained from VA, National Cemetery Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) The standards in §§ 39.60, 39.61, 39.62, and 39.63 constitute general design and construction criteria and shall apply to all Establishment, Expansion, and Improvement Projects for which Federal assistance is requested under 38 U.S.C. 2408.

(c) In developing these standards, no attempt has been made to comply with all of the various State and local codes and regulations. The standards contained in §§ 39.60, 39.61, 39.62, and 39.63 shall be followed where they exceed State or local codes and regulations. Departure will be permitted, however, when alternate standards are demonstrated to provide equivalent or better design criteria than the standards in these sections. Conversely, compliance is required with State and local codes where such requirements provide a standard higher than those in these sections. The additional cost, if any, in using standards that are higher than those of VA should be documented and justified in the application.

(d) The space criteria and area requirements referred to in these standards shall be used as a guide in planning. Additional area and facilities beyond those specified as basic may be included if found to be necessary to meet the functional requirements of the project but are subject to approval by VA. Substantial deviation from the space criteria or area standards shall be carefully considered and justified. Failing to meet the criteria or standards or exceeding them by more than 10 percent in the completed plan would be regarded as evidence of inferior design or as exceeding the boundaries of professional requirements. In those projects that unjustifiably exceed maximum space criteria or area requirements, VA funding may be subject to reduction in proportion to the amount by which the space or area of the cemetery exceeds the maximum specified in these standards.

(Authority: 38 U.S.C. 501, 2408)

§ 39.61 Site planning standards.

(a) *Site selection*—(1) *Location.* The land should be located as close as possible to the densest veteran population in the area under consideration.

(2) *Size.* Sufficient acreage shall be available to provide gravesites for estimated needs for at least 20 years. More acreage should be provided where feasible. Acreage could vary depending on the State veteran population and national cemetery availability.

(3) *Accessibility.* The site should be readily accessible by highway. Offsite improvements shall not be funded by the grant.

(4) *Topography.* The land should range from comparatively level to rolling and moderately hilly terrain. Natural rugged contours are suitable only if development and maintenance costs would not be excessive and burial areas would be accessible to elderly or infirm visitors. The land shall not be subject to flooding.

(5) *Water table.* The water table should be lower than the maximum proposed depth of burial.

(6) *Soil requirements.* The soil should be free from rock, muck, unstable composition, and other materials that would hamper the economical excavation of graves by normal methods. In general, the soil should meet the standards of good agricultural land that is capable of supporting turf and trees, with normal care and without the addition of topsoil.

(7) *Utilities.* Electricity and gas, if required, should be available. Offsite improvements shall not be funded by the grant.

(8) *Water supply.* An adequate supply of water should be available. Offsite improvements shall not be funded by the grant.

(9) *Sewerage.* An approved means to dispose of storm flow and sewage from the facility should be available. Offsite improvements shall not be funded by the grant.

(b) *Site development requirements*—(1) *General.* The development plan shall provide for adequate hard-surfaced roads, walks, parking areas, public rest rooms, a flag circle, and a main gate.

(2) *Parking.* All parking facilities shall include provisions to accommodate the physically handicapped. A minimum of one space shall be set aside and identified with signage in each parking area with additional spaces provided in the ratio of 1 handicapped space to every 20 regular spaces. Handicapped spaces shall not be placed between two conventional diagonal or head-on parking spaces. Each of the handicapped parking spaces shall not be less than 9 feet wide; in addition, a clear space 4 feet wide shall be provided between the adjacent conventional parking spaces and also on the outside of the end spaces. Parking shall not be provided for large numbers of people attending ceremonial events such as Memorial Day services.

(3) *Roads.* Roads should generally follow the topography of the cemetery and allow pedestrian access to burial sections on both sides. Roads should generally not be used as "boundaries" outlining burial sections. Extensive bridging should be avoided. Grant program funding may not be used to build access roads on property that is not part of the cemetery. Road widths shall be compatible with proposed traffic flows and volumes. Primary roads shall be generally 24 feet wide.

(4) *Pavement design.* The pavement section of all roads, service areas, and parking areas shall be designed for the maximum anticipated traffic loads and existing soil conditions and in accordance with local and State design criteria.

(5) *Curbs.* Bituminous roads may be provided with integral curbs and gutters constructed of portland cement concrete. Freestanding curbs may be substituted when the advantage of using them is clearly indicated. All curbs shall have a "roll-type" cross section for vehicle and equipment access to lawn areas except as may be necessary for traffic control. The radii of curbs at road intersections shall not be less than 20 feet-0 inches. Curb ramps shall be provided to accommodate the physically handicapped and maintenance equipment. Curb ramps shall be provided at all intersections of roads and walks. The curb ramps shall not be less than 4 feet wide; they shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The vertical angle between the surface of a curb ramp and the surface of a road or gutter shall not be less than 176 degrees; the transition between the two surfaces shall be smooth. Curb ramps shall have nonskid surfaces.

(6) *Walks.* Walks shall be designed with consideration for the physically handicapped and elderly. Walks and ramps designed on an incline shall have periodic level platforms. All walks, ramps and platforms shall have nonskid surfaces. Any walk shall be ramped if the slope exceeds 3 percent. Walks that have gradients from 2 to 3 percent shall be provided with level platforms at 200-foot intervals and at intersections with other walks. Ramps shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The ramps shall have handrails on both sides unless other protective devices are provided; every handrail shall have clearance of not less than 1½ inches between the back of the handrail and the wall or any other vertical surface behind it. Ramps shall not be less than 4 feet wide between curbs; curbs shall be provided on both sides. The curbs shall not be less than 4 inches high and 4 inches wide. A level platform in a ramp shall not be less than the full width of the ramp and not less than 5 feet long. Entrance platforms and ramps shall be provided with protective weather barriers to shield them against hazardous conditions resulting from inclement weather.

(7) *Steps.* Exterior steps may be included in the site development as long as provisions are made for use by physically handicapped persons.

(8) *Grading.* Minimum lawn slopes shall be 2 percent; critical spot grade elevations shall be shown on the contract drawings. Insofar as practicable, lawn areas shall be designed without steep slopes.

(9) *Landscaping.* The landscaping plan should provide for a park-like setting of harmonious open spaces balanced with groves of indigenous and cultivated deciduous and evergreen trees. Shrubbery should be kept to a minimum. Steep slopes that are unsuitable for interment areas should be kept in their natural state.

(10) *Surface drainage.* Surface grades shall be determined in coordination with the architectural, structural, and mechanical design of buildings and facilities so as to provide proper surface drainage.

(11) *Burial areas.* A site plan of the cemetery shall include a burial layout. If appropriate, the burial layout should reflect the phases of development in the various sections. The first phase of construction should contain sufficient burial sites to meet the foreseeable demand for at least 10 years. All applicable dimensions of roadways, fences, utilities, or other structures shall be indicated on the layout.

(12) *Gravesites.* Gravesites shall be laid out in uniform pattern. There shall be a minimum of 10 feet from the edge of roads and drives and a minimum of 20 feet from the boundaries or fence lines. Maximum distance from the edge of a permanent road to any gravesite shall not be over 275 feet. Temporary roads may be provided to serve areas in phase developments.

(13) *Monumentation.* Each grave shall be marked with an appropriate marker, and each cemetery shall maintain a register of burials setting forth the name of each person buried and the designation of the grave in which he/she is buried. Permanent gravesite control markers shall be installed based on a grid system throughout the burial area unless otherwise specified. This will facilitate the gravesite layout, placement of utility lines, and alignment of headstones.

(14) *Entrance.* The entrance should be an architectural or landscape feature that creates a sense of arrival.

(15) *Memorial walkway.* Each cemetery should have an area for the display of memorials donated by veterans groups and others. Such areas may take the form of a path or walkway and should provide a contemplative setting for visitors.

(16) *Donation items.* Family members and others often wish to donate items such as benches and trees. Acceptable items of donation should be specified in the cemetery plan. The plan should also designate appropriate locations for such items.

(17) *Flag/assembly area.* There shall be one primary flagpole for the United States flag. This flag shall be lighted. A turf assembly area should be developed for major gatherings such as Memorial Day. The assembly area may be focused on the flag. The area may also incorporate an architectural or a landscape feature that functions as a platform or backdrop for speakers.

(18) *Site furnishings.* Site furnishings include signage, trash receptacles, benches, and flower containers. These items should be coordinated and complement each other, the architectural design, and the cemetery as a whole. They should be simple, durable, standardized, and properly scaled.

(19) *Carillons.* The cemetery development plan should include a location for a carillon tower. Carillons are normally donated. They are not provided for in the grant.

(Authority: 38 U.S.C. 501, 2408)

§ 39.62 Space criteria for support facilities.

These criteria are based on a projected average burial rate of one to six per day, staffing by position, and a defined complement of maintenance and service equipment. For cemeteries with less than one or more than six burials per day, support facilities are considered on an individual basis in accordance with § 39.60(d). In converting Net Square Feet (NSF) to Gross Square Feet (GSF), a conversion factor of 1.5 is the maximum allowed. The applicant shall, in support of the design, include the following as an attachment to the application: A list of all grounds maintenance supplies and equipment and the number of Full Time Employees (FTE) by job assignment for the next 10 years.

(a) *Administrative building.* The administrative building should be approximately 1,600 NSF in total, providing space, as needed, for the following:

(1) Cemetery director's office;

(2) Other offices (as needed);
(3) Administrative staff (lobby/office area);
(4) Operations (file/office/equipment/work area);
(5) Family/conference room;
(6) Military honors team;
(7) Refreshment unit;
(8) Housekeeping aide's closet; and
(9) Restroom facilities.

(b) *Maintenance/service building.* The maintenance/service building may be combined with the administrative building. The maintenance/service building should be approximately 2,200 NSF in total, providing heated and air conditioned space, as needed, for the following:
(1) Foreman's office;
(2) Lunch room;
(3) Kitchen unit;
(4) Toilet and locker room facilities;
(5) Housekeeping aide's closet; and
(6) Vehicle and equipment maintenance and storage.

(c) *Vehicle and equipment storage.* Approximately 275 NSF/Bay as needed. Not all types of vehicles and equipment require storage in heated space. Based on climatic conditions, it may be justified to rely completely on open structures rather than heated structures to protect the following types of vehicles and equipment: Dump trucks, pickup trucks, cemetery automobiles, gang and circular mowers.

(d) *Interment/committal service shelter.* One permanent shelter is authorized for every five interments per day. The shelter may include a covered area to provide seating for approximately 20 people and an uncovered paved area to provide space for approximately 50 additional people. The shelter may also include a small, enclosed equipment/storage area. Provisions must be made for the playing of Taps by recorded means.

(e) *Public Information Center.* One permanent Public Information Center is authorized per facility. A Public Information Center is used to orient visitors and funeral corteges. It should include the gravesite locator. The public restrooms may also be combined with this structure. Space determinations for separate structures for public restrooms shall be considered on an individual basis. The Public Information Center, including public restrooms, may be combined with the administrative building.

(f) *Other interment structures.* Space determinations for other support facilities such as columbaria, preplaced graveliners (or crypts), garden niches, etc., will be considered on an individual basis in accordance with § 39.60(d).

(Authority: 38 U.S.C. 501, 2408)

§ 39.63 Architectural design standards.

The publications listed in this section are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be inspected at the office of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of the 2003 edition of the National Fire Protection Association Life Safety Code and Errata (NFPA 101), the 2003 edition of the NFPA 5000, Building Construction and Safety Code, and the 2002 edition of the National Electrical Code, NFPA 70, may be obtained from the National Fire Protection Association, Inc. (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101, 800–844–6058 (toll free). Copies of the 2003 edition of the Uniform Mechanical Code and the 2003 edition of the Uniform Plumbing Code may be obtained from the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761–2816. 909–472–4100 (this is not a toll-free number). The 2002 and 2003 NFPA and IAPMO code publications can be inspected at VA by calling 202–461–4902 for an appointment.

(a) *Architectural and structural requirements*—(1) *Life Safety Code.* Standards must be in accordance with the 2003 edition of the National Fire Protection Association Life Safety Code, NFPA 101. Fire safety construction features not included in NFPA 101 shall be designed in accordance with the requirements of the 2003 edition of the NFPA 5000, Building Construction and Safety Code. Where the adopted codes state conflicting requirements, the NFPA National Fire Codes shall govern.

(2) *State and local codes.* In addition to compliance with the standards set forth in this section, all applicable local and State building codes and regulations must be observed. In areas not subject to local or State building codes, the recommendations contained in the 2003 edition of the NFPA 5000, Building Construction and Safety Code, shall apply.

(3) *Occupational safety and health standards.* Applicable standards contained in the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) must be observed.

(b) *Mechanical requirements.* The heating system, boilers, steam system, ventilation system, and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations. Where no local or State codes are in force, the 2003 edition of the Uniform Mechanical Code shall apply.

(c) *Plumbing requirements.* Plumbing systems shall comply with all applicable local and State codes, the requirements of the State Department of Health, and the minimum general standards as set forth in this part. Where no local or State codes are in force, the 2003 edition of the Uniform Plumbing Code shall apply.

(d) *Electrical requirements.* The installation of electrical work and equipment shall comply with all local and State codes and laws applicable to electrical installations and the minimum general standards set forth in the NFPA 70, National Electrical Code, 2002 edition. The regulations of the local utility company shall govern service connections. Aluminum bus ways shall not be used as a conducting medium in the electrical distribution system.

(Authority: 38 U.S.C. 501, 2408)

Subpart C—Operation and Maintenance Projects

Grant Requirements and Procedures

§ 39.80 General requirements for a grant.

(a) For a State to obtain a grant for the operation or maintenance of a State veterans cemetery:
(1) Its preapplication for the grant must be approved by VA under § 39.81(e);
(2) Its project must be ranked sufficiently high within Priority Group 4 as defined in § 39.3 for the applicable fiscal year so that funds are available for the project, and a grant for the project must not result in payment of more than the $5 million total amount permissible for all Operation and Maintenance Projects in any fiscal year;
(3) Its plans and specifications for the project must be approved by VA under § 39.82;
(4) The State must meet the application requirements in § 39.84; and
(5) Other requirements specified in §§ 39.6, 39.10, and 39.83 must be satisfied.

(b) VA may approve under § 39.85 any Operation and Maintenance Project grant application up to the amount of the grant requested once the requirements under paragraph (a) of this

section have been satisfied, provided that sufficient funds are available and that total amount of grants awarded during any fiscal year for Operation and Maintenance Projects does not exceed $5 million. In determining whether sufficient funds are available, VA shall consider the project's ranking in Priority Group 4; the total amount of funds available for cemetery grant awards in Priority Group 4 during the applicable fiscal year; and the prospects of higher ranking projects being ready for the award of a grant before the end of the applicable fiscal year.

(Authority: 38 U.S.C. 501, 2408)

§ 39.81 Preapplication requirements.

(a) A State seeking a grant for the operation or maintenance of a State veterans cemetery must submit a preapplication to the Director, State Cemetery Grants Service, through *http://www.cem.va.gov/cem/scg_grants.asp.*

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State must submit each of the following:

(1) Standard Form 424 (Application for Federal Assistance) and Standard Form 424C (Budget Information) signed by the authorized representative of the State. These forms document the amount of the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) VA Form 40–0895–2 (Certification of Compliance with Provisions of the Davis-Bacon Act) to certify that the State has obtained the latest prevailing wage rates for Federally funded projects. Any construction project fully or partially funded with Federal dollars must comply with those rates for specific work by trade employees (*e.g.,* electricians, carpenters).

(3) VA Form 40–0895–6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State has legislative authority to support the project and the resources necessary to initially fund the architectural and engineering portion of the project development. Once the grant is awarded, VA will reimburse the applicant for all allowable architectural and engineering costs.

(4) VA Form 40–0895–7 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters–Primary Covered Transactions (State or Tribal Government)) to ensure that the applicant has not been debarred or suspended, and is eligible to participate in the VA grant process and receive Federal funds.

(5) VA Form 40–0895–8 (Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals) to ensure that the applicant complies with the Drug-Free Workplace Act of 1988 at the location where the construction will occur.

(6) VA Form 40–0895–9 (Certification Regarding Lobbying) to ensure that the applicant complies with Public Law 101–121 regarding the prohibition against any payments to anyone that influences or attempts to influence an officer or Member of Congress in connection with the award of a grant.

(7) VA Form 40–0895–10 (Certification of Compliance with Federal Requirements–State or Tribal Government Construction Grant) to ensure that the applicant complies with all requirements of Part 39.

(8) VA Form 40–0895–15 (Certification of Cemetery Maintained in Accordance with National Cemetery Administration Standards) to ensure that any cemetery operated or maintained through a grant will be operated and maintained in accordance with VA's national shrine standards of appearance.

(9) A gravesite assessment survey documenting the State cemetery's performance related to the standards outlined in paragraph (b)(10) of this section for the year in which the preapplication is submitted.

(10) A program narrative describing how the project will assist the State in meeting VA's national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, or turf conditions. Specifically, the preapplication should explain the need for the grant, how the work is to be accomplished, and the expected improvement in the State cemetery's performance related to one or more of the following national shrine standards:

(i) *Cleanliness.* 90 percent of headstones, markers, and niche covers must be clean and free of debris and objectionable accumulations.

(ii) *Height.* 90 percent of headstones and markers must be set and maintained at the proper height.

(iii) *Alignment.* 100 percent of headstones, markers, and niche covers must be properly installed. Upright headstones in active burial sections must be uniform in height (24″–26″ above ground), horizontally and vertically aligned with inscriptions visible, and installed to ensure a pleasing top line while compensating for ground contours. Flat markers must be uniform in height (parallel with the ground and no more than 1″ above grade) and horizontally and vertically aligned. Niche covers must be horizontally and vertically aligned. All inscriptions must be visible.

(iv) *Grade.* 95 percent of the grade of every gravesite must blend in with adjacent grade levels.

(v) *Turf Conditions.* 100 percent of visually prominent areas must have a well-established, healthy stand of turf that is generally weed free; 95 percent of visually prominent areas with established turf must be generally free of bare areas.

(11) A description of the geographic location of the existing State cemetery and any other supporting documentation, as requested by the SCGS Director.

(12) A description of the project including the number and types of headstones and markers that need to be cleaned and aligned, a description of the gravesites that need to be leveled, and a description of the turf conditions that need to be improved to meet VA's national shrine standards.

(c) In addition, the State must submit written assurance of each of the following conditions:

(1) Any cemetery in receipt of a grant under this subpart will be used exclusively for the interment or memorialization of eligible persons, as set forth in § 39.10(a), whose interment or memorialization is not contrary to the conditions of the grant (see § 39.10(b) and 38 U.S.C. 2408(d) and 2411).

(2) Title to the site is or will be vested solely in the State.

(3) The State possesses legal authority to apply for the grant.

(4) The State will obtain approval by VA of the final specifications before the project is advertised or placed on the market for bidding; the project will achieve VA's national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, or turf conditions in accordance with the application and approved plans and specifications; the State will submit to the Director of the State Cemetery Grants Service, for prior approval, changes that alter any cost of the project; and the State will not enter into a contract for the project or undertake other activities until all the requirements of the grant program have been met.

(d) Depending on the scope of the project, the SCGS will work with the State to determine which, if any, of the following are required:

(1) Compliance with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification

and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

(2) Compliance with the Federal requirements in 2 CFR parts 180 and 801 and 38 CFR part 43 and submission of Standard Form 424D (Assurances—Construction Programs).

(3) A site Environmental Assessment to determine whether an Environmental Impact Statement will be necessary as a result of the work to be performed on the headstones and markers, gravesites, or turf conditions.

(e) Upon receipt of a complete preapplication for a grant, including all necessary assurances and all required supporting documentation, VA will determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State of any nonconformity. If the preapplication does conform, VA shall notify the State that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.3(d).

(Authority: 38 U.S.C. 501, 2408, 2411)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 4040–0004, 4040–0008, 4040–0009, and 2900–0559).

§ 39.82 Plan preparation.

(a) The State must successfully complete its plan preparation under this section before submitting a grant application for an Operation and Maintenance Project. The State may be required to undertake some or all of the following requirements of this section. After submitting all necessary plans and specifications to the SCGS and obtaining approval for the State to solicit for the Operation and Maintenance Project contract bids, the State shall:

(1) Obtain bids and determine the successful bidder;

(2) Establish procedures for determining that costs are reasonable and necessary and can be allocated in accordance with the provisions of OMB Circular No. A–87 and submit documentation of such determinations to VA; and

(3) Comply with the uniform requirements for grants-in-aid to State and local governments prescribed by OMB Circular No. A–102, Revised.

(b) Depending on the scope of the project, the SCGS will work with the State to determine which of the following will be required prior to submission of an application. As determined by VA, these may include:

(1) A boundary and site survey comprising a survey and legal description of the existing State cemetery site;

(2) Project drawings indicating the cemetery section(s) to be impacted by the Operation and Maintenance Project, gravesite section layout with permanent section monument markers and lettering system, and the total number of gravesites to be impacted;

(3) Project specifications (to be used for bid purposes), which shall include the invitation for bid, cover or title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and detailed descriptions of materials and workmanship for the work to be performed to meet VA's national shrine standards;

(4) A detailed estimate of the total cost of the work to be performed under the contract; or

(5) A site Environmental Assessment meeting the provisions of § 39.34(b) to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332), as a result of the work to be performed on the headstones and markers, gravesites, or turf conditions.

(c) If VA determines that the project's plans and specifications comply with the terms and conditions prescribed by VA, VA will send the State a written letter of approval indicating that the project's plans and specifications comply with the terms and conditions as prescribed by VA. This does not constitute approval of the contract documents. It is the responsibility of the State to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0559).

§ 39.83 Conferences.

(a) *Planning conference.* The SCGS may require planning conferences for Operation and Maintenance Projects, primarily to ensure that the State agency becomes oriented to VA's national shrine standards, procedures, requirements, and any technical comments pertaining to the project. These conferences will normally occur over the telephone.

(b) *Additional conferences.* At any time, VA may recommend an additional telephone conference to provide an opportunity for the State to discuss with VA officials the requirements for an Operation and Maintenance Project grant.

(Authority: 38 U.S.C. 501, 2408)

§ 39.84 Application requirements.

For an Operation and Maintenance Project to be considered for grant funding under this subpart, the State must submit an application (as opposed to a preapplication) consisting of the following:

(a) Standard Form 424 (Application for Federal Assistance) with the box labeled "application" marked;

(b) Standard Form 424C (Budget Information), which documents the amount of funds requested based on the construction costs as estimated by the successful construction bid;

(c) A copy of itemized bid tabulations; and

(d) Standard Form 424D (Assurances—Construction Program).

(e) VA Form 40–0895–11 (Memorandum of Agreement for a Grant to Construct or Modify a State or Tribal Government Veterans Cemetery) to identify the parties (VA and applicant), identify the scope of the project, and indicate how the grant award funds will be paid to the applicant.

(f) VA Form 40–0895–12 (Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion–Lower Tier Covered Transactions (Contractor)) to ensure that the contractor has not been debarred or suspended, and is eligible to participate in the VA grant process and receive Federal funds.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 4040–0002, 4040–0008, 4040–0009, and 2900–0559).

§ 39.85 Final review and approval of application.

Following VA approval of bid tabulations and cost estimates, the complete Operation and Maintenance Project grant application will be reviewed for approval in accordance with the requirements of § 39.80. If the application is approved, the grant will be awarded by a Memorandum of Agreement of Federal grant funds.

(Authority: 38 U.S.C. 501, 2408)

Award of Grant

§ 39.100 Amount of grant.

(a) The amount of an Operation and Maintenance Project grant awarded

under this subpart may not exceed 100 percent of the total cost of the project, but may be less than total cost of the project.

(b) The total cost of a project under this subpart may include any or all of the following costs:

(1) Administration and design costs, *e.g.,* architectural and engineering fees, inspection fees, and printing and advertising costs.

(2) Construction costs.

(3) The cost of VA-approved equipment that is necessary for the completion of the project.

(c) The total cost of a project under this subpart may not include the cost of any of the following:

(1) Land acquisition;

(2) Buildings of any type;

(3) Improvements not on cemetery land, such as access roads or utilities;

(4) Office supplies or consumable goods (such as fuel and fertilizer) that are routinely used in a cemetery; or

(5) Project contingency costs.

(d) VA shall certify approved applications to the Secretary of the Treasury in the amount of the grant, and shall designate the appropriation from which it shall be paid. Funds paid for the operation and maintenance of a veterans cemetery must be used solely for carrying out approved projects.

(Authority: 38 U.S.C. 501, 2408)

§ 39.101 Payment of grant award.

The amount of an Operation and Maintenance Project grant award will be paid to the State or, if designated by the State representative, the State veterans cemetery for which such project is being carried out, or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement and in installments that are consistent with the progress of the project, as the Director of the State Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved Operation and Maintenance Project shall be used solely for carrying out such project as approved. As a condition for the final payment, the State representative must submit to VA each of the following:

(a) Standard Form 271 (Outlay Report and Request for Reimbursement for Construction Programs);

(b) A report on the project accomplishments in accordance with § 39.120 and a request in writing for the final architectural/engineering inspection, including the name and telephone number of the local point of contact for the project;

(c) The written statement, "It is hereby agreed that the monetary commitment of the Federal government will have been met and the project will be considered terminated upon payment of this voucher."; and

(d) Evidence that the State has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.122.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0002).

Subpart D—Grant Recipient Responsibilities, Inspections, and Reports Following Project Completion

§ 39.120 Documentation of grant accomplishments.

Within 60 days of completion of an Operation and Maintenance Project, the State must submit to SCGS a written report regarding the work performed to meet VA's national shrine standards. This report must be based on the original justification for the grant as noted in § 39.81(b)(10) and must include statistical data and detailed pictures of the work accomplished.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirement in this section under control number 2900–0559).

§ 39.121 State responsibilities following project completion.

(a) A State that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall monitor use of the cemetery by various subgroups and minority groups, including women veterans. If VA determines that under-utilization by any of these groups exists, the State shall establish a program to inform members of these groups about benefits available to them. If a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs benefits information in a language other than English, the State shall make such information available in the necessary language.

(b) A State veterans cemetery that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall be operated and maintained as follows:

(1) Buildings, grounds, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration and hazards to users.

(2) The cemetery shall be kept open for public use at reasonable hours based on the time of the year.

(c) VA, in coordination with the State, shall inspect the project for compliance with the standards set forth in subpart B of this part for Establishment, Expansion, and Improvement Projects and with the standards set forth in subpart C of this part for Operation and Maintenance Projects at the project's completion and at least once in every 3-year period following completion of the project throughout the period the facility is operated as a State veterans cemetery. The State shall forward to the Director, State Cemetery Grants Service, a copy of the inspection report, giving the date and location the inspection was made and citing any deficiencies and corrective action to be taken or proposed.

(d) Failure of a State to comply with any of paragraphs (a) through (c) of this section shall be considered cause for VA to suspend any payments due the State on any project until the compliance failure is corrected.

(Authority: 38 U.S.C. 501, 2408; and E.O. 13166, 65 FR 50121)

§ 39.122 Inspections, audits, and reports.

(a) A State will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State will provide to VA evidence that it has met its responsibility under the Single Audit Act of 1984 (see part 41 of this chapter).

(b) A State will make an annual report on VA Form 40–0241 (State Cemetery Data) signed by the authorized representative of the State. These forms document current burial activity at the cemetery, use of gravesites, remaining gravesites, and additional operational information intended to answer questions about the status of the grant program.

(c) A State will complete and submit to VA a VA Form 40–0895–13 (Certification Regarding Documents and Information Required for State or Tribal Government Cemetery Construction Grants–Post Grant Requirements) to ensure that the grantee is aware of and complies with all grant responsibilities and to properly and timely close out the grant.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0559).

[FR Doc. 2010–14058 Filed 6–15–10; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of Issue 36 of the *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) and its incorporation by reference in the Code of Federal Regulations.

DATES: *Effective Date:* This final rule is effective on June 16, 2010. The incorporation by reference of Issue 36 of the IMM is approved by the Director of the Federal Register as of June 16, 2010.

FOR FURTHER INFORMATION CONTACT: Lizbeth Dobbins, (202) 268–3789.

SUPPLEMENTARY INFORMATION: Issue 36 of the International Mail Manual was issued on May 11, 2009. It replaced all previous editions. Issue 36 of the IMM continues to serve the objectives of the Postal Service's Transformation Plans, the 2004–2008 Five-Year Strategic Plan, the Strategic Transformation Plan 2006–2010, and Vision 2013, Plan for 2009–2013 to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. The Plans' key strategies include improving operational efficiency, supporting growth through added value to customers, and enhancing the Postal Service's performance-based culture.

In addition, Issue 36 sets forth specific changes such as: new mailing standards for authorized shipments of small packets to Cuba to align USPS® with U.S. Department of Commerce regulations; to expand the use of Priority Mail International® Flat Rate Envelopes and Boxes to Ascension and the Falkland Islands; reorganization of sections 260, 290, and 310 to clarify eligibility for M-bags; and, to codify the Postal Service Sure Money® (DineroSeguro®) service as one of its international money transfer services. Issue 36 also corrects various printing and format errors and omissions in the previous Issue.

The International Mail Manual is available to the public on a subscription basis only from: U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197–9000. The subscription price for one issue is currently $50 to addresses in the United States, and $70 to all foreign addresses. The IMM is also published and available to all users on the Internet at *http://pe.usps.com.*

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference.

■ In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 20 as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Section 20.1 is revised to read as follows:

§ 20.1 International Mail Manual; incorporation by reference.

(a) Section 552(a) of Title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when incorporated by reference therein with the approval of the Director of the Federal Register. In conformity with that provision, with 39 U.S.C. 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its International Mail Manual (IMM), Issue 36, dated May 11, 2009. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) The current Issue of the IMM is incorporated by reference in paragraph (a) of this section. Successive Issues of the IMM are listed in the following table:

International mail manual	Date of issuance
Issue 1	November 13, 1981.
Issue 2	March 1, 1983.
Issue 3	July 4, 1985.
Issue 4	September 18, 1986.
Issue 5	April 21, 1988.
Issue 6	October 5, 1988.
Issue 7	July 20, 1989.
Issue 8	June 28, 1990.
Issue 9	February 3, 1991.
Issue 10	June 25, 1992.
Issue 11	December 24, 1992.
Issue 12	July 8, 1993.
Issue 13	February 3, 1994.
Issue 14	August 4, 1994.
Issue 15	July 9, 1995.
Issue 16	January 4, 1996.
Issue 17	September 12, 1996.
Issue 18	June 9, 1997.
Issue 19	October 9, 1997.
Issue 20	July 2, 1998.
Issue 21	May 3, 1999.
Issue 22	January 1, 2000.
Issue 23	July 1, 2000.
Issue 24	January 1, 2001.
Issue 25	July 1, 2001.
Issue 26	January 1, 2002.
Issue 27	June 30, 2002.
Issue 28	January 1, 2003.
Issue 29	July 1, 2003.
Issue 30	August 1, 2004.
Issue 31	May 31, 2005.
Issue 35	May 12, 2008.
Issue 36	May 11, 2009.

■ 3. Section 20.2 is revised to read as follows:

§ 20.2 Effective date of the International Mail Manual.

The provisions of the International Mail Manual Issue 36, effective May 11, 2009, are applicable with respect to the international mail services of the Postal Service.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–14493 Filed 6–15–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–9163–5]

RIN 2060–AG12

Protection of Stratospheric Ozone: Notice 25 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Determination of Acceptability.

SUMMARY: This Determination of Acceptability expands the list of acceptable substitutes for ozone-depleting substances under the U.S. Environmental Protection Agency's Significant New Alternatives Policy program. The substitutes are for use in the following sectors: Refrigeration and air-conditioning, foam blowing, aerosols, and sterilants. The majority of the acceptability decisions find substitutes acceptable as alternatives to the class II ozone depleting substances hydrochlorofluorocarbon (HCFC)–22, HCFC–142b and blends containing one or both of these substances. EPA is also finding one of the alternatives, HFO–

1234ze, acceptable as a substitute for CFC–113 in the heat transfer end use and as a substitute for CFC–11 in the aerosol propellant end use. The listing of additional refrigerant alternatives as acceptable will provide users in the refrigeration and air-conditioning sector with more options for replacing HCFC–22 and HCFC–142b, which, pursuant to EPA's phaseout regulations, may generally be used only as a refrigerant to service equipment manufactured before January 1, 2010.

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

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0118 (continuation of Air Docket A–91–42). All electronic documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Air Docket (No. A–91–42), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Melissa Fiffer by telephone at (202) 343–9464, by facsimile at (202) 343–2338, by e-mail at *fiffer.melissa@epa.gov,* or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 1310 L Street, NW., 10th floor, Washington, DC 20005.

For more information on the Agency's process for administering the Significant New Alternatives Policy (SNAP) program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/snap/.*

SUPPLEMENTARY INFORMATION:

I. What acronyms and abbreviations are used in this document?
II. How does the Significant New Alternatives Policy (SNAP) program work?
A. What are the statutory requirements and authority for the SNAP program?
B. What are EPA's regulations implementing Section 612?
C. How do the regulations for the SNAP program work?
III. How does today's SNAP listing relate to the HCFC phaseout?
A. Why is EPA issuing a SNAP listing of alternatives to hydrochlorofluorocarbon (HCFC)–22, HCFC–142b, and blends thereof?
B. What happened during the most recent milestone in the HCFC phaseout?
C. How does today's SNAP listing affect alternatives to HCFCs other than HCFC–22, HCFC–142b, and blends thereof?
D. In servicing existing refrigeration or air-conditioning equipment, may I continue to use refrigerants, previously found acceptable by SNAP, that contain HCFC–22, HCFC–142b, and blends thereof?
IV. What are my existing and new options for alternative refrigerants?
V. What are my existing and new options for alternative foam blowing agents?
VI. What are my existing and new options for alternative aerosol propellants?
VII. What are my existing and new options for alternative sterilants?

I. What acronyms and abbreviations are used in this document?

Below is a list of acronyms and abbreviations used in this document.

ACGIH American Conference of Government Industrial Hygienists
AEGL Acute Exposure Guideline Limit
AEL Acceptable Exposure Limit
AIHA American Industrial Hygiene Association
ASHRAE American Society of Heating, Refrigerating and Air-Conditioning Engineers
CAA Clean Air Act
CAS ID # Chemical Abstract Service Registry Number
CFC Chlorofluorocarbon
CBI Confidential Business Information
CEGL Continuous Exposure Guidance Level
EPA United States Environmental Protection Agency
FIFRA Federal Insecticide, Fungicide, and Rodenticide Act
GWP Global Warming Potential
HAP Hazardous Air Pollutant
HCFC Hydrochlorofluorocarbon
HFC Hydrofluorocarbon
IDLH Immediately Dangerous to Life and Health
IPCC International Panel on Climate Change
NIOSH National Institutes for Occupational Safety and Health
NRC National Research Council
ODP Ozone Depletion Potential
ODS Ozone-Depleting Substance
OSHA Occupational Safety and Health Administration
PEL Permissible Exposure Limit
REL Recommended Exposure Limit
PMN Pre-Manufacture Notice
RCRA Resource Conservation and Recovery Act
SIP State Implementation Plan
SNAP Significant New Alternatives Policy
TLV Threshold Limit Value
TSCA Toxic Substances Control Act
VOC Volatile Organic Compound
WEEL Workplace Environmental Exposure Limit

II. How does the SNAP program work?

A. What are the statutory requirements and authority for the SNAP program?

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances (ODS). EPA refers to this program as the SNAP program. The major provisions of Section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (e.g., chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (e.g., hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes is found at *http://www.epa.gov/ozone/snap/lists/index.html* and the lists of unacceptable substitutes, substitutes acceptable subject to use conditions and substitutes acceptable subject to narrowed use limits are found at 40 CFR part 82 subpart G.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days

before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

5. Outreach

Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

6. Clearinghouse

Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. What are EPA's regulations implementing Section 612?

On March 18, 1994, EPA published the original rule (59 FR 13044) establishing the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (40 CFR part 82, subpart G). These major industrial use sectors are: Refrigeration and air-conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to list as acceptable only those substitutes that do not present a significantly greater risk to human health and the environment as compared with other substitutes that are currently or potentially available.

C. How do the regulations for the SNAP program work?

Under the SNAP regulations, anyone who plans to market or produce a substitute to replace a class I or II ODS in one of the eight major industrial use sectors must provide notice to the Agency, including health and safety information on the substitute, at least 90 days before introducing it into interstate commerce.[1] This requirement applies to the person planning to introduce the substitute into interstate commerce, typically chemical manufacturers, but may also include importers, formulators, equipment manufacturers, or end-users [2] when they are responsible for introducing a substitute into commerce.

The Agency has identified four possible decision categories for substitutes: Acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Use conditions and narrowed use limits are both considered "use restrictions" and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses within the sector. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions. It is a violation of the CAA and EPA's regulations to replace an ODS with a substitute listed as unacceptable, except for certain exceptions (e.g., test marketing, research and development) specified by the regulation.

After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as "acceptable subject to use conditions." Entities that use these substitutes without meeting the associated use conditions are in violation of section 612 of the CAA and EPA's SNAP regulations.

For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. The Agency requires a user of a narrowed use substitute to demonstrate that no other acceptable substitutes are available for their specific application by conducting comprehensive studies. EPA describes these substitutes as "acceptable subject to narrowed use limits." A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit, are using these substitutes in an unacceptable manner and are in violation of section 612 of the CAA and EPA's SNAP regulations.

The Agency publishes its SNAP program decisions in the **Federal Register** (FR). EPA first proposes decisions concerning substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or for substitutes deemed unacceptable, to allow the public opportunity to comment. After consideration of the public comments, EPA publishes a final decision.

In contrast, EPA publishes decisions that substitutes are acceptable with no restrictions in "notices of acceptability" without first issuing a proposed decision. As described in the rule initially implementing the SNAP program (59 FR 13044), EPA does not believe that notice-and-comment rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include "comments" or "further information" to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs. The "further information" classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the "comments" or "further information" column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building-codes or standards. Thus, many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

[1] As defined at 40 CFR 82.104 "interstate commerce" means the distribution or transportation of any product between one State, territory, possession or the District of Columbia, and another State, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one State, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[2] As defined at 40 CFR 82.17 "end-use" means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ozone-depleting substance.

III. How does today's SNAP listing relate to the HCFC phaseout?

A. Why is EPA issuing a SNAP listing of alternatives to HCFC–22, HCFC–142b, and blends thereof?

To date, EPA has listed many HCFCs as acceptable substitutes for class I ODS thus allowing their use as substitutes for CFCs and for halons under SNAP. As production and importation of HCFCs becomes more limited, availability of these substances for use in current end uses may be limited.[3] In addition, EPA's phaseout regulations contain some use restrictions for specific substances. In particular, per the most recent milestone in the HCFC phaseout, as of January 1, 2010, virgin HCFC–22 and HCFC–142b, and blends containing one or both of these compounds, may only be used as refrigerants to service existing equipment (minor exceptions apply: Please see details in B, below).

In previous SNAP notices, EPA has listed a number of acceptable substitutes for HCFC–22, HCFC–142b, and blends containing one or both of these chemical compounds ("blends thereof"). In today's SNAP listing, EPA is providing a comprehensive list of acceptable substitutes for HCFC–22, HCFC–142b, and blends thereof, generally those that have been previously found acceptable as substitutes, as well as HFO–1234ze in several additional end uses. This notice only addresses the refrigeration and air-conditioning, foam blowing, aerosols, and sterilants sectors. Because HCFC–22, HCFC–142b, and blends thereof have not traditionally been used to any significant extent in the fire suppression and explosion protection, solvent cleaning, tobacco expansion, and adhesives, coatings and inks sectors, we are not making listing decisions for substitutes in these sectors in this notice.

B. What happened during the most recent milestone in the HCFC phaseout?

Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) and the CAA, HCFCs are considered transitional alternatives in the phaseout of CFCs and other class I ODS. HCFCs are less potent ozone depleters than are CFCs and other class I substances; however, they are still subject to both a global and domestic phaseout under the Montreal Protocol and the CAA. HCFCs will no longer be produced in or imported into the United States in accordance with a tiered phaseout that will culminate in the United States in 2030. Under CAA Section 610, the sale and distribution of, or offer for sale and distribution of certain uses of HCFCs in foam blowing and in aerosols or other pressurized dispensers is prohibited. Further, under CAA Section 605(a) and EPA's implementing regulations, use and introduction into interstate commerce (including sale of HCFCs) is or will be prohibited according to the schedule available in the rules cited below and at 40 CFR 82.16, with exceptions for: (1) HCFCs that have been used, recovered, and recycled; (2) HCFCs completely used up in a reaction to create other chemicals; and (3) HCFCs used in refrigeration equipment manufactured before specified dates.

In a December 10, 1993, rule (58 FR 65018), EPA established a 'worst-first' approach for the HCFC phaseout; thus the HCFCs with higher ODPs were scheduled for phaseout earlier than those with lower ODPs. That rule announced an accelerated schedule for the phaseout of HCFC–22 and HCFC–142b, such that the production and import of HCFC–22 and HCFC–142b for use in new equipment would be banned as of January 1, 2010. Since 2003 (68 FR 2819), producers or importers of HCFC–22 and HCFC–142b have been required to hold allowances and importers of used HCFCs have been required to obtain prior approval of import on a per shipment basis. In a December 15, 2009, rule (74 FR 66412), EPA reduced the number of HCFC–22 and HCFC–142b allowances to meet and exceed the 2010 reduction step under the Montreal Protocol. That rule also clarified the use ban described in the 1993 rule and generally limited virgin HCFC–22 and HCFC–142b to use as refrigerants in the servicing of existing equipment. It established an exception for the use of HCFC–22 as a refrigerant in newly manufactured equipment where the components were manufactured prior to January 1, 2010, and are specified in a pre-2010 building permit or contract for use on a particular project, as well as temporary exceptions for the use of HCFC–22 in medical equipment and thermostatic expansion valves. For additional information on the HCFC phaseout, please see the rules promulgated on December 10, 1993 (58 FR 65018), January 21, 2003 (68 FR 2819), and December 15, 2009 (74 FR 66412).

C. How does today's SNAP listing affect alternatives to HCFCs other than HCFC–22, HCFC–142b, and blends thereof?

This notice does not affect previous SNAP listings of acceptable alternatives to HCFC–141b, which was phased out of production in 2003, nor does it list alternatives to the remainder of HCFCs, such as HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, which will be phased out on a later schedule. EPA anticipates updating the lists of acceptable substitutes under SNAP before the production phaseout of other HCFCs.

We note that EPA recently received a petition concerning the listing of HFC–134a in various end uses.[4] We are still reviewing that petition and nothing in this notice should be construed as prejudging EPA's response to that petition.

D. In servicing existing refrigeration or air-conditioning equipment, may I continue to use refrigerants, previously found acceptable by SNAP, that contain HCFC–22, HCFC–142b, and blends thereof?

HCFC–22, as well as some refrigerant blends containing HCFC–22 and/or HCFC–142b, have previously been found acceptable under SNAP for specified end uses. As noted above, these refrigerant blends, which appear in Table 1, below, may continue to be used in servicing existing equipment, i.e., equipment manufactured before January 1, 2010, in those end uses per the regulations at 40 CFR 82.15(g)(2)(i). (EPA defines the term "manufactured" for appliances at 40 CFR 82.3.)

TABLE 1—SUMMARY OF REFRIGERANTS CONTAINING HCFC–22, HCFC–142b, AND BLENDS THEREOF PREVIOUSLY DETERMINED ACCEPTABLE UNDER SNAP

Refrigerant blend	Further identification information for blend (alternative names and composition)
Freeze 12	R–134a/142b.
FreeZone	HCFC Blend Delta; RB–276; R–134a/142b/lubricant.

[3] A SNAP listing is not equivalent to an allocation, i.e., SNAP acceptability does not equate to authorization to produce or import ODS. EPA lists companies that have been allocated production and consumption allowances of HCFCs in 40 CFR 82.17 and 82.19.

[4] The petition is available at *http://www.regulations.gov* as item EPA–HQ–OAR–2003–0118–0249.

TABLE 1—SUMMARY OF REFRIGERANTS CONTAINING HCFC–22, HCFC–142b, AND BLENDS THEREOF PREVIOUSLY DETERMINED ACCEPTABLE UNDER SNAP—Continued

Refrigerant blend	Further identification information for blend (alternative names and composition)
GHG–HP	HCFC Blend Lambda; R–22/600a/142b.
GHG–X5	Autofrost X5; R–22/227ea/600a/142b.
Greencool (Gu) or China Sun G2018C	R–1270/22/152a.
ICOR	R–22/142b.
NARM–502	HCFC Blend Iota; R–23/22/152a.
PFC–330ST, PFC–550HC, PFC–660HC, PFC–1100HC, PFC–1100LT, PGC–100, PGC–150.	Compositions are Confidential Business Information (CBI).
R–401A	SUVA MP 39; R–22/152a/124 (53.0/13.0/34.0).
R–401B	SUVA MP 66; R–22/152a/124 (61.0/11.0/28.0).
R–401C	SUVA MP 52; R–22/152a/124 (33.0/15.0/52.0).
R–402A	SUVA HP80; R–125/290/22 (60.0/2.0/38.0).
R–402B	SUVA HP81; R–125/290/22 (38.0/2.0/60.0).
R–403B	ISCEON 69–L; R–290/22/218 (5.0/56.0/39.0).
R–406A	GHG–12; GHG–X3; McMullen Oil McCool; Monroe Air Tech Autofrost–X3; R–22/600a/142b (55.0/4.0/41.0).
R–408A	HCFC Blend Epsilon; FX–10; R–125/143a/22 (7.0/46.0/47.0).
R–409A	HCFC Blend Gamma; FX–56; R–22/124/142b (60.0/25.0/15.0).
R–411A	Greencool (Gu) or China Sun G2018A; R–1270/22/152a (1.5/87.5/11.0).
R–411B	Greencool (Gu) or China Sun G2018B; R–1270/22/152a (3.0/94.0/3.0).
R–414A	HCFC Blend Xi; GHG–X4; McMullen Oil Chill-It; McCool Chill-It; Monroe Air Tech Autofrost–X4; R–22/124/600a/142b (51.0/28.5/4.0/16.5).
R–414B	HCFC Blend Omicron; Hot Shot; Kar Kool; R–22/124/600a/142b (50.0/39.0/1.5/9.5).
R–420A	Choice R–420A; R–134a/142b (88.0/12.0).
THR–04	Composition is CBI.

While HCFC–22 and blends containing HCFC–22 and/or HCFC–142b may currently continue to be used to service existing refrigeration and air-conditioning equipment, EPA reiterates that HCFCs and HCFC blends are not long-term substitutes for ODS. EPA is considering whether current or potential substitutes are available that pose lower risk than these blends.

IV. What are my existing and new options for alternative refrigerants?

In the refrigeration and air-conditioning sector, EPA has previously found acceptable HCFC–22 and HCFC blends, including those containing HCFC–22 and HCFC–142b. To aid end users in the refrigeration and air-conditioning sector as they transition from use of these refrigerants, this section lists, by end use: (1) Refrigerants that EPA previously found acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b; and (2) refrigerants that EPA is newly finding acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. Where possible, refrigerants listed as acceptable in the refrigeration and air-conditioning section are identified by their designation per American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 34.

At the end of the decision for each end use, there is narrative comparing environmental, flammability, and toxicity information of the newly acceptable alternatives with other currently or potentially available alternatives. Flammable refrigerants are hazardous waste and must be disposed of consistent with regulations under the Resource Conservation and Recovery Act (RCRA). More environmental and health information is also available in the original SNAP rule of March 18, 1994, the notice of acceptability in which each substitute was first listed, or the sector table, which provides identification information, environmental information, flammability information, and toxicity and exposure data for each of the acceptable alternatives to HCFC–22 and blends containing HCFC–22 and/or HCFC–142b, in the refrigeration and air-conditioning sector. The sector table is available at *http://www.epa.gov/ozone/snap/refrigerants/index.html*.

A. Household and Light Commercial Air-Conditioning and Heat Pumps

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in household and light commercial air-conditioning and heat pumps:

- R–404A (new and retrofit equipment)
- R–407A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in household and light commercial air-conditioning and heat pumps:

- Ammonia absorption system (new equipment)
- Desiccant cooling (new equipment)
- Evaporative cooling (new equipment)
- HFC–134a (new equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22)[5] (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)

[5] Throughout the decisions, available trade names for refrigerants without ASHRAE designations are provided in parentheses.

- R–424A (new and retrofit equipment)
- R–427A (retrofit equipment)
- R–434A (new and retrofit equipment)
- R–437A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)

Comparison to other refrigerants in the household and light commercial air-conditioning and heat pumps end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section A.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have 100-year integrated (100-yr) global warming potentials (GWPs)[6] relative to CO_2 ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407A is about 2110, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as hazardous air pollutants (HAPs) under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered volatile organic compounds (VOCs) under CAA regulations (*see* 40 CFR 51.100(s)) addressing the development of state implementation plans (SIPs) to attain and maintain the national ambient air quality standards. None of the substitutes previously found acceptable in IV.A.1, above, contain VOCs. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.[7]

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that flammability risks posed by ammonia can be addressed by existing standards from the Occupational Safety and Health Administration (OSHA) and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8-hours, such as Workplace Environmental Exposure Limits (WEELs) from the American Industrial Hygiene Association (AIHA) or Threshold Limit Values (TLVs) from the American Conference of Government Industrial Hygienists (ACGIH). Ammonia has a Permissible Exposure Limit (PEL) of 50 ppm over 8 hours from OSHA. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the Material Safety Data Sheets (MSDSs) and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.A.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the household and light commercial air-conditioning and heat pumps end use.

B. Residential Dehumidifiers

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in residential dehumidifiers:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in residential dehumidifiers:

- HFC–134a (new and retrofit equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5%by weight) (ICOR AT–22) (new and retrofit equipment)
- R–410B (new equipment)
- R–421A (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–434A (new and retrofit equipment)
- R–437A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)

Comparison to other refrigerants in the residential dehumidifiers end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section B.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (*see* 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. None of the substitutes previously found acceptable in IV.B.1, above, contain VOCs. However, emissions of VOCs

[6] These values are based upon mass-weighted averages of the component chemicals, using the 100-yr GWPs listed in the International Panel on Climate Change's [IPCC] Fourth Assessment Report, *Climate Change 2007: The Physical Science Basis.* Another available source for GWPs is the IPCC's Second Assessment Report, *Climate Change 1995: Working Group I—The Science of Climate Change,* accessible from *http://www.ipcc.ch/ipccreports/sar/wg_I/ipcc_sar_wg_I_full_report.pdf.*

[7] EPA 1994. Significant New Alternatives Policy Technical Background Document: Risk Screen on the Use of Substitutes for Class I Ozone-depleting Substances: Refrigeration and Air Conditioning.

from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.B.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the residential dehumidifiers end use.

C. Reciprocating and Screw Chillers

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in reciprocating and screw chillers:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in reciprocating and screw chillers:

- Ammonia absorption chillers or vapor compression with secondary loop (new equipment)
- Desiccant cooling (new equipment)
- Evaporative cooling (new equipment)
- HFC–134a (new and retrofit equipment)
- HFC–227ea (new equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–427A (retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)
- SP34E (new and retrofit equipment)
- Stirling cycle (new equipment)

Comparison to other refrigerants in the reciprocating and screw chillers end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section C.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (*see* 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. None of the substitutes previously found acceptable in IV.C.1, above, contain VOCs. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.C.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the reciprocating and screw chillers end use.

D. Centrifugal Chillers

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in centrifugal chillers:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in centrifugal chillers:

- Ammonia absorption chillers or vapor compression with secondary loop (new equipment)
- Desiccant cooling (new equipment)
- Evaporative cooling (new equipment)
- HFC–134a (new and retrofit equipment)
- HFC–227ea (new equipment)
- HFC–245fa (new and retrofit equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)

- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–423A (ISCEON 39TC) (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)
- Stirling cycle (new equipment)
- Water/lithium bromide (new equipment)

Comparison to other refrigerants in the centrifugal chillers end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section D.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. None of the substitutes previously found acceptable in IV.D.1, above, contain VOCs. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8-hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. HFC–245fa exhibits moderate to low toxicity and has an 8-hour WEEL of 300 ppm. Water/lithium bromide absorption exhibits low toxicity. Lithium bromide (LiBr) has a 24-hour/day, 90 day Continuous Exposure Guidance Level (CEGL) value of 1 mg/m^3 from the National Research Council (NRC). Based on this CEGL, EPA recommends an 8-hour preliminary workplace exposure limit of 3 mg/m^3.[8] EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, PELs and CEGL) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry. Therefore, we find the newly listed substitutes (in IV.D.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the centrifugal chillers end use.

E. Industrial Process Air-Conditioning

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in industrial process air-conditioning:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–507A (new and retrofit equipment)

[8] EPA's analysis of the NRC CEGL and rationale for preliminary workplace exposure limit are available at *http://www.regulations.gov* as item EPA–HQ–OAR–2003–0118–0243 EPA anticipates that lithium bromide powder will be used consistent with the personal protective equipment recommendations specified by OSHA (*http://www.osha.gov/pls/oshaweb/owastand.display_standard_group?p_toc_level=1&p_part_number=1910#1910_Subpart_I*).

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in industrial process air-conditioning:

- Ammonia vapor compression or absorption systems (new equipment)
- Desiccant cooling (new equipment)
- Evaporative cooling (new equipment)
- HFC–134a (new and retrofit equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–423A (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–427A (retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)

Comparison to other refrigerants in the industrial process air-conditioning end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section E.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. None of the substitutes previously found acceptable in IV.E.1, above, contain VOCs. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8-hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.E.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the industrial process air-conditioning end use.

F. Industrial Process Refrigeration

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in industrial process refrigeration:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–422A (ISCEON 79) (new and retrofit equipment)
- R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in industrial process refrigeration:

- Ammonia vapor compression or absorption-systems (new equipment)
- Desiccant cooling (new equipment)
- Evaporative cooling (new equipment)
- HC Blend A (OZ–12) (new and retrofit equipment)
- HC Blend B (original formulation of HC–12a) (new and retrofit equipment)
- HFC–134a (new and retrofit equipment)
- HFC–227ea (new equipment)
- HFE–7000 [9] (new and retrofit equipment)
- HFE–7100 [10] and HFE–7200 [11] as secondary heat transfer fluid in not-in-kind systems (new equipment)
- Nitrogen direct gas expansion (new equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–290 (Propane) (new and retrofit equipment)
- R–407A and R–407B (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A and R–421B (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–423A (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–428A (new equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- R–600 (Butane) (new and retrofit equipment)
- R–744 (Carbon dioxide, CO_2) (new equipment)
- R–1270 (Propylene) (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)
- Stirling cycle (new equipment)

Comparison to other refrigerants in the industrial process refrigeration end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section F.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3610, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. The hydrocarbon substitutes that we are finding acceptable are at the low end of this range. Specifically, R–290, R–600, R–1270, and HC Blends A and B each have a GWP of about 5 or less. This in contrast with the GWPs of the previously listed substitutes, including the GWP of R–404A which is about 3920, the GWP of R–407C which is about 1770, the GWP of R–410A which is about 2090, the GWP of R–422A which is about 3140, and the GWP of R–507A which is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. The hydrocarbons R–290, R–600, and R–1270, as well as all components of HC Blends A and B, are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under these regulations. In comparison, one of the substitutes previously found acceptable in IV.F.1, above, (R–422A) contains a VOC component. Emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

Ammonia has an ASHRAE class 2 flammability classification or moderate flammability risk. EPA believes that the moderate flammability risks of ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry. Each of the newly listed hydrocarbons and hydrocarbon blends

[9] 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane; HFE–347mcc3; CAS ID #375–03–1.

[10] Methoxynonafluorobutane, iso and normal; HFE–449s1; CAS ID #163702–07–6.

[11] Ethoxynonafluorobutane, iso and normal; HFE–569sf2; CAS ID #163702–05–4.

has an ASHRAE class 3 flammability classification. As early as the 1994 original SNAP rule, EPA noted that hydrocarbons were used in industrial process refrigeration, including specialized industrial applications such as oil refineries and chemical plants. EPA noted that these users were familiar with hydrocarbons, had safety procedures in place, and that their facilities were designed to comply with the safety standards required for managing flammable chemicals.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low when used according to standard practices for industrial processes and for industrial process refrigeration. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. HFE–7200 has an 8-hour manufacturer acceptable exposure limit (AEL) of 200 ppm and HFE–7000 has an 8-hour manufacturer AEL of 75 ppm. Within the industrial process refrigeration end use, such as at chemical or other industrial plants, proper exposure controls and ventilation are generally available as well as established protocols for handling potentially hazardous materials, and therefore overall occupational risk is mitigated. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, PELs, and manufacturer AELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.F.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the industrial process refrigeration end use.

G. Bus and Passenger Train Air-Conditioning

The bus and passenger train air-conditioning end use previously had substitutes listed as acceptable for HCFC–22 itself, but not as substitutes for blends containing HCFC–22 and/or HCFC–142b; this is reflected in category (1), below.

1. EPA previously found the following acceptable as substitutes for HCFC–22 in bus and passenger train air-conditioning:

- HFC–134a (new and retrofit equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–417A (new and retrofit equipment)
- R–422B and R–422D (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–427A (retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in bus and passenger train air-conditioning:

- Evaporative cooling (new equipment)
- HFC–134a (new and retrofit equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–417A (new and retrofit equipment)
- R–422B and R–422D (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–427A (retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- SP34E (new and retrofit equipment)
- Stirling cycle (new equipment)

Comparison to other refrigerants in the bus and passenger train air-conditioning end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section G.1 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3250, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920 and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

None of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. For each of these substitutes, EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.G.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the bus and passenger train air-conditioning end use.

H. Ice Skating Rinks

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in ice skating rinks:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–422A (ISCEON 79) (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22

and blends containing HCFC–22 and/or HCFC–142b in ice skating rinks:

- Ammonia vapor compression or absorption systems (new equipment)
- HFC–134a (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–407A and R–407B (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A and R–421B (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–423A (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–428A (new and retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)

Comparison to other refrigerants in the ice skating rinks end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section H.2 are non-ozone depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3610, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, and the GWP of R–422A is about 3140. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (*see* 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. In comparison, one of the substitutes previously found acceptable in IV.H.1, above, (R–422A) contains a VOC component. Emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry. Therefore, we find the newly listed substitutes (in IV.H.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the ice skating rinks end use.

I. Cold Storage Warehouses

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in cold storage warehouses:

- R–404A (new and retrofit equipment)
- R–407A and R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–422A (ISCEON 79) (new and retrofit equipment)
- R–428A (new and retrofit equipment)
- R–507A (new and retrofit equipment)
- R–744 (Carbon dioxide, CO_2) (new equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in cold storage warehouses:

- Ammonia vapor compression or absorption systems (new equipment)
- Desiccant cooling (new equipment)
- Evaporative cooling (new equipment)
- HFC–134a (new and retrofit equipment)
- HFC–227ea (new equipment)
- Pressure stepdown (new equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–407B (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A and R–421B (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–423A (ISCEON 39TC) (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)
- Self-chilling cans containing recycled CO_2 (not generating CO_2 via chemical reaction) (new and retrofit equipment)
- SP34E (new and retrofit equipment)
- Stirling cycle

Comparison to other refrigerants in the cold storage warehouses end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section I.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, the GWP of R–422A is about 3140, the GWP of R–428A is about 3610, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions

is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. In comparison, two of the substitutes previously found acceptable in IV.I.1, above, (R–422A and R–428A) contain some VOC components. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. For each of these substitutes, EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry. Therefore, we find the newly listed substitutes (in IV.I.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the cold storage warehouse end use.

J. Refrigerated Transport

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in refrigerated transport:

- R–404A (new and retrofit equipment)
- R–407A and R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–428A (new and retrofit equipment)
- R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in refrigerated transport:

- Cryogenic system using recaptured liquid CO_2 or liquid nitrogen (new equipment)
- Direct nitrogen expansion (new equipment)
- HFC–134a (new and retrofit equipment)
- R–125/134a/600a (28.1%/70.0%/1.9% by weight) (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–407B and R–407D (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A and R–421B (new and retrofit equipment)
- R–422A (ISCEON 79) (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)
- SP34E (new and retrofit equipment)
- Stirling cycle (new equipment)

Comparison to other refrigerants in the refrigerated transport end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section J.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407A is about 2110, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, the GWP of R–428A is about 3610, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. In comparison, one of the substitutes previously found acceptable in IV.J.1, above, (R–428A) contains some VOC components. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

None of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. For each of these substitutes, EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry. Therefore, we find the newly listed substitutes (in IV.J.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the refrigerated transport end use.

K. Retail Food Refrigeration

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in retail food refrigeration:

- R–404A (new and retrofit equipment)
- R–407A (new and retrofit equipment)
- R–407C (new and retrofit equipment)

- R–410A (new equipment)
- R–422A (ISCEON 79) (new and retrofit equipment)
- R–428A (new and retrofit equipment)
- R–507A (new and retrofit equipment)
- R–744 (Carbon dioxide, CO_2) (new equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in retail food refrigeration:

- Ammonia vapor compression with a secondary loop (new equipment)
- HFC–134a (new and retrofit equipment)
- HFE–7100 and HFE–7200 as secondary heat transfer fluid in not-in-kind systems (new equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–407B (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A and R–421B (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–427A (retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)
- SP34E (new and retrofit equipment)

Comparison to other refrigerants in the retail food refrigeration end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section K.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, the GWP of R–422A is about 3140, the GWP of R–428A is about 3610, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. In comparison, two of the substitutes previously found acceptable in IV.K.1, above, (R–422A and R–428A) contain some VOC components. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. HFE–7200 has an 8-hour manufacturer AEL of 200 ppm. For each of these substitutes, EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, PELs, and manufacturer AEL) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.K.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the retail food refrigeration end use.

L. Commercial Ice Machines

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in commercial ice machines:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–428A (new and retrofit equipment)
- R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in commercial ice machines:

- Ammonia vapor compression or absorption-systems (new equipment)
- HFC–134a (new equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–407A and R–407B (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A and R–421B (new and retrofit equipment)
- R–422A (ISCEON 79) (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)
- Stirling cycle (new equipment)

Comparison to other refrigerants in the commercial ice machines end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section L.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, the GWP of R–428A is about 3610, and the GWP of R–507A is about 3990. The contribution of these

refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. In comparison, one of the substitutes previously found acceptable in IV.L.1, above, (R–428A) contains some VOC components. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.L.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the commercial ice machines end use.

M. Household Refrigerators and Freezers

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in household refrigerators and freezers:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)
- R–422A (ISCEON 79) (new and retrofit equipment)
- R–428A (new and retrofit equipment)
- R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in household refrigerators and freezers:

- Ammonia absorption systems (new equipment)
- HFC–134a (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–410B (new equipment)
- R–417A (new and retrofit equipment)
- R–421A and R–421B (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–424A (new and retrofit equipment)
- R–426A (new and retrofit equipment)
- R–427A (retrofit equipment)
- R–434A (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- RS–24 (2002 formulation) (new and retrofit equipment)
- RS–44 (2003 formulation) (new and retrofit equipment)

Comparison to other refrigerants in the household refrigerators and freezers end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section M.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, the GWP of R–422A is about 3140, the GWP of R–428A is about 3610, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. In comparison, two of the substitutes previously found acceptable in IV.M.1, above, (R–422A and R–428A) contain some VOC components. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of ammonia, none of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. EPA believes that the flammability risks posed by ammonia can be addressed by existing standards from OSHA and ASHRAE and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. Ammonia has a PEL of 50 ppm over 8 hours from OSHA. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.M.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the household refrigerators and freezers end use.

N. Vending Machines

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in vending machines:

- R–404A (new and retrofit equipment)

• R–407C (new and retrofit equipment)
• R–410A (new equipment)
• R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in vending machines:
• HFC–134a (new and retrofit equipment)
• R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
• R–410B (new equipment)
• R–417A (new and retrofit equipment)
• R–421A (new and retrofit equipment)
• R–422B, R–422C, and R–422D (new and retrofit equipment)
• R–426A (new and retrofit equipment)
• R–438A (new and retrofit equipment)
• RS–24 (2002 formulation) (new and retrofit equipment)
• SP34E (new and retrofit equipment)
• Stirling cycle (new equipment)

Comparison to other refrigerants in the vending machines end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section N.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. None of the substitutes previously found acceptable in IV.N.1, above, contain VOCs. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

None of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.N.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the vending machines end use.

O. Water Coolers

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in water coolers:
• R–404A (new and retrofit equipment)
• R–407C (new and retrofit equipment)
• R–410A (new equipment)
• R–507A (new and retrofit equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in water coolers:
• HFC–134a (new and retrofit equipment)
• R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
• R–410B (new equipment)
• R–417A (new and retrofit equipment)
• R–421A and R–421B (new and retrofit equipment)
• R–422B, R–422C, and R–422D (new and retrofit equipment)
• R–426A (new and retrofit equipment)
• R–434A (new and retrofit equipment)
• R–438A (new and retrofit equipment)
• RS–24 (2002 formulation) (new and retrofit equipment)
• SP34E (new and retrofit equipment)

Comparison to other refrigerants in the water coolers end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section O.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, the GWP of R–410A is about 2090, and the GWP of R–507A is about 3990. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. None of the substitutes previously found acceptable in IV.O.1, above, contain VOCs. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

None of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, and PELs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.O.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the vending machines end use.

P. Very Low Temperature Refrigeration

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in very low temperature refrigeration:

- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in very low temperature refrigeration:

- HFE–7100 and HFE–7200 as secondary heat transfer fluid in not-in-kind systems (new equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–422B and R–422C (new and retrofit equipment)
- R–744 (Carbon dioxide, CO_2) (new equipment)

Comparison to other refrigerants in the very low temperature refrigeration end use:

The newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b listed above in section P.2 are non-ozone-depleting, in contrast to HCFC–22 or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, and the GWP of R–410A is about 2090. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. None of the substitutes previously found acceptable in IV.P.1, above, contain VOCs. However, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

None of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b is flammable. The toxicity risks of the newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b are low. Most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. HFE–7200 has an 8-hour manufacturer AEL of 200 ppm. R–744 has a PEL of 5000 ppm. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, PELs and AEL) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry.

Therefore, we find the newly listed substitutes (in IV.P.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the vending machines end use.

Q. Non-Mechanical Heat Transfer Systems

HFO–1234ze,[12] which was previously listed as a substitute for class I and class II ODS in several foam blowing end uses (September 30, 2009; 74 FR 50129) is today being listed as acceptable as a substitute for CFC–113, HCFC–22, and blends containing HCFC–22 and/or HCFC–142b, in the heat transfer end use. You may find the submission under Docket items EPA–HQ–OAR–2003–0118–0222 and EPA–HQ–OAR–2003–0118–0247 at *http://www.regulations.gov*. We note that EPA is also reviewing this substance through a Pre-Manufacture Notice (PMN) under the Toxic Substances Control Act (TSCA) and users will be subject under TSCA to any requirements established through the PMN process.

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC blends, including those containing HCFC–22 and/or HCFC–142b, in non-mechanical heat transfer systems:

- HFC–4310mee (new and retrofit equipment)
- R–404A (new and retrofit equipment)
- R–407C (new and retrofit equipment)
- R–410A (new equipment)

2. EPA is newly finding the following acceptable as substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b in non-mechanical heat transfer systems:

- C6-perfluoroketone[13] (Novec™ 649) (new and retrofit equipment)
- HFC–245fa (new and retrofit equipment)
- HFE–7000 (new and retrofit equipment)
- HFE–7100 (new and retrofit equipment)
- HFE–7200 (new and retrofit equipment)
- HFO–1234ze (new and retrofit equipment)
- R–125/290/134a/600a (55.0%/1.0%/42.5%/1.5% by weight) (ICOR AT–22) (new and retrofit equipment)
- R–417A (new and retrofit equipment)
- R–422B, R–422C, and R–422D (new and retrofit equipment)
- R–438A (new and retrofit equipment)
- R–744 (Carbon Dioxide, CO_2) (new and retrofit equipment)
- Volatile Methyl Siloxanes[14] (new and retrofit equipment)
- Water (new and retrofit equipment)

3. EPA is newly finding the following acceptable as a substitute for CFC–113 in non-mechanical heat transfer systems:

- HFO–1234ze (new and retrofit equipment)

Comparison to other refrigerants in the non-mechanical heat transfer systems end use:

The newly listed substitutes for CFC–113, HCFC–22, and blends containing HCFC–22 and/or HCFC–142b listed above in section P.2 and 3 are non-ozone-depleting, in contrast to CFC–113, HCFC–22, or blends containing HCFC–22 and/or HCFC–142b. They are comparable to other acceptable substitutes for CFC–113, HCFC–22, and blends containing HCFC–22 and/or HCFC–142b in their lack of risk for ozone depletion. HFO–1234ze has no

[12] HFC–1234ze; HFO–1234ze(E); HFC–1234ze(E); trans-1,3,3-tetrafluoroprop-1-ene; CAS ID #29118–24–9.

[13] 1,1,1,2,2,4,5,5,5-nonafluoro-4-(trifluoromethyl)-3-pentanone or FK–5–1–12mmy2; CAS ID #756–13–8.

[14] Octamethylcyclo-tetrasiloxanes (*e.g.,* D4, CAS ID #556–67–2) and decamethylcyclo-pentasiloxanes (*e.g.,* D5, CAS ID #541–02–6).

ODP. HFO–1234ze has a GWP of 6 and an atmospheric lifetime of approximately 2 weeks (Javadi et al., 2008). The newly listed substitutes have GWPs ranging from 0 to about 3390, comparable to or lower than that of other substitutes for CFC–113, HCFC–22, and blends containing HCFC–22 and/or HCFC–142b. For example, the GWP of HFC–4310mee is about 1640, the GWP of R–404A is about 3920, the GWP of R–407C is about 1770, and the GWP of R–410A is about 2090. The contribution of these refrigerants to greenhouse gas emissions is limited given the venting prohibition under section 608(c)(2) of the CAA and EPA's implementing regulations codified at 40 CFR 82.154(a)(1), which limit emissions of refrigerant substitutes.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. C6-perfluoroketone and HFO–1234ze are considered VOCs under CAA regulations (*see* 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. Some of the newly listed substitutes contain small amounts of components that are considered VOCs under those regulations. In comparison, none of the substitutes previously found acceptable in IV.Q.1, above, contain VOCs. EPA has received a petition to exempt HFO–1234ze from the definition of VOC for purposes of SIPs to attain and maintain the NAAQS on the basis that the chemical has a low photochemical reactivity. EPA intends to address the request through notice-and-comment rulemaking. Further, emissions of VOCs from refrigerant blends are expected to be small relative to the total emissions of VOCs from all sources.

With the exception of some of the volatile methyl siloxanes, none of the newly listed substitutes for CFC–113, HCFC–22, and blends containing HCFC–22 and/or HCFC–142b is flammable. Some volatile methyl siloxanes have flammability risks, and EPA believes that these will be addressed by existing standards from OSHA, ASHRAE, guidelines in the MSDSs, and other safety precautions common in the refrigeration and air-conditioning industry.

The toxicity risks of the newly listed substitutes for CFC–113, HCFC–22, and blends containing HCFC–22 and/or HCFC–142b are low. The potential health effects of HFO–1234ze at lower concentrations include drowsiness and dizziness. At sufficiently high concentrations, it may cause central nervous system depression or irregular heartbeat. HFO–1234ze could cause asphyxiation, if air is displaced by vapor in a confined space. The substitute may also irritate the lungs, skin or eyes or cause frostbite. These potential health effects are common to many refrigerants. EPA anticipates that users of non-mechanical heat transfer systems will take action consistent with the recommendations specified in the manufacturers' MSDSs for HFO–1234ze. EPA recommends a workplace AEL of 1,000 ppm on an 8-hour time-weighted average for HFO–1234ze.[15] EPA recommends a preliminary consumer exposure limit (acute) of 10,000 ppm on a 30-minute time-weighted average. Our risk screen found that workplace and consumer exposure, respectively, are likely to be well below these levels.[16]

As for the other newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b, most of the blends contain HFC or hydrocarbon components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. C6-perfluoroketone has an 8-hour manufacturer AEL of 150 ppm, HFE–7200 has an 8-hour manufacturer AEL of 200 ppm, and HFE–7000 has an 8-hour manufacturer AEL of 75 ppm. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, PELs, manufacturer AELs and EPA recommendation) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the refrigeration and air-conditioning industry. Therefore, we find the newly listed substitutes (in IV.P.2 and 3, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the non-mechanical heat transfer end use.

V. What are my existing and new options for alternative foam blowing agents?

Historically, HCFC–22 and HCFC–142b, along with HCFC–141b, have been used as substitutes for CFC–11 and CFC–12 in foam blowing. HCFC–22 and HCFC–142b were originally found acceptable as substitutes for CFCs in all foam blowing end uses under the SNAP program (March 18, 1994; 59 FR 13084). In 2007, EPA found a number of foam blowing agents containing HCFCs unacceptable for use as substitutes for ODS, because alternatives exist with zero or lower ODPs. Specifically, EPA has found HCFC–22, HCFC–142b, and blends thereof unacceptable as substitutes for CFCs in the following end uses:

- Rigid polyurethane and polyisocyanurate laminated boardstock;
- Rigid polyurethane appliance;
- Rigid polyurethane spray and commercial refrigeration, and sandwich panels;
- Rigid polyurethane slabstock and other foams;
- Polystyrene extruded insulation boardstock and billet;
- Phenolic insulation board and bunstock;
- Flexible polyurethane; and
- Polystyrene extruded sheet

(40 CFR part 82 appendix Q to subpart G)

EPA has also found HCFC–22, HCFC–142b, and blends thereof unacceptable as substitutes for HCFC–141b in the following end uses:

- Rigid polyurethane and polyisocyanurate laminated boardstock;
- Rigid polyurethane appliance;
- Rigid polyurethane spray and commercial refrigeration, and sandwich panels; and
- Rigid polyurethane slabstock and other foams

(40 CFR part 82 appendix K to subpart G and 40 CFR part 82 appendix Q to subpart G)

Existing users of HCFC–22, HCFC–142b, and blends thereof, as of November 4, 2005, were allowed a transition period (which varied in time by end use and application) to switch to alternatives, depending on the specific use. The last of these transition periods ended January 1, 2010 (40 CFR part 82 appendix Q to subpart G).

Finally, EPA has found that HCFC–124 is unacceptable as a substitute for HCFC–123, HCFC–141b, HCFC–142b, HCFC–22, or blends thereof in all foam blowing end uses (40 CFR Part 82 Appendix K to Subpart G).

In the original SNAP rulemaking EPA addressed the use of blends in foam blowing applications. EPA determined that notification was not required for "use of blends or mixtures of substitutes listed as acceptable under the SNAP program in open-celled or closed-cell or semi-rigid end uses" but was required in the following end-uses: polyurethane and polyisocyanurate rigid laminated boardstock; polyurethane spray foam; polystyrene extruded boardstock and billet foams; phenolic foams; and polyolefin foams (59 FR 13084, March

[15] Due to additional data on toxicity, EPA is able to use a lower uncertainty factor and recommend a higher workplace AEL compared to the preliminary AEL analysis (where an AEL of 375 ppm was recommended).

[16] The risk screen as well as derivations of EPA's recommended workplace AEL and preliminary consumer exposure limit (acute) are available at *http://www.regulations.gov* as item EPA–HQ–OAR–2003–0118–0250.

18, 1994). Therefore, blends of acceptable substitutes are also acceptable substitutes for the following foam blowing end uses: rigid polyurethane, appliance; rigid polyurethane, commercial (including commercial foam and sandwich panels, but excluding spray foam); rigid polyurethane, slabstock; flexible polyurethane; polystyrene, extruded sheet; and integral skin polyurethane.

To aid end users as they transition from use of HCFC–22 and HCFC–142b, sections IV.A through K list, by end use: (1) Foam blowing agents that EPA previously found acceptable as substitutes for HCFC–22, HCFC–142b, or all HCFCs; and (2) foam blowing agents that EPA is newly finding acceptable as substitutes for HCFC–22, HCFC–142b, or blends thereof. At the end of the decision for each end use, there is narrative comparing environmental, flammability, and toxicity information of the newly acceptable alternatives with other currently or potentially available alternatives. Flammable blowing agents are hazardous waste when disposed and must be disposed of consistent with regulations under RCRA. More environmental information, flammability information, and toxicity and exposure data is also available in the original SNAP rule of March 18, 1994, the notice of acceptability in which each substitute was first listed, or the sector table for each of the acceptable alternatives to HCFC–22, HCFC–142b, and blends thereof, in the foam blowing sector. The sector table is available at *http://www.epa.gov/ozone/snap/foams/index.html*. The sector table also includes further identification information (including composition and trade names) for each substitute.

Due to the unique flammability concerns that affect listings in the spray foam application, for greater clarity this document separates listings for spray foam (section V.D) from listings for commercial refrigeration foam and sandwich panels (section V.C). Commercial refrigeration foam, spray foam, and sandwich panels together constitute the rigid polyurethane commercial refrigeration foam, spray foam, and sandwich panels end use. However, because of the heightened risk of using a flammable blowing agent when blowing spray foam, in most cases we have not listed flammable substitutes as acceptable in spray foam (*e.g.,* methyl formate and C3–C6 saturated light hydrocarbons), although we have found some acceptable for use in commercial refrigeration foam and in sandwich panels (*see* April 11, 2000; 65 FR 19327, December 18, 2000; 65 FR 78977, August 21, 2003; 68 FR 50533, and September 30, 2009; 74 FR 50129). In limited circumstances, where the submitter of a specific substitute has supplied EPA with a safety training program for customers to address the flammability risks unique to spray foam, we have listed such flammable blowing agents as acceptable for spray foam applications (see December 6, 1999; 64 FR 68039 and October 1, 2004; 69 FR 58903).

A. Rigid Polyurethane & Polyisocyanurate Laminated Boardstock

HFO–1234ze,[17] which was previously listed as a substitute for class I and class II ODS in several foam blowing end uses (September 30, 2009; 74 FR 50129) is today being listed as a substitute for HCFC–22, HCFC–142b, and blends thereof in five other foam blowing end uses. You may find the submission under Docket items EPA–HQ–OAR–2003–0118–0222 and EPA–HQ–OAR–2003–0118–0246 at *http://www.regulations.gov*.

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in rigid polyurethane & polyisocyanurate laminated boardstock:

- Carbon dioxide, CO_2
- 2-chloropropane
- Ecomate™
- Formacel® TI
- Formic acid
- HFC–134a
- HFC–152a
- HFC–245fa
- Methyl formate
- Transcend™ Technologies, as an additive to SNAP-approved blowing agents in blends making up to 5% by weight of the total foam formulation.
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in rigid polyurethane & polyisocyanurate laminated boardstock:

- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- HFO–1234ze
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the rigid polyurethane & polyisocyanurate laminated boardstock end use:

The newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section A.2 are non-ozone-depleting, in contrast to HCFC–22, HCFC–142b, or blends thereof. They are comparable to other acceptable substitutes for HCFC–22, HCFC–142b, and blends thereof in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to 794, comparable to or lower than that of other substitutes for HCFC–22, HCFC–142b, and blends thereof. For example, the GWP of HFC–134a is about 1430 and the GWP of HFC–245fa is about 1030.

None of the newly listed refrigerant substitutes contain any components that are defined as HAPs under the CAA. C3–C6 saturated hydrocarbons, HFO–1234ze, and some components of Exxsol blowing agents are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. EPA has received a petition to exempt HFO–1234ze from the definition of VOC for purposes of SIPs to attain and maintain the NAAQS on the basis that the chemical has a low photochemical reactivity. EPA intends to address the request through notice-and-comment rulemaking. Of the substitutes previously found acceptable in V.A.1, above, 2-chloropropane and formic acid are VOCs.

Among the newly listed substitutes for HCFC–22, HCFC–142b, or blends thereof, Exxol Blowing Agents, HFC–365mfc, and C3–C6 saturated hydrocarbons are flammable. Examples of other flammable foam blowing agents that we previously found acceptable in this end use include 2-chloropropane, Ecomate™, formic acid, HFC–152a, and methyl formate. EPA believes that the flammability risks can be addressed by existing standards from OSHA, guidelines from the manufacturer, and other safety precautions common in the foam blowing industry.

The toxicity risks of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof are low. The potential health effects of HFO–1234ze at lower concentrations include drowsiness and dizziness. The substitute may also irritate the lungs, skin or eyes or cause frostbite. At sufficiently high concentrations, it may cause central nervous system depression or irregular heart beat. HFO–1234ze could cause asphyxiation, if air is displaced by vapor in a confined space. These potential health effects are common to many foam blowing agents. EPA anticipates that users in foam blowing end uses will take action consistent with the recommendations specified in the manufacturers' MSDSs for HFO–1234ze. EPA recommends a

[17] HFO–1234ze(E); HFC–1234ze(E); trans-1,3,3-tetrafluoroprop-1-ene; CAS ID #29118–24–9.

workplace AEL of 1,000 ppm on an 8-hour time-weighted average for HFO–1234ze, which is updated from our preliminary recommendation that accompanied the acceptability listing for HFO–1234ze in several other foam blowing end uses (74 FR 50129; September 30, 2009).[18] Our risk screen found that workplace exposure is likely to be well below that level.[19]

As for the other newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b, HFC–365mfc, C3–C6 saturated light hydrocarbons, and Exxsol blowing agents contain components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from ACGIH. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, PELs and EPA recommendation) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the foam blowing industry. Therefore, we find the newly listed substitutes (in V.A.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the rigid polyurethane & polyisocyanurate laminated boardstock end use.

B. Rigid Polyurethane Appliance Foam

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in rigid polyurethane appliance foam:

- Carbon dioxide, CO_2
- Ecomate™
- Formacel® TI
- Formic acid
- HFC–134a
- HFC–152a
- HFC–245fa
- HFO–1234ze
- Methyl formate
- Transcend™ Technologies, as an additive to SNAP-approved blowing agents in blends making up to 5% by weight of the total foam formulation.
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in rigid polyurethane appliance foam:

- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)
- Vacuum panels

Comparison to other foam blowing agents in the rigid polyurethane appliance foam end use:

We are finding all of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.B.2, with the exception of vaccum panels, to also be acceptable in the rigid polyurethane and polyisocyanurate laminated boardstock end use. Vacuum panels have an ODP and GWP of 0, are not VOCs or HAPs, are non-flammable, and do not present toxicity concerns. *Please see* section V.A.2 for further information on the environmental and safety impacts of the newly listed alternatives compared to other available alternatives. For the reasons discussed above in this section and in section V.A.2, we find that the newly listed substitutes (in V.B.2, above) are acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the rigid polyurethane appliance foam end use.

C. Rigid Polyurethane Commercial Refrigeration Foam and Sandwich Panels

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in rigid polyurethane commercial refrigeration foam and sandwich panels:

- Carbon dioxide, CO_2
- Ecomate™
- Formacel® TI
- Formic acid
- HFC–134a
- HFC–152a
- HFC–245fa
- HFO–1234ze
- Methyl formate
- Transcend™ Technologies, as an additive to SNAP-approved blowing agents in blends making up to 5% by weight of the total foam formulation.
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in rigid polyurethane commercial refrigeration foam and sandwich panels:

- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- HFC–365mfc/HFC–245fa blends containing at least 5% HFC–245fa
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the rigid polyurethane commercial refrigeration foam and sandwich panels end use:

We are finding all of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.C.2, with the exception of HFC–365mfc/HFC–245fa blends containing at least 5% HFC–245fa, to also be acceptable in the rigid polyurethane and polyisocyanurate laminated boardstock end use. Blends of HFC–365mfc/HFC–245fa containing at least 5% HFC–245fa are comparable to other acceptable substitutes for HCFC–22, HCFC–142b, or blends thereof in the rigid polyurethane commercial refrigeration foam and sandwich panels end use in their lack of risk for ozone depletion. In addition, these blends have average GWPs ranging from 870 to 960, comparable to or lower than other substitutes (e.g., the GWP of HFC–134a is about 1430 and the GWP of HFC–245fa is about 1030). HFC–365mfc and HFC–245fa are exempt from the definition of VOCs under CAA regulations addressing the development of SIPs to attain and maintain the national ambient air quality standards. HFC–365mfc is flammable. Examples of other flammable foam blowing agents that we previously found acceptable in this end use include Ecomate™, formic acid, HFC–152a, and methyl formate. EPA believes the flammability risks can be addressed by existing standards from OSHA, guidelines from the manufacturer, and other safety precautions common in the foam blowing industry. With regard to toxicity, HFC–245fa has an 8-hour WEEL of 300 ppm. EPA anticipates that users will be able to meet the WEEL and will address potential health risks by following requirements and recommendations in the MSDS and other safety precautions common in the foam blowing industry. Please see section V.A.2 for further information on the environmental and safety impacts of the other newly listed alternatives compared to available alternatives.

For the reasons discussed above in this section and in section V.A.2, we find the newly listed substitutes (in V.C.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the rigid polyurethane commercial refrigeration foam and sandwich panels end use.

[18] Due to additional data on toxicity, EPA is able to use a lower uncertainty factor and recommend a higher workplace AEL compared to the preliminary AEL analysis (where an AEL of 375 ppm was recommended).

[19] The risk screen is available at *http://www.regulations.gov* as item EPA–HQ–OAR–2003–0118–0250.

D. Rigid Polyurethane Spray Foam

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in rigid polyurethane spray foam:

- Carbon dioxide, CO_2
- Ecomate™
- Formacel® TI
- Formic acid
- HFC–134a
- HFC–152a
- HFC–245fa
- HFO–1234ze
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in rigid polyurethane spray foam:

- Electroset technology
- Exxsol blowing agents
- HFC–365mfc/HFC–245fa blends containing at least 5% HFC–245fa

Comparison to other foam blowing agents in the rigid polyurethane spray foam end use:

We are finding all of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.D.2 to also be acceptable in the rigid polyurethane and polyisocyanurate laminated boardstock end use. Please see section V.A.2 for further information on the environmental and safety impacts of the newly listed alternatives compared to available alternatives. For the reasons above in this section and in section V.A.2, we find the newly listed substitutes (in V.D.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the rigid polyurethane spray foam end use.

E. Rigid Polyurethane Slabstock and Other

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in rigid polyurethane slabstock and other foams:

- Carbon dioxide, CO_2
- Ecomate™
- Formacel® TI
- Formic acid
- HFC–134a
- HFC–152a
- HFC–245fa
- Methyl formate
- Transcend™ Technologies, as an additive to SNAP-approved blowing agents in blends making up to 5% by weight of the total foam formulation.
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in rigid polyurethane slabstock and other foams:

- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- HFO–1234ze
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the rigid polyurethane slabstock and other foams end use:

We are finding all of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.E.2 to also be acceptable in the rigid polyurethane and polyisocyanurate laminated boardstock end use. Please see section V.A.2 for further information on the environmental and safety impacts of the newly listed alternatives compared to available alternatives. For the reasons above and in V.A.2, we find the newly listed substitutes (in V.E.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the rigid polyurethane, slabstock and other foam end use.

F. Polystyrene Extruded Boardstock and Billet

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in polystyrene extruded boardstock and billet:

- Carbon dioxide, CO_2
- Ecomate™
- Formacel® B
- Formacel® TI
- HFC–134a
- HFC–152a
- HFC–245fa
- HFO–1234ze
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in polystyrene extruded boardstock and billet:

- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the polystyrene extruded boardstock and billet end use:

We are finding all of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.F.2 to also be acceptable in the rigid polyurethane and polyisocyanurate laminated boardstock end use. Please see section V.A.2 for further information on the environmental and safety impacts of the newly listed alternatives compared to available alternatives. For the reasons above and in section V.A.2, we find the newly listed substitutes (in V.F.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the polystyrene, extruded boardstock and billet end use.

G. Phenolic Insulation Board and Bunstock

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in phenolic insulation board and bunstock:

- Carbon dioxide, CO_2
- Ecomate™
- HFC–134a
- HFC–152a
- HFC–245fa
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in phenolic insulation board and bunstock:

- 2-chloropropane
- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- HFO–1234ze
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the phenolic insulation board and bunstock end use:

We are finding all of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.G.2, with the exception of 2-chloropropane, to also be acceptable in the rigid polyurethane and polyisocyanurate laminated boardstock end use. 2-chloropropane is comparable to other acceptable substitutes for HCFC–22, HCFC–142b, and blends thereof in the phenolic insulation board and bunstock end use in its lack of risk for ozone depletion. Additionally, we estimate it has a GWP of 5 or less, comparable to or lower than that of other substitutes for HCFC–22, HCFC–142b, and blends thereof (e.g., the GWP of HFC–134a is about 1430, the GWP of HFC–245fa is about 1030, and the GWP of carbon dioxide is 1). 2-chloropropane is considered a VOC under CAA regulations addressing the development of SIPs to attain and maintain the national ambient air quality standards. 2-chloropropane is flammable, like the

newly listed substitutes for HCFC–22, HCFC–142b, or blends thereof, Exxol Blowing Agents, HFC–365mfc, and C3–C6 saturated hydrocarbons. Examples of other flammable foam blowing agents that we previously found acceptable in this end use include Ecomate™, HFC–152a, and methyl formate. EPA believes the flammability risks can be addressed by existing standards from OSHA, guidelines from the manufacturer, and other safety precautions common in the foam blowing industry. With regard to toxicity, EPA recommends a workplace exposure limit of 350 ppm on an 8-hour time-weighted average for 2-chloropropane (65 FR 37900, June 19, 2000). EPA anticipates users will be able to meet the recommended workplace exposure limit and will address potential health risks by following requirements and recommendations in the MSDS and other safety precautions common in the foam blowing industry. Please see section V.A.2 for further information on the environmental and safety impacts of the other newly listed alternatives compared to available alternatives. For the reasons above and in section V.A.2, we find the newly listed substitutes (in V.G.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the phenolic insulation board & bunstock end use.

H. Polystyrene, Extruded Sheet

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in polystyrene, extruded sheet:
- Carbon dioxide, CO_2
- Ecomate™
- Formacel® TI
- HFC–134a
- HFC–152a
- HFC–245fa
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in polystyrene, extruded sheet:
- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the polystyrene, extruded sheet end use:

We are finding all of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.H.2 to also be acceptable in the rigid polyurethane and polyisocyanurate laminated boardstock end use. Please see section V.A.2 for further information on the environmental and safety impacts of the newly listed alternatives compared to available alternatives. For the reasons above and in section V.A.2, we find the newly listed substitutes (in V.H.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the polystyrene, extruded sheet end use.

I. Flexible Polyurethane

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in flexible polyurethane:
- Carbon dioxide, CO_2
- Ecomate™
- HFC–134a
- HFC–152a
- HFC–245fa
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in flexible polyurethane:
- Acetone
- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the flexible polyurethane end use:

We are finding all of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.I.2, with the exception of acetone, to also be acceptable in the rigid polyurethane and polyisocyanurate laminated boardstock end use. Acetone is comparable to other acceptable substitutes for HCFC–22, HCFC–142b, and blends thereof in its lack of risk for ozone depletion. Acetone has a GWP of 0.5, comparable to or lower than that of other substitutes for HCFC–22, HCFC–142b, and blends thereof (e.g., the GWP of HFC–134a is about 1430, the GWP of HFC–245fa is about 1030, and the GWP of carbon dioxide is 1). Acetone is exempt from the definition of VOC under CAA regulations addressing the development of SIPs to attain and maintain the national ambient air quality standards. Acetone is flammable, along with other substitutes for HCFC–22, HCFC–142b, or blends thereof, including Exxol Blowing Agents, HFC–365mfc, and C3–C6 saturated hydrocarbons. Examples of other flammable foam blowing agents that we previously found acceptable in this end use include Ecomate™ and HFC–152a. EPA believes that the flammability risks can be addressed by existing standards from OSHA, guidelines from the manufacturer, and other safety precautions common in the foam blowing industry. With regard to toxicity, acetone has an 8-hour ACGIH TLV of 500 ppm. EPA anticipates that users will be able to meet the TLV and will address potential health risks by following requirements and recommendations in the MSDS and other safety precautions common in the foam blowing industry. Please see section V.A.2 for further information on the environmental and safety impacts of the other newly listed alternatives compared to available alternatives. For the reasons above and in section V.A.2, we find the newly listed substitutes (in V.I.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the flexible polyurethane end use.

J. Polyolefin

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in polyolefin:
- Carbon dioxide, CO_2
- Ecomate™
- Formacel® TI
- HFC–134a
- HFC–152a
- HFC–245fa
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in polyolefin:
- Blends of HFC–152a and saturated light hydrocarbons (C3–C6)
- Chemical Blend A [20]
- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- HFO–1234ze
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the polyolefin end use:

The newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.J.2 are non-ozone-depleting, in contrast to HCFC–22, HCFC–142b, or blends thereof. They are comparable to other acceptable substitutes for HCFC–22, HCFC–142b, and blends thereof in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to 790, comparable to or

[20] Composition is claimed as CBI by the submitter.

lower than that of other substitutes for HCFC–22, HCFC–142b, and blends thereof. For example, the GWP of HFC–134a is about 1430 and the GWP of HFC–245fa is about 1030.

HFO–1234ze is currently considered a VOC, and Exxsol blowing agents and C3–C6 saturated hydrocarbons contain compounds that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. EPA has received a petition to exempt HFO–1234ze from the definition of VOC for purposes of SIPs to attain and maintain the NAAQS on the basis that the chemical has a low photochemical reactivity. EPA intends to address the request through notice-and-comment rulemaking. None of the acceptable substitutes previously listed in this end use are VOCs. However, HFO–1234ze, Exxsol blowing agents, and C3–C6 saturated hydrocarbons have lower overall environmental and health risk compared to other substitutes.

Among the newly listed substitutes for HCFC–22, HCFC–142b, or blends thereof, Exxol Blowing Agents, HFC–365mfc, and C3–C6 saturated hydrocarbons are flammable. Examples of other flammable foam blowing agents that we previously found acceptable in this end use include Ecomate™ and HFC–152a. EPA believes the flammability risks can be addressed by following existing standards from OSHA, guidelines from the manufacturer, and other safety precautions common in the foam blowing industry.

The toxicity risks of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof are low. The potential health effects of HFO–1234ze at lower concentrations include drowsiness and dizziness. The substitute may also irritate the skin or eyes or cause frostbite. At sufficiently high concentrations, it may cause central nervous system depression or irregular heart beat. HFO–1234ze could cause asphyxiation, if air is displaced by vapor in a confined space. The substitute may also irritate the lungs, skin or eyes or cause frostbite. These potential health effects are common to many foam blowing agents. EPA anticipates that users in foam blowing end uses will take action consistent with the recommendations specified in the manufacturers' MSDSs for HFO–1234ze. EPA recommends a workplace AEL of 1,000 ppm on an 8-hour time-weighted average for HFO–1234ze, which is updated from our preliminary recommendation that accompanied the acceptability listing for HFO–1234ze in several other foam blowing end uses (74 FR 50129; September 30, 2009). Our risk screen found that workplace exposure is likely to be well below that level.[21]

As for the other newly listed substitutes for HCFC–22 and blends containing HCFC–22 and/or HCFC–142b, HFC–365mfc, C3–C6 saturated light hydrocarbons and Exxsol blowing agents contain components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or TLVs from the ACGIH. EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, PELs, manufacturer's recommendation, and EPA recommendation) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the foam blowing industry. For the above reasons, we find the newly listed substitutes (in V.J.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the polyolefin end use.

K. Integral Skin Polyurethane

1. EPA previously found the following acceptable as substitutes for HCFC–22, HCFC–142b, blends thereof, or for all HCFCs in integral skin polyurethane:

- Carbon dioxide, CO_2
- Ecomate™
- Formacel® TI
- Formic acid
- HFC–134a
- HFC–152a
- HFC–245fa
- Methyl formate
- Water

2. EPA is newly finding the following acceptable as substitutes for HCFC–22, HCFC–142b, and blends thereof in integral skin polyurethane:

- Acetone
- Electroset technology
- Exxsol blowing agents
- HFC–365mfc
- HFO–1234ze
- Saturated light hydrocarbons C3–C6 (e.g., propane, butane, isobutane, pentane, cyclopentane, hexane, cyclohexane)

Comparison to other foam blowing agents in the integral skin polyurethane end use:

The newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section V.K.2 are non-ozone-depleting, in contrast to HCFC–22, HCFC–142b, or blends thereof. They are comparable to other acceptable substitutes for HCFC–22, HCFC–142b, and blends thereof in their lack of risk for ozone depletion. The newly listed substitutes have GWPs ranging from 0 to 794, comparable to or lower than that of other substitutes for HCFC–22, HCFC–142b, and blends thereof. For example, the GWP of HFC–134a is about 1430 and the GWP of HFC–245fa is about 1030.

HFO–1234ze is currently considered a VOC, and Exxsol blowing agents and C3–C6 saturated hydrocarbons contain compounds that are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. EPA has received a petition to exempt HFO–1234ze from the definition of VOC for purposes of SIPs to attain and maintain the NAAQS on the basis that the chemical has a low photochemical reactivity. EPA intends to address the request through notice-and-comment rulemaking. An acceptable substitute previously listed in this end use that is a VOC is formic acid.

Among the newly listed substitutes for HCFC–22, HCFC–142b, or blends thereof, acetone, Exxol Blowing Agents, HFC–365mfc, and C3–C6 saturated hydrocarbons are flammable. Examples of other flammable foam blowing agents that we previously found acceptable in this end use include Ecomate™, formic acid, and HFC–152a. EPA believes that the flammability risks can be addressed by existing standards from the OSHA, guidelines from the manufacturer, and other safety precautions common in the foam blowing industry.

The toxicity risks of the newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof are low. HFC–365mfc, C3–C6 saturated light hydrocarbons and Exxsol blowing agents contain components with workplace exposure limits of 500 to 1,000 ppm averaged over 8 hours, such as WEELs from the AIHA or threshold limit values (TLVs) from the ACGIH. EPA recommends a workplace AEL of 1000[22] ppm on an 8-hour time-weighted average for HFO–1234ze, which is updated from our preliminary recommendation that accompanied the acceptability listing for HFO–1234ze in several other foam blowing end uses (74 FR 50129, September 30, 2009). EPA anticipates that users will be able to meet the workplace exposure limits (WEELs, TLVs, PELs and EPA recommendation) and will address

[21] The risk screen is available at *http://www.regulations.gov* as item EPA–HQ–OAR–2003–0118–0250.

[22] The derivation of EPA's recommended AEL is available at *http://www.regulations.gov* as item EPA–HQ–OAR–2003–0118–0250.

potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common in the foam blowing industry. For the above reasons, we find the newly listed substitutes (in V.K.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the integral skin polyurethane end use.

VI. What are my existing and new options for alternative aerosols?

A. Propellants

We previously found HCFC–22 and HCFC–142b acceptable as substitutes for CFC–11 in the aerosol propellant end use. In the aerosol propellants end use, the two HCFCs typically have not been blended.

Under the Nonessential Products Ban in Section 610 of the CAA, and EPA's regulations implementing that provision at 40 CFR subpart C, the sale and distribution or offer for sale and distribution of HCFCs in pressurized containers is banned. However, EPA regulations at 40 CFR 82.70 provide exceptions for a limited number of specific uses. For aerosol propellants, these include:

- Medical devices listed in 21 CFR 2.125(e);
- Mold release agents that contain HCFC–22 as a propellant where evidence of good faith efforts to secure alternatives indicates that, other than a class I substance, there are no suitable alternatives;
- Spinnerette lubricants/cleaning sprays used in the production of synthetic fibers, which contain class II substances for solvent purposes and/or contain class II substances for propellant purposes;
- Document preservation sprays which contain HCFC–22 as a propellant, but which contain no other class II substance and which are used solely on thick books, books with coated, dense or paper and tightly bound documents;
- Aerosol or pressurized dispenser cleaning fluid for electronic and photographic equipment which contains a class II substance that is sold or distributed to a commercial purchaser.

To aid end users in the aerosol propellants end use as they transition from use of HCFC–22, HCFC–142b, and blends thereof, this section lists: 1) Propellants that EPA previously found acceptable as substitutes for HCFC–22 and HCFC–142b; and 2) a propellant that EPA is newly finding acceptable as a substitute for CFC–11, HCFC–22, HCFC–142b, and blends thereof. At the end of the decision for the end use, there is narrative comparing environmental, flammability, and toxicity information of the newly acceptable alternative with other currently or potentially available alternatives. More environmental and health information is also available in the original SNAP rule of March 18, 1994, the notice of acceptability in which each substitute was first listed, or the sector table for each of the acceptable alternatives to HCFC–22, HCFC–142b, and blends thereof, in the aerosol propellants end use. The sector table is available at *http://www.epa.gov/ozone/snap/aerosol/index.html*. The sector table also includes further identification information (including composition and trade names) for each substitute.

1. EPA previously found the following acceptable as substitutes for HCFC–22 and HCFC–142b in aerosol propellants:

- Alternative processes (pumps, mechanical pressure dispensers, non-spray dispensers)
- Compressed gases (e.g., carbon dioxide, air, nitrogen, and nitrous oxide)
- Dimethyl ether
- HFC–125
- HFC–134a
- HFC–152a
- HFC–227ea
- Saturated light hydrocarbons, C3–C6 (e.g., propane, isobutane, n-butane)

2. EPA is newly finding the following acceptable as a substitute for CFC–11, HCFC–22, HCFC–142b, and blends thereof as an aerosol propellant:

- HFO–1234ze [23]

HFO–1234ze is non-ozone-depleting in contrast to the ozone depleting substances which it replaces. In its lack of risk for ozone depletion, HFO–1234ze is comparable to other substitutes for HCFC–22 and HCFC–142b such as HFC–134a, HFC–152a, and compressed CO_2. HFO–1234ze's 100-year GWP is 6, comparable to or lower than that of other substitutes for CFC–11, HCFC–22 and HCFC–142b. For example, the GWP of HFC–134a is about 1430, the GWP of HFC–152a is about 124, and the GWP of compressed CO_2 is 1.

Neither HFO–1234ze nor any of the previously acceptable substitutes in the propellant end use are HAPs. HFO–1234ze is currently considered a VOC under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. Other acceptable substitutes in the propellant end use that are VOCs are dimethyl ether and the saturated light hydrocarbons (C3–C6). EPA has received a petition to exempt HFO–1234ze from the definition of VOC for purposes of SIPs to attain and maintain the NAAQS on the basis that the chemical has a low photochemical reactivity. EPA intends to address the request through notice-and-comment rulemaking.

HFO–1234ze is not flammable. The toxicity risks of HFO–1234ze are low. The potential health effects of HFO–1234ze at lower concentrations include drowsiness and dizziness. At sufficiently high concentrations, it may cause central nervous system depression or irregular heart beat. HFO–1234ze could cause asphyxiation, if air is displaced by vapor in a confined space. The substitute may also irritate the lungs, skin or eyes or cause frostbite. These potential health effects are common to many propellants. EPA anticipates that users in the propellant end use will take action consistent with the recommendations specified in the manufacturers' MSDSs for HFO–1234ze. EPA recommends a workplace exposure limit of 1,000 ppm on an 8-hour time-weighted average for HFO–1234ze. EPA recommends a preliminary consumer exposure limit (intermittent) of 420 ppm. Our risk screen found that workplace and consumer exposure, respectively, are likely to be well below these levels.[24] EPA anticipates that users will be able to meet the recommended workplace and consumer exposure limits and will address potential health risks by following requirements and recommendations in the MSDSs and labels and other safety precautions common in the aerosol industry. For the above reasons, we find HFO–1234ze acceptable because it does not pose a greater overall risk to human health and the environment than the other substitutes acceptable in the aerosol propellants end use.

VII. What are my existing and new options for alternative sterilants?

A. Sterilants

Sterilants are chemicals, blends, or devices used to sterilize medical equipment. Many sterilants contain ethylene oxide (EtO) as a component. In this sector, EPA has previously found acceptable ethylene oxide blends containing a blend of HCFC–22 and/or HCFC–124. HCFC–142b has not been used in this sector.

To aid end users in the sterilant end use as they transition from use of

[23] HFO–1234ze(E); HFC–1234ze(E); trans-1,3,3-tetrafluoroprop-1-ene; CAS ID #29118–24–9.

[24] The derivation of EPA's recommended AEL, preliminary consumer exposure limit (intermittent), and risk screen are available at *http://www.regulations.gov* as item EPA–HQ–OAR–2003–0118–0250.

ethylene oxide blends containing HCFC–22, this section lists: (1) Sterilants that EPA previously found acceptable as substitutes for ethylene oxide blends containing HCFC–22; and (2) sterilants that EPA is newly finding acceptable as substitutes for ethylene oxide blends containing HCFC–22.

At the end of the decision for the end use, there is narrative comparing environmental, flammability, and toxicity information of the newly acceptable alternative with other currently or potentially available alternatives. Flammable and highly reactive sterilants are hazardous waste when disposed. Sterilants must be registered by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) prior to use. Also, requirements of the Food and Drug Administration for medical devices apply to equipment using sterilants.

More environmental and health information is also available in the original SNAP rule of March 18, 1994, the notice of acceptability in which each substitute was first listed, or the sector table for each of the acceptable alternatives to ethylene oxide blends containing HCFC–22, in the sterilant end use. The sector table is available at *http://www.epa.gov/ozone/snap/sterilants/index.html*. The sector table also includes further identification information (including composition and trade names) for each substitute.

1. EPA previously found the following acceptable as substitutes for ethylene oxide blends containing HCFC–22 as sterilants:

- IoGas™ Sterilant Blends 1, 3, and 6 (blends of $CF_3I/CO_2/EtO$)
- Mini-Max® Cleaner

2. EPA is newly finding the following acceptable as substitutes for ethylene oxide blends containing HCFC–22 as sterilants:

- CO_2/EtO
- Hydrogen peroxide gas plasma systems
- Peroxyacetic acid/hydrogen peroxide gas plasma systems
- Pure EtO
- Steam

The newly listed substitutes for HCFC–22, HCFC–142b, and blends thereof listed above in section VII.A.2. are non-ozone-depleting, in contrast to HCFC–22 blends. They are comparable to other acceptable substitutes for HCFC–22 blends in their lack of risk for ozone depletion. The newly listed substitutes have GWPs of one or less, comparable to or lower than that of other substitutes for HCFC–22 blends. For example, the GWP of the IoGas blends is less than one.

Peroxyacetic acid and ethylene oxide are considered VOCs under CAA regulations (see 40 CFR 51.100(s)) addressing the development of SIPs to attain and maintain the national ambient air quality standards. Ethylene oxide is a hazardous air pollutant under EPA regulations. EPA's National Emission Standards for Hospital Ethylene Oxide Sterilizers apply to this substance and blends that contain it (*see* subpart WWWWW of 40 CFR part 63). EPA has previously found other blends containing ethylene oxide to be acceptable as sterilants. Further, blends that do not contain ethylene oxide are often still reactive.

Among the newly listed substitutes for HCFC–22 blends, pure ethylene oxide and peroxyacetic acid, a component in a peroxyacetic acid/hydrogen peroxide gas plasma system, are flammable. Hydrogen peroxide is not flammable per se, but is highly reactive and must be handled cautiously at the concentrations required for use in sterilization equipment. These sterilants should be used in equipment designed to reduce the risks of flammable or highly reactive chemicals. EPA believes that the flammability and reactivity risks can be addressed by existing standards from OSHA, NIOSH, and EPA, and/or by guidelines from the manufacturer, and other safety precautions common during sterilization.

The toxicity risks of the newly listed substitutes for HCFC–22 blends are comparable to the risks of the IoGas blends that EPA previously found acceptable as substitutes for blends of ethylene oxide and HCFCs. Ethylene oxide has an OSHA PEL of 1 ppm on an 8-hour time-weighted average and a NIOSH IDLH of 800 ppm (30-minute). This compound may be carcinogenic. Hydrogen peroxide, used in gas plasma systems, has an OSHA PEL of 1 ppm (8-hr TWA) and a NIOSH IDLH value of 75 ppm (30 min). Peroxyacetic acid, used together with hydrogen peroxide in gas plasma systems, has an AEGL–1 of 0.17 ppm from 10 min to 8 hours to avoid irritation and an AEGL–2 of 0.5 ppm from 10 min to 8 hours to avoid "irreversible or other serious, long-lasting adverse health effects * * *." (*Acute Exposure Guideline Levels for Selected Airborne Chemicals,* Committee on Acute Exposure Guideline Levels, National Research Council of the National Academies, 2009). EPA anticipates that users will be able to meet the workplace exposure limits (PELs, IDLHs, and AEGLs) and will address potential health risks by following requirements and recommendations in the MSDSs and other safety precautions common when working with sterilants. For the above reasons, we find the newly listed substitutes (in VII.A.2, above) acceptable because they do not pose a greater overall risk to human health and the environment than the other substitutes available in the end use.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/snap/chron.html.* This information is also available from the Air Docket (*see* **ADDRESSES** section above for contact information).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 10, 2010.

Brian J. McLean,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2010–14510 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2009–0609; FRL–8829–9]

Bacillus thuringiensis eCry3.1Ab Protein in Corn; Temporary Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit 67979-EUP-8. Syngenta Seeds, Incorporated submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting a temporary exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn under the FFDCA. The temporary tolerance exemption expires on June 1, 2012.

DATES: This regulation is effective June 16, 2010. Objections and requests for

hearings must be received on or before August 16, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0609. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0609 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 16, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0609, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of September 30, 2009 (74 FR 50196) (FRL–8433–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 9F7561) by Syngenta Seeds, Incorporated, P.O. Box 12257, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn. This notice referenced a summary of the petition prepared by the petitioner Syngenta Seeds, Incorporated, which is available in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit VII.C.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...." Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider "available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other

exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Product Characterization Overview

Based on amino acid sequence homology and crystal structures, known Cry proteins have a similar three-dimensional structure comprised of three domains, Domain I, II, and III (Refs. 3, 5, 6 and 7). The toxin portions of Cry proteins are characterized by having five conserved blocks (CB) across their amino acid sequence. These are numbered CB1 to CB5 from the N-terminus to the C-terminus (Ref. 4). The sequences preceding and following these conserved blocks are highly variable and are designated as variable regions V1 to V6.

Syngenta Seeds, Incorporated developed Event 5307 maize (*Zea mays*) through *Agrobacterium*-mediated transformation (via plasmid vector PV-ZMIR245) to express eCry3.1Ab protein for use as a plant-incorporated protectant (PIP). This proposed PIP is a chimeric *Bacillus thuringiensis* protein, composed of portions of Cry1Ab and modified Cry3A proteins. The eCry3.1Ab protein was genetically engineered via exchanging the variable regions (V1 to V6) between the mCry3A and the Cry1Ab proteins for enhanced toxicity against western corn rootworm (WCR, *Diabrotica virgifera*). The eCry3.1Ab protein consists of a fusion between the N-terminus (Domain I, Domain II, and a portion of Domain III) of mCry3 A and the C-terminus (a portion of Domain III and variable region 6) of Cry1Ab. The eCry3.1Ab protein is 654 amino acid residues in size and is approximately 73.7 kilodaltons.

B. Mammalian Toxicity and Allergenicity Assessment

Syngenta has submitted acute oral toxicity data demonstrating the lack of mammalian toxicity at high levels of exposure to the pure eCry3.1Ab protein. These data demonstrate the safety of the product at a level well above maximum possible exposure levels that are reasonably anticipated in the crop. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity testing and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which this PIP was derived (see 40 CFR 158.2130(d)(1)(i) and 158.2140(d)(7)). For microbial products, further toxicity testing and residue data are triggered by significant adverse acute effects in studies, such as the mouse oral toxicity study, to verify and quantify the observed adverse effects and clarify the source of these effects (Tiers II & III).

An acute oral toxicity study in mice (Master Record Identification Number MRID No. 477539-01) indicated that eCry3.1Ab is nontoxic. Two groups of 10 male and 10 female mice were orally dosed (via gavage) with 2,000 milligrams/kilograms bodyweight (mg/kg bwt) (eCry3.1Ab protein mg/kg bwt) of the eCry3.1Ab-0208 test substance, the microbial-produced eCry3.1Ab protein. All treated animals gained weight and had no test material-related clinical signs and no test material-related findings at necropsy. Since there were no significant differences between the test and control groups related to the oral administration of eCry3.1Ab-0208 test material, the eCry3.1Ab protein does not appear to cause any significant adverse effects at an exposure level of up to 2,000 mg/kg bwt and supports the finding that the eCry3.1Ab protein would be nontoxic to mammals.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Ref. 8). Therefore, since no acute effects were shown to be caused by eCry3.1Ab, even at relatively high dose levels, the eCry3.1Ab protein is not considered toxic. Further, amino acid sequence comparisons showed no similarities between the eCry3.1Ab protein and known toxic proteins in protein databases that would raise a safety concern.

Since eCry3.1Ab is a protein, allergenic sensitivities were considered. Currently, no definitive tests exist for determining the allergenic potential of novel proteins. Therefore, EPA uses a "weight-of-the-evidence" approach where the following factors are considered: Source of the trait; amino acid sequence similarity with known allergens; prevalence in food; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF) and glycosylation (as recommended by *CAC* 2003, see Ref. 2). Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by acid and proteases; may be glycosylated; and present at high concentrations in the food.

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence*. A comparison of the amino acid sequence of eCry3.1Ab with known allergens showed no significant overall sequence similarity or identity at the level of eight contiguous amino acid residues. This is the appropriate level of sensitivity to detect possible IgE epitopes without high false positive rates.

3. *Prevalence in food*. Preliminary expression level analysis shows that the eCry.1Ab protein is present at relatively low levels. Dietary exposure is expected to be correspondingly low. Expression in Event 5307 leaf is 35 parts per million ppm; root is 6 ppm; and pollen is 0.15 ppm. Thus, the expression has been shown to be in the parts per million range.

4. *Digestibility*. The eCry3.1Ab protein was rapidly digested in simulated mammalian gastric fluid containing pepsin at a pH of 1.2 at 37°C. Theestimated degradation rate (DT50) is less than 1 minute for eCry3.1Ab protein.

5. *Glycosylation*. The eCry3.1Ab protein expressed in corn was shown not to be glycosylated.

6. *Conclusion*. Considering all of the available information, EPA has concluded that the potential for eCry3.1Ab to be a food allergen is minimal.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. First, with respect to other related substances, the eCry3.1Ab protein is a chimeric *Bacillus thuringiensis* protein, composed of portions of Cry1Ab and mCry3A proteins both of which are registered PIPs that were previously assessed as having a lack of mammalian toxicity at high levels of exposure. Exemptions from the requirement of a tolerance have been established for Cry1Ab in food and

mCry3A in maize, (see 40 CFR 174.511, effective Apr. 25, 2007 and 40 CFR 174.505, effective Apr. 25, 2007, respectively). Second, and specific to the eCry3.1Ab protein, these considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the PIP chemical residue and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the PIP is contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. The amino acid homology assessment included similarity to known aeroallergens. It has been demonstrated that there is no evidence of occupationally-related respiratory symptoms, based on a health survey on migrant workers after exposure to *Bt* pesticides (Ref. 1). Exposure via residential or lawn use to infants and children is also not expected because the use sites for the eCry3.1Ab protein are all agricultural for control of insects. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water.

However, oral toxicity testing done at a dose of 2 gm/kg showed no adverse effects. Furthermore, the expected dietary exposure from corn is several orders of magnitude lower than the amounts of eCry3.1Ab protein shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, the Agency concludes that such exposure would present no harm due to the lack of mammalian toxicity and the rapid digestibility demonstrated for the eCry3.1Ab protein.

V. Cumulative Effects from Substances with a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Since eCry3.1Ab is not considered toxic, EPA has not found eCry3.1Ab protein to share a common mechanism of toxicity with any other substances, and eCry3.1Ab protein does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that eCry3.1Ab protein does not have a common mechanism of toxicity with other substances. Following from this, therefore, EPA concludes that there are no cumulative effects associated with eCry3.1Ab that need to be considered. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Determination of Safety for the U.S. Population, Infants, and Children

The data submitted and cited regarding potential health effects for the eCry3.1Ab protein include the characterization of the expressed eCry3.1Ab protein in corn, as well as the acute oral toxicity, heat stability, and *in vitro* digestibility of the protein. The results of these studies were used to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were also considered.

As discussed more fully in Unit III. above, the acute oral toxicity data submitted supports the prediction that the eCry3.1Ab protein would be nontoxic to humans. Moreover, eCry3.1Ab showed no sequence similarity to any known toxin. Because of this lack of demonstrated mammalian toxicity, no protein residue chemistry data for eCry3.1Ab were required for a human health effects assessment. Even so, preliminary expression level analysis showed eCry3.1Ab protein is present at relatively low levels. Dietary exposure is expected to be correspondingly low.

In addition, since eCry3.1Ab is a protein, its potential allergenicity was also considered as part of the toxicity assessment. Data considered as part of the allergenicity assessment include that the eCry3.1Ab protein came from *Bacillus thuringiensis,* which is not a known allergenic source, showed no sequence similarity to known allergens, was readily degraded by pepsin, and was not glycosylated when expressed in the plant. Therefore, there is a reasonable certainty that eCry3.1Ab protein will not be an allergen.

Considered together, the lack of mammalian toxicity at high levels of exposure to the eCry3.1Ab protein and the minimal potential for that protein to be a food allergen demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

Finally, and specifically in regards to infants and children, FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children.

Based on its review and consideration of all the available information, as discussed in more detail above, the Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of the eCry3.1Ab protein and the genetic material necessary for its production in corn. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has also concluded, again for the reasons discussed in more detail above, that there are no threshold effects of concern and, as a result, that an additional margin of safety for infants and children is unnecessary in this instance.

VII. Other Considerations

A. Analytical Enforcement Methodology

The Agency has determined that an analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. Nonetheless, a method for extraction and two test strip commercial kits to detect eCry3.1Ab protein via enzyme-linked immunosorbent assay analysis in corn have been submitted and are under review by the Agency.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. In this context, EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance

that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established a MRL for eCry3.1Ab protein in corn.

C. Response to Comments

One comment was received from an anonymous individual who objected in general terms to EPA's registration of any pesticides and its approval of any tolerance or tolerance exemption, claiming that no safety testing is required or undertaken. While the Agency understands that some individuals are opposed to all pesticide use, relavant data (discussed above) did serve as the basis for EPA's conclusion in this instance that there is a reasonable certainty of no harm from residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn.

VIII. Conclusions

The Agency concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of eCry3.1Ab protein in corn and the genetic material necessary for its production. Therefore, a temporary exemption is established for residues of *Bacillus thuringiensis* eCry3.1Ab protein in or on corn.

IX. References

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X. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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 note).

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 1, 2010.

Steven Bradbury,

Acting Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 174.532 to subpart W to read as follows:

§ 174.532 *Bacillus thuringiensis* **eCry3.1Ab protein in corn; temporary exemption from the requirement of a tolerance.**

Residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop are exempt temporarily from the requirement of a tolerance when *Bacillus thuringiensis* eCry3.1Ab protein in corn is used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit 67979-EUP-8. This temporary exemption from the requirement of a tolerance expires and is revoked on June 1, 2012.

[FR Doc. 2010–14330 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0739; FRL–8825–2]

Sodium 1,4-Dialkyl Sulfosuccinates; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of sodium 1,4-dialkyl sulfosuccinates including sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3); sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9); and sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5) when used as an inert ingredient in pesticide formulations for pre-harvest and post-harvest uses, as well as, for application to animals under 40 CFR 180.910 and 40 CFR 180.930, respectively. The Joint Inerts Task Force (JITF), Cluster Support Team 13 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of the sodium 1,4-dialkyl sulfosuccinates.

DATES: This regulation is effective June 16, 2010. Objections and requests for hearings must be received on or before August 16, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0739. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select "Test Methods and Guidelines."

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0739 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 16, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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

EPA–HQ–OPP–2008–0739, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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

II. Petition for Exemption

In the **Federal Register** of March 19, 2010 (75 FR 13277) (FRL–8813–2), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 9E7647) by the Joint Inerts Task Force, Cluster Support Team 13, EPA Company Number 84949, c/o CropLife America, 1156 15th St., NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910 and 40 CFR 180.930 be amended by establishing exemptions from the requirement of a tolerances for residues of sodium 1,4-dialkyl sulfosuccinates including sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3); sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9); and sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5) when used as inert ingredients in pesticide formulations for pre-harvest and post-harvest uses, as well as, for application to animals. For ease of reading this document the sodium 1,4-dialkyl sulfosuccinates will be referred to as SDSS. That notice referenced a summary of the petition prepared by the Joint Inerts Task Force (JITF), Cluster Support Team Number 13 (CST 13), the petitioner, which is available in the docket, *http://www.regulations.gov*. No comments were received in the docket. However, the Agency received one comment by e-mail. The comment was received from a private citizen who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the FFDCA EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute.

EPA previously published a final rule to establish a tolerance for SDSS under 40 CFR 180.920 in the **Federal Register** of July 8, 2009 (74 FR 32433) (FRL–8423–3). That final rule established a tolerance exemption for SDSS when used as an inert ingredient in pesticide formulations applied to growing crops only.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for SDSS including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with SDSS follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

SDSS have moderate to low acute oral toxicity and low dermal acute toxicity. There was no hazard identified in a combined repeat dose rat reproductive/developmental screening study at the limit dose of 1,000 milligrams/kilogram/day (mg/kg/day) to either parental animals or their offspring. There is no concern for neurotoxicity, immunotoxicity or carcinogenicity for SDSS.

Specific information on the studies received and the nature of any observed effects caused by SDSS as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://*

www.regulations.gov in the document "Sodium 1,4-Dialkyl Sulfosuccinates (JITF CST 13 Inert Ingredients). Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations" pages 6–8 in docket ID number EPA–HQ–OPP–2008–0739.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

There was no hazard identified in a combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats with SDSS at the limit dose of 1,000 mg/kg/day to either parental animals or their offspring. Thus, due to their low potential hazard and lack of a hazard endpoint, the Agency has determined that a quantitative risk assessment using safety factors applied to a POD protective of an identified hazard endpoint is not appropriate.

No mutagenicity, genotoxicity, or chronic toxicity data have been located for any of the SDSS. However, no structural alerts for genotoxicity or carcinogenicity were identified in a qualitative structure activity relationship (SAR) database, DEREK Version 11. In addition, data for similar compounds showed they are not mutagenic or carcinogenic. The primary alcohol mammalian metabolites of SDSS have been shown to be negative in the *in vitro* Ames test. Furthermore, a structurally similar compound that is also used as an inert ingredient, sodium dioctyl sulfosuccinate (CAS Reg. No. 577–11–7) was not mutagenic, or carcinogenic in a chronic rat study or a tumor promotion study. Based on the above, SDSS are not expected to be carcinogenic.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses and drinking water*. Since an endpoint for risk assessment was not identified, an exposure assessment for SDSS was not conducted. Any possible dietary exposure of SDSS from their use as inert ingredients in pesticide products would be through consumption of food to which pesticide products containing SDSS have been applied and through drinking water (from runoff).

2. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., textiles (clothing and diapers), carpets, swimming pools, and hard surface disinfection on walls, floors, tables).

Since an endpoint for risk assessment was not identified, a quantitative residential exposure assessment for SDSS was not conducted. Residential exposures to SDSS may occur as a result of the use of pesticide products containing SDSS as inert ingredients (such as antimicrobial hard surface cleaners) as well as from other, nonpesticidal, residential use products containing SDSS.

3. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found SDSS to share a common mechanism of toxicity with any other substances, and SDSS does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that SDSS does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

The toxicity database for SDSS is adequate for FQPA assessment and the potential exposure is adequately characterized given the low toxicity of the chemical. There was no hazard identified in a combined repeat dose rat reproductive/developmental screening study at the limit dose of 1,000 mg/kg/day to either parental animals or their offspring. There is no concern for neurotoxicity, immunotoxicity or carcinogenicity for SDSS.

Based on this information, there is no concern, at this time, for increased sensitivity to infants and children to SDSS when used as inert ingredients in pesticide formulations for pre-harvest and post-harvest uses, as well as for application to animals, therefore a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

Given the lack of concern for hazard posed by SDSS, EPA concludes that there are no dietary or aggregate dietary/ non-dietary risks of concern as a result of exposure to SDSS in food and water or from residential exposure.

Taking into consideration all available information on SDSS, EPA has determined that there is a reasonable certainty that no harm to any population subgroup will result from aggregate exposure to SDSS under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.910 and 40 CFR 180.930 for residues of sodium 1,4-dialkyl sulfosuccinates including sodium 1,4-dihexyl sulfosuccinate (CAS

Reg. No. 3006–15–3); sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9); and sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5) when used as an inert ingredient in pesticide formulations for pre-harvest and post-harvest uses, as well as, for application to animals, is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for SDSS nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 and 40 CFR 180.930 for sodium 1,4-dialkyl sulfosuccinates including sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3); sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9); and sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5) when used as an inert ingredient in pesticide formulations for pre-harvest and post-harvest uses, as well as, for application to animals.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemptions in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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 note).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report 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 this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 28, 2010.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.910, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* *	* * * * *	
Sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3).	.....	Surfactants, related adjuvants of surfactants
Sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9).	.....	Surfactants, related adjuvants of surfactants
Sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5).	.....	Surfactants, related adjuvants of surfactants
* *	* * * * *	

* * * * *

■ 3. In § 180.930, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* *	* * * * *	
Sodium 1,4-dihexyl sulfosuccinate (CAS Reg. No. 3006–15–3).	.....	Surfactants, related adjuvants of surfactants
Sodium 1,4-diisobutyl sulfosuccinate (CAS Reg. No. 127–39–9).	.....	Surfactants, related adjuvants of surfactants
Sodium 1,4-dipentyl sulfosuccinate (CAS Reg. No. 922–80–5).	.....	Surfactants, related adjuvants of surfactants
* *	* * * * *	

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[FR Doc. 2010–14093 Filed 6–15–10; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–786; MB Docket No. 05–10; RM–11279]

FM Table of Allotments (The Dalles, Tualatin, Eugene, Albany, Lebanon, Paisley, and Diamond Lake, Oregon and Goldendale, WA)

AGENCY: Federal Communications Commission

ACTION: Final rule; dismissal of petition for reconsideration.

SUMMARY: The Audio Division dismisses a Petition for Reconsideration jointly filed by Portland Broadcasting, LLC ("Portland Broadcasting"), licensee of Station KXPC–FM, Channel 279C, Lebanon, Oregon, Bicoastal Media Licenses IV, LLC ("Bicoastal"), licensee of Station KACI–FM, Channel 249C2, The Dalles, Oregon, and Station KMSW(FM), Channel 224C3, The Dalles, Oregon, and Extra Mile Media, Inc., licensee of Station KHPE(FM), Channel 300C, Albany, Oregon, collectively (the "Joint Petitioners"). In this regard, Portland Broadcasting, Columbia Gorge Broadcasters, Inc., M.S.W Communications, LLC, Bicoastal, and Extra Media, Inc. (the "Joint Parties") filed a Motion to Dismiss the Petition for Reconsideration. The Joint Parties' Motion to Dismiss the Petition for Reconsideration contained a Settlement Agreement between Cumulus and the Joint Parties. In accordance with Section 1.420(j) of the Commission's Rules, we are granting the Joint Parties' Motion to Dismiss. In doing so, we approve the Settlement Agreement. The Joint Parties will collectively and individually receive payments that are less than their respective legitimate and prudent expenses incurred in connection with the preparation, filing and advocacy of the Counterproposal. Each party filed a declaration in accordance with Section 1.420(j), containing an itemization of its respective legal, engineering and other legitimate and prudent expenses. The Joint Parties and Cumulus each state in its respective declaration that aside from the Settlement Agreement, neither respective licensee nor any of its members, officers, or employees is a party to any agreement, written or oral, that will require the respective licensee to pay or receive any monies or provide or receive any other consideration from or to the existing and former licensee for the actions described in each respective declaration.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MB Docket No. 05–10, adopted May 21, 2010, and released May 24, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, <http://www.bcpiweb.com>.

The Commission will not send a copy of this Memorandum Opinion and Order pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the aforementioned petition for reconsideration was dismissed.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

List of Subjects in 47 CFR Part 73

Federal Communications Commission.

John A. Karousos,

Assistant Chief,

Audio Division,

Media Bureau.

[FR Doc. 2010–14512 Filed 6–15–10– 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080228326–0108–03]

RIN 0648–AW30

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex Fishery; Amendment 3

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is implementing approved measures in Amendment 3 to the Northeast Skate Complex Fishery Management Plan (Skate FMP), including final specifications for the 2010 and 2011 fishing years (FY). Amendment 3 was developed by the New England Fishery Management Council (Council) to rebuild overfished skate stocks and implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Amendment 3 implements a rebuilding plan for smooth skate and establishes an ACL and annual catch target (ACT) for the skate complex, total allowable landings (TAL) for the skate wing and bait fisheries, seasonal quotas for the bait fishery, new possession limits, in season possession limit triggers, and other measures to improve management of the skate fisheries. This interim final rule also includes skate fishery specifications for FY 2010 and 2011, pursuant to the specifications process established in Amendment 3.

DATES: Effective July 16, 2010. Comments on the final specifications for the 2010 and 2011 fishing years must be received by 5 p.m. on July 16, 2010.

ADDRESSES: A final environmental impact statement (FEIS) was prepared for Amendment 3 that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of Amendment 3, the FEIS, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

An environmental assessment (EA) was prepared for the final 2010 and 2011 specifications. A copy of this EA, and its associated finding of no significant impact, is available from National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also available online at *http://www.nero.noaa.gov/nero/*.

You may submit comments on the final specifications, identified by RIN 0648–AW30, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- Fax: (978) 281–9135, Attn: Tobey Curtis.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Skate Final Specifications for 2010 and 2011."

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273, or Allison McHale, Fishery Policy Analyst, (978) 281–9103.

SUPPLEMENTARY INFORMATION:

Background

This interim final rule implements measures contained in Amendment 3, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on March 23, 2010. A proposed rule to implement the measures contained in Amendment 3 published in the **Federal Register** on January 21, 2010 (75 FR 3434), with public comment accepted through February 22, 2010. Details concerning the development of Amendment 3 were contained in the preamble of the proposed rule and are not repeated here.

The January 21, 2010, proposed rule included proposed specifications for FY 2010 and 2011. The proposed specifications were included in Amendment 3 based on the best available scientific information available at the time the final Amendment 3 document was prepared by the Council. Specifically, the proposed specifications included the following: (1) ACL = 30,643 mt; (2) ACT = 22,982 mt; and (3) TAL = 9,427 mt. These proposed specifications derived from the scientific advice of the Council's Scientific and Statistical Committee (SSC) that the acceptable biological catch (ABC) for the skate complex should not exceed 30,643 mt. This recommendation was developed in September 2009 by the SSC, based on the best information considered appropriate for use at the time, which included data from the Northeast Fisheries Science Center (NEFSC) trawl surveys through spring 2008 for little skate, and through fall 2007 for all other species in the skate complex.

Although this was the best scientific information available at the time the Council prepared and submitted Amendment 3 for review by NMFS, in March 2010, the Council's SSC reconvened to reconsider its ABC recommendation for FY 2010 and 2011. The SSC reconsidered its ABC recommendation to incorporate the fall 2008 NEFSC trawl survey data, which had not been previously incorporated into the SSC's evaluation of an appropriate ABC for the skate complex. As a result of the inclusion of these additional data, which showed a marked increase in the availability of winter skates, the SSC revised its ABC recommendation from 30,643 mt to 41,080 mt. Based on the procedures in Amendment 3, a change in the SSC's ABC recommendation affects the specifications to be implemented, as follows: (1) The ACL is similarly increased to 41,080 mt; (2) the ACT increases to 30,810 mt; and (3) the TAL increases to 13,848 mt (the TAL also reflects an updated analysis by the Council's Skate Plan Development Team (PDT) on estimated discards of skates across all fisheries). The SSC presented its recommendation to revise the skate ABC at the April 28, 2010, meeting of the Council. At this meeting, the Council accepted the revised ABC and requested that NMFS incorporate this new scientific information into the implementation of Amendment 3. Therefore, consistent with the request of the Council, the final specifications implemented in this interim final rule reflect this new scientific information from the Council's SSC, as required under National Standard 2 of the Magnuson-Stevens Act ("any regulation promulgated to implement any such [fishery management] plan . . . shall be based upon the best scientific information available"). But, because the scientific basis for setting the FY 2010 and 2011 specifications changed between the publication of the proposed rule and the publication of this interim final rule, the final specifications are published as an interim final rule in order to provide the public with the

opportunity to provide comment on the revised specifications.

Approved Measures

New Biological Reference Points

For all skate species except barndoor, the B_{MSY} proxy (biomass target; the biomass level at which maximum sustainable yield (MSY) can be attained on a continuing basis) is defined as the 75th percentile of the appropriate NEFSC trawl survey (autumn or spring) biomass index time series for that species: Autumn 1975–2007 for clearnose; spring 1982–2008 for little; autumn 1967–2007 for winter and rosette; and autumn 1963–2007 for smooth and thorny. For barndoor, the B_{MSY} proxy remains unchanged as the average 1963–1966 autumn survey biomass index, because the survey did not catch barndoor skates during a protracted time period of years.

A skate species is considered overfished if its 3-year moving average survey biomass falls below one-half of its B_{MSY} proxy value (biomass threshold). Therefore, because the current biomass indices for thorny and smooth skates are below their respective thresholds, they are considered overfished (Table 1). The current biomass for clearnose and rosette skates are above their respective biomass targets, so they are considered to be above B_{MSY}. Winter, little, and barndoor skates are not overfished, but not completely rebuilt to their biomass targets (Table 1).

Fishing mortality reference points, defined by percentage changes in the survey biomass indices, remain unchanged. No skates are currently subject to overfishing, although thorny skate was considered to be subject to overfishing in 2007. The previous and revised biomass reference points are shown in Table 1, relative to the most recent survey biomass for each species.

TABLE 1. COMPARISON BETWEEN CURRENT SKATE BIOMASS STATUS (THROUGH AUTUMN 2008) WITH PREVIOUS AND REVISED BIOMASS REFERENCE POINTS.

Stratified mean survey biomass (kg/tow)

Skate Species	Current Biomass	Previous Threshold	Revised Threshold	Previous Target	Revised Target
Winter	5.23	3.43	2.80	6.46	5.60
Little	5.04	3.27	3.51	6.54	7.03
Barndoor	1.02	0.81	0.81	1.62	1.62
Thorny	0.42	2.20	2.06	4.41	4.12
Smooth	0.13	0.16	0.14	0.31	0.29
Clearnose	1.04	0.28	0.38	0.56	0.77
Rosette	0.052	0.015	0.024	0.029	0.048

2010–2011 Final Specifications (ACL, ACT, and TAL)

The following final specifications differ from the specifications proposed in the January 21, 2010, proposed rule. The regulation at § 648.320(a)(7) regarding the annual review and specification process provides that "if the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section." As explained above, the final specifications implemented in this interim final rule are based on the revised ABC recommendation of the Council's SSC. The proposed specifications were based on the best information available at the time the Council prepared Amendment 3, but this information changed as a result of the March 17, 2010, meeting of the SSC. Thus, these final specifications differ from those recommended by the Council in Amendment 3 to ensure that the final FY 2010 and 2011 specifications are based on the best available scientific information. Also, because these final specifications were calculated according to the procedures in Amendment 3, stemming from the revised ABC recommendation, the final specifications are determined to satisfy the criteria set forth in Amendment 3.

In each FY, the ACL for the skate complex will be set equal to the ABC recommended by the Council's SSC. Through FY 2011, the SSC has recommended an ABC based on the median catch/biomass exploitation rate of the skate complex multiplied by the 2005–2008 average survey biomass, which is 90.566 million lb (41,080 mt) per year. To account for management uncertainty, an ACT will be set at 75 percent of the ACL, or 67.924 million lb (30,810 mt) per year. Due to the difficulties in monitoring skate discards in all fisheries during a FY, a projection of total annual dead discards will be subtracted from the ACT to generate the TAL for the skate fisheries. After deducting an estimate of skate landings from vessels fishing solely in state waters (approximately 3 percent of the total landings), the remaining TAL for Federal waters in FY 2010 and 2011 will be 30.530 million lb (13,848 mt) per year.

The TAL will be allocated between the skate wing fishery and the skate bait fishery based on historic landings proportions. The skate wing fishery predominantly lands winter skate, while the bait fishery predominantly lands little skate. The skate wing fishery will receive 66.5 percent of the TAL, or 20.302 million lb (9,209 mt), and the skate bait fishery will receive 33.5 percent of the TAL, or 10.227 million lb (4,639 mt). Landings of skates will be monitored and allocated to the appropriate fishery quota through information currently required to be submitted by seafood dealers on a weekly basis.

Because this action was not effective at the start of the FY on May 1, 2010, all skate landings that accrue from May 1, 2010, until the date of implementation of this interim final rule will be counted against the respective skate wing and bait TALs for FY 2010, as described above. The rationale for this attribution of FY 2010 landings was explained in the January 21, 2010, proposed rule.

Possession Limits and Seasons

As part of the final specifications for FY 2010 and 2011, this interim final rule implements a possession limit for the skate wing fishery that differs from the possession limit in Amendment 3 and the proposed rule. The possession limit for the wing fishery is revised in order to reflect the change in TAL allocated to the wing fishery as a result of the ABC. Under Amendment 3, the wing fishery landings are assessed against a yearly TAL that is managed primarily through the use of a possession limit on landings designed to constrain landings such that the TAL is

not exceeded. In Amendment 3, the proposed reduction in allowable landings in the wing fishery to the initial 13.821 million lb (6,269 mt) TAL required a substantial reduction in the possession limit, from the original limits of 10,000 lb (4,536 kg) wing weight for all trips less than 24 hr in duration (and 20,000 lb (9,072 kg) wing weight for all trips greater than 24 hr in duration) to the proposed limit of 1,900 lb (862 kg) wing weight for all trips, regardless of trip duration. Consistent with the new ABC recommendation, and the resultant increase in the wing fishery TAL from the 13.821–million-lb (6,269–mt) TAL in the proposed rule to the 20.302–million-lb (9,209–mt) TAL implemented in this interim final rule, the Skate PDT recently completed an analysis indicating that the proposed 1,900–lb (862–kg) wing possession limit should also be revised.

This change from the proposed rule is necessary to ensure that the management measure is based on the best available scientific information, and to provide an opportunity for the fishery to attain the TAL. Based on PDT analyses, if fishing patterns in FY 2010 and 2011 are similar to those in FY 2007–2009, the proposed 1,900–lb (862–kg) wing possession limit was expected to have constrained total wing landings to approximately two-thirds of the overall TAL, while potentially substantially increasing regulatory discards of marketable skates. An increase in the wing possession limit from the level initially proposed provides a greater likelihood that the fishery will have the opportunity to fully attain the TAL, and reduces the potential for a substantial increase in regulatory discards.

All vessels possessing, retaining, and landing skates will continue to be required to obtain a Federal open access skate permit. Subject to the additional restrictions described in the following sections, a possession limit of 5,000 lb (2,268 kg) wing weight (11,350 lb (5,148 kg) whole weight) is implemented for any vessels in possession of skates, unless the vessel is in possession of a Skate Bait Letter of Authorization (LOA). All skates landed in wing form or sold for use as food will accrue against the skate wing TAL. To ensure that the skate wing TAL is not exceeded, when 80 percent of the annual skate wing TAL is landed, the 5,000–lb (2,268–kg) skate wing possession limit will be reduced to 500 lb (227 kg) wing weight (1,135 lb (515 kg) whole weight) for the remainder of the FY. The purpose of this measure is to reduce incentives to target skates, but allow some incidental catches of skates to be landed, rather than discarded.

This rule retains the requirement that a vessel possessing a valid Federal skate permit must also fish under an Atlantic sea scallop, Northeast (NE) multispecies, or monkfish day-at-sea (DAS) in order to possess, retain, and land skates, unless that the vessel is otherwise exempted under § 648.80.

This action also implements an incidental skate trip limit of 500 lb (227 kg) wing weight, or 1,135 lb (515 kg) whole weight, for any vessel issued a Federal skate permit that is not fishing under a DAS.

A possession limit of 20,000 lb (9,072 kg) whole weight is implemented for vessels participating in the skate bait fishery that also possess a Skate Bait LOA. The existing requirements of the Skate Bait LOA will remain in effect, including the requirement to land skates in only whole form, to be sold only as bait, a maximum skate size limit of 23 inches (58 cm) total length, and a minimum participation period of 7 days. Vessels that do not possess a Skate Bait LOA, or that land any combination of whole skates and skate wings (even if the vessel possesses a Skate Bait LOA) are subject to the appropriate wing fishery possession limit. To help maintain a consistent market supply of bait skates, the skate bait TAL will be split into three quota periods per year. All skates landed in whole form that are sold for use as bait will accrue against the skate bait TAL. When 90 percent of the skate bait quota is harvested in each quota period, the possession limit will be reduced to the whole weight equivalent of the skate wing fishery possession limit until the start of the next period, whether it be 5,000 lb (2,268 kg) or 500 lb (227 kg) wing weight at the time.

The bait skate possession limit implemented in this interim final rule is the same as that recommended by the Council in Amendment 3 and in the proposed rule. Although the TAL allocated to the bait fishery is increased in this interim final rule from the level in Amendment 3 and the proposed rule, similar to the wing fishery TAL, the basis for establishing a possession limit for the bait fishery, and the level at which that possession limit was set, was different than for the wing fishery. Rather than an overall annual TAL, the bait fishery TAL is subdivided into three quota periods. When landings of bait skates are projected to reach 90 percent of the quota for each quota period, the bait fishery possession limit is reduced to the standing wing fishery possession limit, until the start of the next quota period. Because of concerns that derby-style fishing, in conjunction with the open-access nature of the bait fishery, could result in early "closures" of the bait fishery (so-called due to the larger volumes of bait skates needed to supply the bait market) that would disrupt the market for bait skates and have substantial negative consequences for the lobster fishery that is largely dependent on skates for bait, the 20,000–lb (9,072–kg) possession limit was suggested by members of the Council's Skate Industry Advisory Panel as a mechanism to control the pace at which the landings approached the quota period limits.

As an additional conservation measure, vessels declared to be fishing on a Northeast Multispecies Category B DAS will have a skate possession limit of 220 lb (100 kg) wing weight (500 lb (227 kg) whole weight).

Accountability Measures

If the annual TAL allocated to either fishery is exceeded by more than 5 percent in a given year, the possession limit trigger (80 percent in the wing fishery, 90 percent in the bait fishery) will be reduced by 1 percent for each 1–percent overage for that fishery. This measure is intended to help prevent repeated excessive TAL overages.

If it is determined that the ACL for the skate complex was exceeded in a given year, including landings and estimates of discards, then the ACL-ACT buffer (25 percent, initially) will be increased by 1 percent for each 1–percent overage. For example, if the ACL is exceeded by 5 percent, the ACL-ACT buffer will be increased to 30 percent in the subsequent fishing year, which is intended to effectively reduce allowable landings.

Annual Review, SAFE Reports, and Specifications Process

In place of the "Skate Baseline Review" process included in the original Skate FMP, the Skate PDT will convene annually to review skate stock status, fishery landings and discards, and determine if any AMs were triggered by fishing in the previous year. The annual review will also incorporate an assessment of changes to other fishery management plans that may impact skates, and determine if changes to skate management measures may be warranted. If changes to the Skate FMP are warranted, the Skate PDT could then recommend to the Council that changes to the skate management measures be made via specifications or framework adjustment. Specifications for the skate fisheries may be implemented for up to 2 years.

A Stock Assessment and Fishery Evaluation (SAFE) report for the skate complex will be completed every 2 years by the Skate PDT. The SAFE report will be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the skate complex and its associated fisheries, and provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

Comments and Responses

A total of 11 comments were received on the proposed rule and the amendment from 4 individuals (2 comments from the same individual), 3 industry groups, 2 state agencies (Massachusetts Division of Marine Fisheries (MADMF) and Rhode Island Department of Environmental Protection (RIDEM)), and the Council. Four commenters expressed either general or specific support for the management measures in Amendment 3, one commenter disagreed with NMFS's interpretation of certain provisions necessary to implement the amendment, and four commenters opposed the implementation of Amendment 3. One commenter appeared to be confused about which alternatives were selected by the Council in relation to those that NMFS included in the proposed rule. The comments opposing Amendment 3 and its proposed rule focused on the expected negative economic impacts of the Amendment, particularly the impacts associated with the proposed reductions in the TALs and the possession limits.

This section summarizes the principle comments contained in the individual comment letters that pertained to Amendment 3 and the proposed rule, and NMFS's response to those comments. Any comments received that were not specific to the management measures contained in the Amendment 3 proposed rule, or in the amendment document, are not responded to in this interim final rule.

Comment 1: The Council noted that the regulatory text describing the AMs in § 648.323 required further clarification to clearly reflect the Council's intent. Specifically, the Council proposed that the term "next fishing year" with respect to the description of the AM to address TAL overages described in section 5.1.3.2 of the amendment, should refer to the year immediately following the year in which the TAL overage occurs. Additionally, the Council noted that the AM to adjust the ACL buffer if skate catches exceed the ACL would be applied in the second fishing year following the year in which the overage occurred, and requested that the language in § 648.323(b) be clarified to be consistent with the description provided in section 5.1.3.3 of the amendment.

Response: In this interim final rule, NMFS has revised § 648.323(b) so that it is clear that any adjustment of the ACL buffer made necessary due to an overage of the ACL would be implemented in the second year following the year for which the overage is determined to have occurred. However, with respect to the TAL overage issue raised by the Council, the amendment provides that, if upon review of the complete landings data from a FY it is determined that a TAL is exceeded by more than 5 percent, the trigger point at which the possession limit is reduced would be adjusted by the same percentage "in the next FY." For example, if the skate wing TAL is exceeded by 10 percent in one FY, then the AM requires that the wing possession limit trigger would be changed from 80 percent of the wing TAL to 70 percent of the wing TAL. However, the FMP is vague as to the meaning of the "next" FY. Due to the time lags inherent in data collection, and the time necessary to ensure that complete data are used to determine whether a TAL has been exceeded, including time for late data to be collected and entered into the system, data processing, audits, and analysis, it typically would take several months after the end of a FY before NMFS would be able to determine the full extent to which a TAL may have been exceeded. Thus, in all discussions with the Council on this issue, NMFS staff advised the Council that it would not be practicable to make such an adjustment in the FY that immediately follows the year in which the overage occurred. However, in their comment letter on the proposed rule, the Council states that this was, in fact, their intent, and that such AMs should be imposed in the year immediately following the year in which the overage occurred.

In order to implement such a process, at least two rulemakings would be required: The first would be completed in advance of the start of a FY, and would establish the specifications based on the best available information at the time; and the second would be completed several months (potentially up to 6 months) after the start of the FY, to adjust the TAL trigger points to account for any overages determined to occur in the prior FY. This process, and the implications for disruption to the on-going FY, were never discussed by the Council nor analyzed in the Amendment 3 document. Therefore, under its authority at section 305(d) of the Magnuson-Stevens Act, NMFS retains the language that this AM would be implemented in the FY that follows the year in which the overage is identified (i.e., an overage in 2010 would be identified in 2011, once complete data on FY 2010 are available, and the AM would be implemented in FY 2012).

Comment 2: The Council noted that section 5.1.5 of the amendment recommended that the skate bait fishery TAL be monitored based upon attributing skate landings by vessels with a valid, active Skate Bait LOA to the skate bait fishery, regardless of how those landings are classified by Federal dealers (i.e., as either food or bait). The Council's concern appears to be that dealers may misclassify skates landed in one form as another product form due to processing and/or marketing reasons. The Council further states that the monitoring method proposed by NMFS in § 648.322(a) may lack transparency and result in unexpected possession limit adjustments.

Response: NMFS disagrees that the TAL monitoring method proposed by the Council is the best approach to accurately monitoring the skate TALs being established through this amendment. Council and NMFS staff engaged in several discussions on this issue during the development of Amendment 3. As a result of those discussions, which involved NMFS staff experienced in monitoring landings of other NE fisheries, NMFS determined that using the product classification provided by Federal dealers, as required under § 648.7(a)(1)(i), is the most reliable approach to monitoring the skate TALs, because it most accurately reflects how the product is being utilized, versus the form (wing or whole) in which it was landed. Furthermore, the regulations deemed by the Council to be consistent with Amendment 3 clearly state that the dealer's product classification will be used to allocate skate landings to the appropriate TAL, not possession of the Skate Bait LOA as suggested by the Council in the comments on the proposed rule. Thus, the method described in the proposed rule to monitor skate landings is being implemented in this interim final rule.

Comment 3: The Council further noted that a provision in § 648.322(b) of the proposed regulations would have exempted vessels targeting skate that also participate in an approved sector under the NE Multispecies FMP from the requirement to use either a NE multispecies, monkfish, or scallop DAS

in order to land skate wings was not the intent of the Council in developing Amendment 3. The Council cites the baseline measure identified in section 4.16.1 of the original Skate FMP as evidence that the Skate FMP relies on the DAS mechanism in other fisheries to control access to the skate resource. The Council also notes that section 5.1.8 of Amendment 3 establishes a 500–lb (227–kg) whole weight (200–lb (91–kg) wing weight) possession limit for vessels fishing under a NE multispecies Category B DAS to prevent vessels from using these DAS to target skates because these DAS were originally intended under the NE Multispecies FMP to allow vessels to target stocks at "healthy" biomass levels, while Amendment 3 is intended to reduce skate fishing effort. The Council further cites inequity with non-sector vessels and concern over how the removal of the DAS requirement for sector vessels could increase targeting of skates by these vessels.

Response: The Council's Amendment 3 document is internally inconsistent with respect to this issue, stating that vessels targeting skates must be under a DAS in some sections and not in others. Furthermore, the regulations deemed by the Council to be consistent with Amendment 3 at its April 2009 meeting were silent on this issue. As a result, NMFS included a provision in the proposed rule to address the complicated interaction between the new NE multispecies sectors authorized by Amendment 16 and the skate fishery. However, given the Council's comments on this issue, it is clear that it did not intend for sector vessels to be exempt from DAS requirements for the purpose of targeting skate wings. Thus, it appears the regulations deemed by the Council to be consistent with Amendment 3 were consistent with its intent. Therefore, this interim final rule removes the sector provision in the proposed rule from the regulations. As a result, all vessels landing skate wings in excess of the proposed 500–lb (227–kg) (wing weight) incidental limit will be required to utilize a NE multispecies, monkfish, or scallop DAS. This change is consistent with the Council's comments on this issue, as well as similar comments made by MADMF.

Comment 4: Three industry members and one industry group submitted comments recommending that some form of limited access or history-based allocations be developed and implemented for the bait skate fishery to mitigate the economic impacts of Amendment 3 and ensure a steady supply of bait for the lobster fishery. Three of these individuals specifically asked that such a provision be included in Amendment 3.

Response: This measure was not included nor specifically considered in Amendment 3, and, therefore, NMFS has no legal authority to establish such a measure as part of the implementation of Amendment 3. However, the Council is aware that some members of the bait skate fishery would like such a program, and on July 30, 2009, at the request of the Council, NMFS established a control date for the bait skate fishery for this purpose. The effect of this control date is to preserve the opportunity for the Council, should it elect at some time in the future to develop and implement a limited access program for the bait fishery that may distinguish participation before and after July 30, 2009. The Council may take up this issue at any time deemed appropriate.

Comment 5: One individual, two industry groups, and two state agencies raised concerns about the TALs and possession limits proposed in Amendment 3. The commenters suggest that new scientific information indicates that the TALs proposed in the January 21, 2010, proposed rule, which would have represented substantial reductions from recent landings, along with the proposed possession limits, are unnecessary and would result in economic harm to the fishing industry dependent on skates. These commenters urged NMFS and the Council to incorporate this new scientific information as soon as possible and set FY 2010 total allowable catch and trip limits accordingly.

Response: The "new scientific information" referred to in the comment letters is the 2008 fall trawl survey data, which were reviewed by the SSC at its March 17, 2010, meeting. As explained earlier in this preamble, the SSC reconsidered the FY 2010–2011 ABC recommendation for the skate complex using the updated survey data, and provided a new ABC recommendation of 41,080 mt. Based on the recommendation of the SSC, the Skate PDT met on April 7, 2010, to discuss options for revising the trip limits for the wing fishery to achieve the new target TAL. Therefore, as urged by these commenters, this interim final rule revises the specifications in the proposed rule and implements final specifications that are consistent with the new scientific information. This interim final rule adjusts the ABC, associated TALs, and wing possession limit to be consistent with the most recent recommendation of the SSC, as requested by the Council.

Comment 6: One individual submitted a comment opposing a bait trip limit lower than the amount he currently catches, and stated that the wing fishery should not be included in the bait fishery.

Response: This interim final rule implements a trip limit of 20,000 lb (9,072 kg) of whole skate for the skate bait fishery. Originally, the Council's preferred option had no trip limit for the bait fishery, but relied entirely on a seasonal quota to control landings. However, at the request of members of the bait fishery that serve on the Council's industry advisory panel, the Council adopted a 20,000–lb (9,072–kg) trip limit implemented in this interim final rule as a means of ensuring a steady supply of bait by preventing the seasonal quotas from being reached too quickly. Additionally, NMFS clarifies that the skate wing fishery is not considered part of the bait skate fishery. The Council and NMFS recognize the differences between these two fisheries and, through the Skate FMP, have adopted specific measures to manage these fisheries differently. This individual may be confused as to how the TALs for the skate wing fishery and the bait skate fishery are derived. An overall TAL is established for the NE skate complex, which is then split into specific TALs for the skate wing fishery and bait skate fishery based upon the percentages approved in Amendment 3 and implemented through this interim final rule.

Comment 7: In addition to the comments above regarding the proposed TAL and possession limits, RIDEM also provided several other comments. The RIDEM questioned the rationale for imposing "drastic reductions" on the bait skate fishery, suggested that the proposed rule is contrary to the alternatives selected by the Council, and suggested that steps should be taken to address the seasonality of the bait skate fishery and the need for a steady supply of bait skates.

Response: NMFS is not proposing to implement an alternative not selected by the Council. RIDEM suggests that the Council selected alternative 1B for the wing fishery and alternative 4 for the bait fishery; however, the Amendment 3 document, and the Council record, clearly indicate that the Council's final decision was to select alternative 3B for the wing fishery, along with alternative 4 for the bait fishery. Alternative 1B would have required implementation of time and area closures for all fishing gear capable of catching skates, which would have included gear used in the sea scallop, monkfish, and groundfish fisheries. This alternative was not favored by either the Council or the fishing industry that provided

comments to the Council during the development of Amendment 3.

As to the comments on the measures for the bait fishery, the Amendment 3 document clearly explains that the catch and landings of skates cannot be reliably distinguished by species, and that the best scientific advice from the Council's SSC is to establish catch limits (ABC, ACL, TALs) at the complex level (that is, inclusive of all seven skate species). Therefore, if the complex-level ABC is reduced, or discards of skates increase, then the resulting reduction in the overall skate TAL would necessitate a reduction in the TALs available to both the bait and wing fisheries. Also, RIDEM appears to misunderstand the specific actions proposed in Amendment 3 for the bait fishery. The proposed system of three quota periods (rather than a single annual quota) was designed precisely to maximize the probability of ensuring a steady supply of bait skates when most needed. The annual TAL is not divided equally among the three quota periods, but is allocated based on evidence of the seasonality of this fishery; in fact, 66.7 percent of the annual TAL is allocated to the quota period May-October, which is the season RIDEM indicates has the highest demand for bait skates. Also, the 20,000–lb (9,072–kg) possession limit proposed for the bait skate fishery was suggested initially by members of the bait skate fishing industry as a way to maintain a consistent supply of skates by controlling landings and avoiding a derby fishery.

Changes From Proposed Rule to Interim Final Rule

At its April 2009 meeting, the Council reviewed the draft regulations and deemed them necessary and appropriate for implementation of Amendment 3, as required under section 303(c) of the Magnuson-Stevens Act. Technical changes to the regulations deemed necessary by the Secretary for clarity may be made, as provided under sections 304(b) and 305(d) of the Magnuson-Stevens Act. This interim final rule makes minor technical changes to the proposed rule to address an issue of clarity concerning ACL overages that was raised by the Council in its comments; to clarify the regulatory text concerning the Skate Bait LOA; and to correct an incorrect cross-reference in the proposed rule. These changes are listed below in the order in which they appear in the regulations.

In § 648.322(c), the wording "when a vessel is fishing pursuant to the terms of the authorization" is added to the introductory paragraph for clarity. Additionally, the last sentence under § 648.322(c)(4) is removed and a new § 648.322(c)(5) is added to more clearly reflect the conditions under which a vessel in possession of a Skate Bait LOA may retain skate wings.

In § 648.323(b), the phrase "in the subsequent fishing year" is revised to read "in the second fishing year following the fishing year in which the ACL overage occurred," to more accurately reflect when the intended action will occur.

In § 648.323(c), the cross-reference to paragraph § 648.323(c) is corrected to read paragraph (d).

In addition to the changes identified above, and consistent with the requirement under National Standard 2 of the Magnuson-Stevens Act that "any regulation promulgated to implement any such [FMP] . . . shall be based upon the best scientific information available," NMFS is implementing final specifications for FY 2010 and 2011 that differ from the proposed specifications. The authority for NMFS to deviate from the specifications included in Amendment 3 is provided at § 648.320(a)(7), which stipulates that the specifications published in the **Federal Register** may differ from those recommended by the Council, so long as the reasons for the differences are clearly stated and the revised specifications satisfy the criteria in the regulations. This regulation (§ 648.320(a)(7)) was deemed by the Council to be necessary and appropriate for the implementation of Amendment 3, and was included in the January 21, 2010, proposed rule. The scientific basis for the revised final specifications is provided earlier in the preamble to this interim final rule and is not repeated here. As part of the final specifications for FY 2010 and 2011, the following regulation has been revised.

In § 648.322(b)(1), the skate wing possession limit is revised to read "Up to 5,000 lb (2,268 kg) of skate wings (11,350 lb (5,148 kg) whole weight) per trip, except . . ."

Classification

The Administrator, Northeast Region, NMFS, determined that the management measures implemented by this interim final rule are necessary for the conservation and management of the NE skate fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This interim final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

The Council prepared an FEIS for Amendment 3. A notice of availability was published on January 22, 2010 (75 FR 3730). The FEIS describes the impacts of Amendment 3 measures on the environment. Most of these measures were designed to reduce skate landings. As a result, the impacts are primarily social and economic, as well as biological. In general, all biological impacts are expected to be positive. Although some of the economic and social impacts may be negative in the short term, particularly for vessels that have traditionally targeted or relied substantially on sales of skates, the long-term social and economic benefits of sustainable skate fisheries would be positive. In approving the Amendment 3 on March 23, 2010, NMFS issued a Record of Decision (ROD) identifying the selected alternatives. A copy of the ROD is available from NMFS (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on the revised final specifications for FY 2010 and 2011 because it is unnecessary, impracticable, and would be contrary to the public interest. On January 21, 2010, NMFS published a proposed rule in the **Federal Register** for Amendment 3 to the Skate Complex FMP. This proposed rule included proposed specifications for FY 2010 and 2011 that were consistent with the best scientific information available at the time (i.e., the September 2009 recommendations of the Council's SSC) and that were derived according to the protocols in Amendment 3 for calculating an ACT and associated TALs based on the ABC recommendation. After the comment period on the proposed rule closed, but before this interim final rule was prepared, the Council's SSC reconvened in late March 2010 to consider newly available information regarding the status of the skate complex. As a result of this new information, the SSC revised its recommendation for the skate ABC for FY 2010 and 2011. At its April 28, 2010, meeting, the Council accepted the revised ABC and requested that NMFS incorporate this new scientific information into the implementation of Amendment 3. The final specifications implemented in this interim final rule are consistent with the new ABC recommendation, which is now considered to be the best scientific information available.

Providing an additional opportunity for public comment on the final specifications is unnecessary because the public was provided an opportunity to consider, and provide comments on, the changes to the specifications resulting from the revised ABC recommendation in advance of and

during a public meeting of the Council held on April 28, 2010, and NMFS has fully considered those comments in modifying the specifications in this interim final rule.

The April 28, 2010, Council meeting was open to the public, and prior notice of this meeting was announced in the **Federal Register** on April 8, 2010 (75 FR 17901). The meeting notice explained that the Council's SSC would provide its report to the Council on the revised ABC recommendation for skates, and that the Council would consider taking action and potentially revising management measures for the skate fishery. Members of the skate fishing industry and the general public attended the meeting, and several provided comments to the Council on the issue at hand (i.e., revising the FY 2010 and 2011 specifications to be consistent with the new ABC recommendation). At that meeting, following an open public discussion, the Council adopted a motion to incorporate the new ABC from the SSC into Amendment 3 and adjust the skate wing possession limit. The motion passed unanimously, with one abstention. Also, based on the comments received on the proposed rule, and the public review by the Council of the new ABC and its implications for the FY 2010 and 2011 specifications, there is widespread expectation in the skate fishing industry that the specifications will be revised as soon as possible to reflect the new ABC. Therefore, providing an additional opportunity for public comment on the final specifications is unnecessary.

Providing an additional opportunity for public comment on the final specifications is impracticable and contrary to the public interest for two reasons: (1) FY 2010 began on May 1, 2010, and until these final specifications are implemented, there is significant uncertainty and confusion within the fishing industry regarding the regulations to which the fishery is currently subject, and as to the regulations that will be implemented for the remainder of FY 2010; and (2) until these final specifications are implemented, the fishery is subject to the less restrictive measures in place prior to Amendment 3, which are inconsistent with the best available scientific information on the status of the skate resource and could result in disruptions to the fishing industry. Amendment 3 to the Skate FMP represents a significant change in the management regime for the skate fishery. For one, Amendment 3 establishes an ACL and AMs consistent with the reauthorized Magnuson-Stevens Act. As part of the ACL and AM management structure, specific TALs are derived and allocated separately to the skate wing and bait skate segments of the skate fishery. A possession limit is imposed for the first time on the bait skate fishery, which will now operate under three seasonal quotas, with the potential for the possession limit to be reduced if the seasonal quota trigger threshold is reached. Although the skate wing fishery has operated under a possession limit prior to Amendment 3, the amendment proposed a significant reduction in this limit (and although higher than initially proposed, these final specifications implement a possession limit that remains substantially below the pre-Amendment 3 limits), and the wing fishery now faces further restrictions in allowable landings if the TAL trigger threshold is reached too early in the FY. These new measures are necessary for the conservation and management of the skate resources, and are required under the reauthorized Magnuson-Stevens Act. However, until this interim final rule, including the revised final specifications, is implemented, the fishery remains free to operate under the less restrictive pre-Amendment 3 regulations.

Continued operation under the less restrictive pre-Amendment 3 regulations for the time it would take to proceed with an additional proposed rule and opportunity for public comment would significantly increase the risk of substantial disruptions to the skate fishery and the businesses that depend upon it, due to unexpected reductions in possession limits if TAL trigger thresholds are reached earlier than planned. This could also have the effect of limiting the availability of skate products on the market to the detriment not only of skate vessels and dealers, but also of the entire southern New England lobster fishery, which depends almost entirely on skates for use as bait. As noted above, the FY began on May 1, 2010, and the fishery is currently operating under the less restrictive pre-Amendment 3 regulations, which include unlimited possession by the bait fishery and much higher possession limits by the wing fishery than allowed under this rule. However, all landings by the bait and wing fisheries that occur between May 1, 2010, and the effective date of this interim final rule will be counted against the respective fishery TALs once the TALs are implemented. If landings during this interim period exceed those that would be expected under the Amendment 3 measures, then it is likely that the TAL trigger thresholds may be reached earlier in the FY than planned or expected. This could result in disruptions not just to the skate fisheries, which would be subject to earlier than expected reductions in allowable landings, but also to the lobster fishery and the businesses that depend upon it, due to an unexpected reduction in the supply of lobster bait (which is the primary use of bait skates). The lobster fishery, in particular, depends upon a steady, consistent supply of bait skates year round. The measures in Amendment 3, with the bait skate TAL allocated across three quota periods, in combination with a 20,000–lb (9,072–kg) per trip possession limit, were carefully crafted in consultation with the fishing industry to minimize such disruptions. Delaying implementation of the final specifications even longer than has already occurred, in order to solicit additional public comments, would only increase the likelihood of early reductions in allowable landings and disruptions in the fishery that are contrary to the public's interest.

NMFS could not have completed prior notice and comment rulemaking on the final specifications for FY 2010 and 2011 any earlier, because the Council's SSC did not meet until late March 2010 to consider the newly available information on the skate resources, and did not present a final recommendation on the revised ABC until the April 28, 2010, Council meeting. The Council, similarly, did not take a position on incorporating this new ABC into the Amendment 3 specifications process until April 28, 2010, nor did the Council evaluate the analyses completed by its PDT regarding the need to modify the skate wing fishery possession limit to be consistent with the revised specifications until this time. Immediately following the conclusion of the April 2010 Council meeting, and the decisions and recommendations by the Council and its SSC therein, NMFS undertook to revise this interim final rule implementing Amendment 3 to ensure it remains consistent with the best available scientific information and the intent of the Council.

Although prior notice and comment have been waived for the final FY 2010 and 2011 specifications implemented in this rule, NMFS is publishing this rule as an interim final rule and providing an opportunity for additional public comment to be submitted for 30 days following publication. NMFS will consider any comments submitted and may further revise the final specifications based on the comments received.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of Amendment 3. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the IRFA, RIR, and FEIS are available upon request (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this interim final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Eleven public comments were submitted on the proposed rule. Although none of these comments were specific to the IRFA, several commenters noted the negative economic effects of the proposed possession limit for the skate wing fishery in Amendment 3. NMFS has responded to these comments in the Comments and Responses section of this preamble. Several changes were made to the final specifications for FY 2010 and 2011 implemented in this interim final rule that are pertinent to some of the comments received. As described earlier in this preamble, the final specifications implemented in this action have been revised to be consistent with the most recent scientific information represented by the new ABC recommendation from the Council's SSC. Thus, consistent with several of the comments on the proposed rule, the final specifications for FY 2010 and 2011 are as follows: (1) An ABC and ACL = 41,080 mt; (2) an ACT = 30,810 mt; (3) a Federal waters TAL = 13,848 mt; (4) wing and bait TALs = 9,209 mt and 4,639 mt, respectively; and (5) a skate wing possession limit of 5,000 lb (2,268 kg) per day (wing weight).

Description and Estimate of Number of Small Entities to Which the Final Rule Will Apply

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery is not readily available, and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

The participants in the commercial skate fishery were defined using Northeast dealer reports to identify any vessel that reported having landed 1 lb (0.45 kg) or more of skates during calendar year 2007. These dealer reports identified 542 vessels that landed skates in states from Maine to North Carolina out of 2,685 vessels that held a Federal skate permit.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This interim final rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

All of the alternatives considered in this action were developed by the Council based on input from members of the skate fishing industry that serve on the Council's industry advisory panel. Other than the no action alternative, of all the alternatives developed by the Council and considered in Amendment 3, the set of management measures implemented in this interim final rule represent those with the least economic impact on small entities. Based on the best available scientific information on the status of the skate complex, in order to be consistent with the requirements and intent of the ACL provisions of the reauthorized Magnuson-Stevens Act, as well as the National Standard 1 guidelines, the overall catch (inclusive of landings and dead discards) of skates must be reduced up to 26 percent from recent catch levels. All of the alternatives considered in Amendment 3, with the exception of the no action alternative, were designed to achieve this reduction in catch, albeit in different ways. But, because all of the relevant alternatives are designed around a catch reduction, there are economic impacts associated with them that would be borne by the fishing industry. The only alternative considered in Amendment 3 that would not result in any direct economic impacts on the skate fishing industry was the no action alternative; however, this alternative could not be implemented because it is inconsistent with the requirements and intent of the Magnuson-Stevens Act.

Alternatives 1A, 1B, 2, and 4 proposed time and/or area closures for bottom-tending fishing gears in the Gulf of Maine and Southern New England as a method to reduce skate catch in the NE multispecies, monkfish, and scallop fisheries primarily. These closures, however, would have restricted vessels from harvesting their more valuable target species. One reason the preferred alternative was selected (a combination of Alternatives 3B and 4) was that it did not include any time/area closures, and minimized the impact of the Skate FMP on other fisheries that only incidentally catch skates. The preferred alternative puts more focus on reducing only skate landings, and therefore skate revenues, rather than potentially reducing landings and revenues from higher valued species across a broader spectrum of New England fisheries, which would have had a direct economic impact on far more small entities than the preferred alternative. Because skates are a comparatively low value species, the preferred alternative focuses the anticipated economic impacts to the skate fishery, rather than on the NE multispecies, monkfish, or scallop fisheries.

The preferred alternative also attempts to minimize economic impacts by using a target TAC approach rather than a hard TAC approach. Under the target TAC alternatives, landings of skates are never completely prohibited as the TAC is approached. Possession limits will be reduced, but as incidental catch of skates is unavoidable in many fisheries, those catches could be converted to landings rather than to discards. Under the hard TAC alternatives, when the TAC was harvested, all skate catch would have to be discarded.

Dividing the skate bait fishery TAL into three seasons, as described in Alternative 4, in combination with the 20,000–lb (9,072–kg) per trip bait skate possession limit, is anticipated to minimize economic impacts on the skate bait fishery. Due to the market dynamics in the skate bait fishery and the need to fill bait orders for the lobster fishery, a bait fishery closure too early in the year could result in economic hardship for skate bait fishermen as well as lobster fishermen. The three seasonal quotas are intended to help ensure that any skate bait fishery closures would be short term, and landings would be able to continue late in the FY, allowing for

a relatively constant supply of bait year round.

This interim final rule also implements revised final specifications for FY 2010 and 2011, consistent with the best scientific information available, as described above. These final specifications are substantially higher than the specifications described in the proposed rule and IRFA, and are expected to impose less significant costs to the fishing industry in the form of overall landings limits (TALs) 47 percent higher than initially proposed. Also, based in part on comments received on the proposed rule and relevant to the IRFA, this action increases the per-trip possession limit for the skate wing fishery from 1,900 lb (862 kg) to 5,000 lb (2,268 kg) wing weight. This measure will also minimize the economic impacts associated with this action on the participants of the wing fishery.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Northeast skate fishery. In addition, copies of this interim final rule and guide (i.e., permit holder letter) are available from the Regional Administrator, NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 10, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.13, paragraph (h) is revised to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(h) *Skates.* (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels not issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under§ 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit, provided:

(i) The transferring vessel possesses on board a valid letter of authorization issued by the Regional Administrator as specified under § 648.322(c); and

(ii) The transferring vessel and vessel owner or operator comply with the requirements specified at § 648.322(c).

* * * * *

■ 3. In § 648.14, paragraphs (v)(1)(ii), (v)(3)(i), and (v)(3)(ii)(A) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(v) * * *

(1) * * *

(ii) Onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of only whole skates as bait that are less than the maximum size specified at § 648.322(c).

* * * * *

(3) * * *

(i) *Skate wings.* Fail to comply with the conditions of the skate wing possession and landing limits specified at § 648.322(b), unless holding a valid letter of authorization to fish for and land skates as bait at § 648.322(c).

(ii) * * *

(A) Transfer at sea, or attempt to transfer at sea, to any vessel, any skates unless in compliance with the provisions of §§ 648.13(h) and 648.322(c).

* * * * *

■ 4. In § 648.80, paragraphs (b)(5)(i)(C)(*1*) and (*2*), and (b)(6)(i)(D)(*1*) and (*2*) are revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(5) * * *

(i) * * *

(C) * * *

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has a valid letter of authorization on board to fish for skates as bait, and complies with the requirements specified at § 648.322(c); or

* * * * *

(6) * * *

(i) * * *

(D) * * *

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(*2*) The vessel has a valid letter of authorization on board to fish for skates as bait, and complies with the requirements specified at § 648.322(c); or

* * * * *

■ 5. Section 648.320 is revised to read as follows:

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review and specifications process.* The Council, its Skate Plan Development Team (PDT), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources.

(1) The Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices, fishery landings and discards; a re-evaluation of stock status based on the updated survey indices and the FMP's overfishing definitions; and a determination of whether any of the accountability measures specified under § 648.323 were triggered. The review shall also include an analysis of changes to other FMPs (e.g., Northeast Multispecies, Monkfish, Atlantic Scallops, etc.) that may impact skate stocks, and describe the anticipated impacts of those changes on the skate fishery.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the Skate PDT shall provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the framework process specified in

§ 648.321, or through an amendment to the FMP.

(3) For overfished skate species, the Skate PDT and the Council shall monitor the trawl survey index as a proxy for stock biomass. As long as the 3-year average of the appropriate weight per tow increases above the average for the previous 3 years, it is assumed that the stock is rebuilding to target levels. If the 3-year average of the appropriate survey mean weight per tow declines below the average for the previous 3 years, then the Council shall take management action to ensure that stock rebuilding will achieve target levels.

(4) Based on the annual review described above and/or the Stock Assessment and Fishery Evaluation (SAFE) Report described in paragraph (b) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee, and any other relevant information, the Skate PDT shall recommend to the Skate Committee and Council the following annual specifications for harvest of skates: An annual catch limit (ACL) for the skate complex set less than or equal to ABC; an annual catch target (ACT) for the skate complex set less than or equal to 75 percent of the ACL; and total allowable landings (TAL) necessary to meet the objectives of the FMP in each fishing year (May 1–April 30), specified for a period of up to 2 fishing years.

(5) *Recommended measures*. The Skate PDT shall also recommend management measures to the Skate Committee and Council to assure that the specifications are not exceeded. Recommended measures should include, but are not limited to:

(i) Possession limits in each fishery;

(ii) In-season possession limit triggers for the wing and/or bait fisheries; and

(iii) Required adjustments to in-season possession limit trigger percentages or the ACL-ACT buffer, based on the accountability measures specified at § 648.323.

(6) Taking into account the annual review and/or SAFE Report described in paragraph (b) of this section, the advice of the Scientific and Statistical Committee, and any other relevant information, the Skate PDT may also recommend to the Skate Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of the skate complex and its component species. These adjustments may be included in the Council's specifications for the skate fisheries.

(7) *Council recommendation*. The Council shall review the recommendations of the Skate PDT, Skate Committee, and Scientific and Statistical Committee, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall consider the recommendations and publish a rule in the **Federal Register** proposing specifications and associated measures, consistent with the Administrative Procedure Act. The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws. If the final specifications are not published in the **Federal Register** for the start of the fishing year, the previous year's specifications shall remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(b) *Biennial SAFE Report*—(1) The Skate PDT shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE Report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) In any year in which a SAFE Report is not completed by the Skate PDT, the annual review process described in paragraph (a) of this section shall be used to recommend any necessary adjustments to specifications and/or management measures in the FMP.

■ 6. Section 648.321 is revised to read as follows:

§ 648.321 Framework adjustment process.

(a) *Adjustment process*. To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses*. In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council shall develop and analyze appropriate management actions within the scope of measures specified in paragraph (b) of this section. The Council shall publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation*. After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the framework measures should be issued directly as a final rule, without opportunity for public notice and comment, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) The Regional Administrator may publish the recommended framework measures in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures*. Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting;

(2) Skate overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession limits;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or quotas for non-directed fisheries;

(9) Establishment of a mechanism for TAC set-asides to conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) OY and/or MSY specifications;

(19) Changes to the accountability measures described at § 648.323;

(20) Changes to TAL allocation proportions to the skate wing and bait fisheries;

(21) Changes to seasonal quotas in the skate bait or wing fisheries;

(22) Reduction of the baseline 25–percent ACL-ACT buffer to less than 25 percent; and

(23) Changes to catch monitoring procedures.

(c) *Emergency action*. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

■ 7. Section 648.322 is revised to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

(a) *Allocation of TAL*. (1) A total of 66.5 percent of the annual skate complex TAL shall be allocated to the skate wing fishery. All skate products that are landed in wing form, for the skate wing market, or classified by Federal dealers as food as required under § 648.7(a)(1)(i), shall count against the skate wing fishery TAL.

(2) A total of 33.5 percent of the annual TAL shall be allocated to the skate bait fishery. All skate products that are landed for the skate bait market, or classified by Federal dealers as bait as required under § 648.7(a)(1)(i), shall count against the skate bait fishery TAL. The annual skate bait fishery TAL shall be allocated in three seasonal quota periods as follows:

(i) Season 1–May 1 through July 31, 30.8 percent of the annual skate bait fishery TAL shall be allocated;

(ii) Season 2–August 1 through October 31, 37.1 percent of the annual skate bait fishery TAL shall be allocated; and

(iii) Season 3–November 1 through April 30, the remainder of the annual skate bait fishery TAL not landed in Seasons 1 or 2 shall be allocated.

(b) *Skate wing possession and landing limits*. A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, or is also a limited access multispecies vessel participating in an approved sector described under § 648.87, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

(1) Up to 5,000 lb (2,268 kg) of skate wings (11,350 lb (5,148 kg) whole weight) per trip, except for a vessel fishing on a declared NE multispecies Category B DAS described under § 648.85(b), which is limited to no more than 220 lb (100 kg) of skate wings (500 lb (227 kg) whole weight) per trip (or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27– for example, 100 lb (45.4 kg) of skate wings X 2.27 = 227 lb (103.1 kg) of whole skates).

(2) *In-season adjustment of skate wing possession limits*. When the Regional Administrator projects that 80 percent of the annual skate wing fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate wing trip limit to 500 lb (227 kg) of skate wings (1,135 lb (515 kg) whole weight, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27) for the remainder of the fishing year, unless such a reduction would be expected to prevent attainment of the annual TAL.

(3) *Incidental possession limit for vessels not under a DAS*. A vessel issued a Federal skate permit that is not fishing under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, and is not a limited access multispecies vessel participating in an approved sector described under § 648.87, may retain up to 500 lb (227 kg) of skate wings or 1,135 lb (515 kg) of whole skate, or any prorated combination of skate wings and whole skates based on the conversion factor for wing weight to whole weight of 2.27), per trip.

(c) *Bait Letter of Authorization (LOA)*. A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions for a minimum of 7 consecutive days, provided that when the vessel is fishing pursuant to the terms of authorization at least the following requirements and conditions are met:

(1) The vessel owner or operator obtains and retains onboard the vessel a valid LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner or operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) The vessel owner or operator possesses or lands no more than 20,000 lb (9,072 kg) of only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length.

(5) Vessels that choose to possess or land skate wings during the participation period of this letter of authorization must comply with possession limit restrictions under paragraph (b) of this section for all skates or skate parts on board. Vessels possessing skate wings in compliance with the possession limit restrictions under paragraph (b) may fish for, possess, or land skates for uses other than bait.

(6) The vessel owner or operator complies with the transfer at sea requirements at § 648.13(h).

(d) *In-season adjustment of skate bait possession limits*. When the Regional Administrator projects that 90 percent of the skate bait fishery seasonal quota has been landed in Seasons 1 or 2, or 90 percent of the annual skate bait fishery TAL has been landed, the Regional Administrator shall, through a notice in the **Federal Register** consistent with the Administrative Procedure Act, reduce the skate bait trip limit to the whole weight equivalent of the skate wing trip limit specified under paragraph (b) of this section for the remainder of the quota period, unless such a reduction would be expected to prevent attainment of the seasonal quota or annual TAL.

(e) *Prohibitions on possession of skates*. A vessel fishing in the EEZ portion of the Skate Management Unit may not:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

■ 8. Section 648.323 is added to read as follows:

§ 648.323 Accountability measures.

(a) *TAL overages*. If the skate wing fishery TAL or skate bait fishery TAL is determined to have been exceeded by more than 5 percent in any given year based upon, but not limited to, available landings information, the Regional Administrator shall reduce the in-season possession limit trigger for that fishery, as specified at § 648.322(b) and (d), in the next fishing year by 1 percent for each 1 percent of TAL overage, consistent with the Administrative Procedure Act.

(b) *ACL overages*–(1) If the ACL is determined to have been exceeded in any given year, based upon, but not limited to, available landings and discard information, the percent buffer between ACL and ACT, initially specified at 25 percent, shall be increased by 1 percent for each 1–percent ACL overage in the second fishing year following the fishing year in which the ACL overage occurred, through either the specifications or framework adjustment process described under §§ 648.320 and 648.321.

(2) If the Council fails to initiate action to correct an ACL overage through the specifications or framework adjustment process, consistent with paragraph (b)(1) of this section, the Regional Administrator shall implement the required adjustment, as described under paragraph (b)(1) of this section, consistent with the Administrative Procedure Act.

[FR Doc. 2010–14555 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 115
Wednesday, June 16, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0611; Directorate Identifier 2009–SW–18–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 350 B, BA, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the Eurocopter France Model AS 350 B, BA, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N helicopters, with certain main rotor servo-controls and tail rotor servo-controls. This proposed AD would require replacing all servo-controls that are identified in the Applicability section of this proposed AD. This proposed AD is prompted by an internal review conducted by the manufacturer which revealed that some main and tail rotor servo-controls do not conform to the approved design. The actions specified by this proposed AD are intended to prevent the distributor slide valve jamming in its sleeve, leading to reduced controllability of the rotors and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before August 16, 2010.

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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

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: J.R. Holton, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–4964, fax (817) 222–5961.

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–2010–0611, Directorate Identifier 2009–SW–18–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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency AD No. 2007–0141–E, dated May 21, 2007, to correct an unsafe condition for certain Eurocopter France Model AS 350 B, BA, BB, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N helicopters. EASA advises that an internal review revealed that some main and tail rotor servo-controls do not conform to the approved design. This results in a greater play in the input lever bearing which could lead to off-centered lever/distributor slide valve. If not corrected, this condition could jam the distributor slide valve in its sleeve, contributing to reduced controllability of the rotors and subsequent loss of control of the helicopter.

Related Service Information

Eurocopter has issued Emergency Alert Service Bulletin (EASB) No. 01.00.58, applicable to Model AS 350 B, BA, BB, B1, B2, B3, and D helicopters, and EASB No. 01.00.53, applicable to Model AS355 E, F, F1, F2, and N helicopters, both Revision 1 and both dated April 19, 2007, "to preclude the risk of jamming of the distributor slide valve in its sleeve, due to excessive play in the bearing of the servo-control input lever." Both EASB 01.00.58 and 01.00.53, along with 01.00.22 and 01.00.23 for various military model helicopters are contained in the same EASB document. The EASA classified these EASBs as mandatory and issued EASA Emergency AD No. 2007–0141–E, dated May 21, 2007, to ensure the continued airworthiness of these helicopters.

FAA's Evaluation and Unsafe Condition Determination

These products have been approved by the aviation authority of France and are approved for operation in the United

States. Pursuant to our bilateral agreement with France, EASA, their technical representative, has notified us of the unsafe condition described in the MCAI AD. 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 these same type designs. This proposed AD would require replacing all servo-controls with serial numbers that are in the Applicability section of this proposed AD.

Differences Between This Proposed AD and the EASA AD

This proposed AD does not require returning servo-controls to the manufacturer for return to conformity. The proposed AD does not require inspecting for the existence of "hard points" in the flight controls.

Costs of Compliance

We estimate that this proposed AD would affect 56 helicopters of U.S. registry and the proposed actions would take approximately 1.5 work hours per helicopter to accomplish at an average labor rate of $85 per work hour. Required parts would cost approximately $16,500 per helicopter. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $931,140 for the entire fleet.

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

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 adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. FAA–2010–0611; Directorate Identifier 2009–SW–18–AD.

Applicability: Model AS 350 B, BA, B1, B2, B3, and D, and Model AS355 E, F, F1, F2, and N helicopters, with a main rotor or tail rotor servo-control identified in Table 1, installed, certificated in any category.

TABLE 1

Component	Part No. (P/N)	Serial No. (S/N)
Main rotor servo-control	P/N SC5083	S/N 270M, 272M, 409M, 423M, 452M, or 1573.
	P/N SC5083–1	S/N 2902 through 2921, inclusive.
	P/N 5084	S/N 30, 84, 104, 186, 438, 575, or 695.
	P/N 5084–1	S/N 1462 through 1481, inclusive.
Tail rotor servo-control	P/N SC5072	S/N 222M, 306M, or 309.

Compliance: Required as indicated.

To prevent the distributor slide valve jamming in its sleeve, leading to reduced controllability of the rotors and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), or when a "hard point" is detected in the flight controls, whichever occurs earlier, replace each installed servo control that has a serial number listed in Table 1 of this AD, with an airworthy servo control.

Note 1: Eurocopter EASB 01.00.58 and 01.00.53 have guidance which pertains to the subject of this AD.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: J.R. Holton, Aviation Safety Engineer, Regulations and Policy Group, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–4964, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 6730: Rotorcraft Servo System.

Note 2: The subject of this AD is addressed in Eurocopter Aviation Safety Agency (France) Emergency AD No. 2007–0141–E, dated May 21, 2007.

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

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–14540 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–5222–P–01]

RIN 2502–A172

Manufactured Home Construction and Safety Standards, Test Procedures for Roof Trusses

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal Manufactured Home Construction and Safety Standards by adopting proposals made by the Manufactured Home Consensus Committee (MHCC), as modified by HUD. The National Manufactured Housing Construction and Safety Standards Act of 1974 requires HUD to publish in the **Federal Register** any proposed revised Manufactured Home Construction and Safety Standard submitted by MHCC. Changes to the existing roof truss testing procedures were part of the first group of MHCC proposals submitted to HUD in 2003 to revise various aspects of the standards. However, in response to public comments on the proposed rule, including those submitted by MHCC, HUD returned the proposal on roof truss testing to MHCC for further consideration.

After further consideration, MHCC has submitted an amended version of its 2003 proposal on roof truss testing to HUD. HUD is in agreement with the majority of MHCC's current recommendations on roof truss testing. This proposed rule contains the recommendations on which HUD and MHCC agree. This proposed rule also includes HUD's modifications to the MHCC proposal, together with HUD's reasons for not accepting those particular revisions proposed by the MHCC.

DATES: *Comment Due Date:* August 16, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Regulatory Affairs and Manufactured Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9162, Washington, DC 20410–8000; telephone number 202–708–2121 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act) authorizes HUD to establish and amend the Federal Manufactured Home Construction and Safety Standards (Construction and Safety Standards) codified in 24 CFR part 3280. The Act was amended in 2000 by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569), which expanded the original Act's purposes and created the MHCC.

The amended Act generally requires that HUD establish Construction and Safety Standards that are reasonable and practical, meet high standards of protection, are performance-based, and are objectively stated. Congress specifically established the MHCC to develop proposed revisions to the construction and safety standards and included specific procedures in the Act (42 U.S.C. 5403) for the MHCC process.

MHCC began considering possible revisions to the construction and safety standards in 2002 and established its own priorities for selecting revisions for HUD to consider. Included among the first set of proposals recommended to HUD by MHCC in 2003 were revisions to the current requirements for roof truss testing.[1] Those recommendations were included in HUD's proposed rule to amend the Construction and Safety Standards, which was published in the **Federal Register** on December 1, 2004 (69 FR 70016). After considering comments received on the proposed rule from both the public and MHCC, HUD agreed with commenters who wanted HUD to return the proposal on truss testing procedures to MHCC for further consideration. However, as indicated in the preamble of HUD's final rule published in the **Federal Register** on November 30, 2005 (70 FR 72024), which followed the December 1, 2004, proposed rule, HUD views truss testing procedures as too important a safety consideration to leave unresolved.

HUD requested the MHCC to work expeditiously to reevaluate and resubmit new proposals for truss testing procedures. As a result, the Truss Test Task Force of MHCC's Standards Subcommittee was established. Five teleconferences of this task force were held, and the full MHCC held two teleconferences to review and vote on new truss testing procedures. HUD worked closely with MHCC throughout the review and reevaluation process, and HUD agrees with the majority of the

[1] A truss is a triangular structure used to support a roof. Multiple trusses are used to assemble the framework for a roof.

new proposals made by MHCC. However, after careful review, HUD has made editorial revisions to the MHCC proposals and modified the MHCC's proposal regarding uplift testing. The following is a discussion of the specific revisions to the current roof truss testing requirements in § 3280.402 of the Construction and Safety Standards that are included in this proposed rule.

II. Proposed Changes

The proposed rule would amend various paragraphs of § 3280.402, Test Procedures for Roof Trusses, of the Construction and Safety Standards.

A. HUD Questions on Roof Trussing Presented in the November 30, 2005, Final Rule

In returning the proposal on truss testing procedures to MHCC for further consideration, HUD asked MHCC, in the preamble to the November 30, 2005, final rule, to consider the following questions during its deliberations in formulating any revised proposals. The questions asked and MHCC actions taken are as follows:

(1) *Whether the nondestructive testing procedure for roof trusses that permits a lower overall factor of safety to be used in conducting the tests based on a presumed low failure rate for roof trusses should be eliminated.*

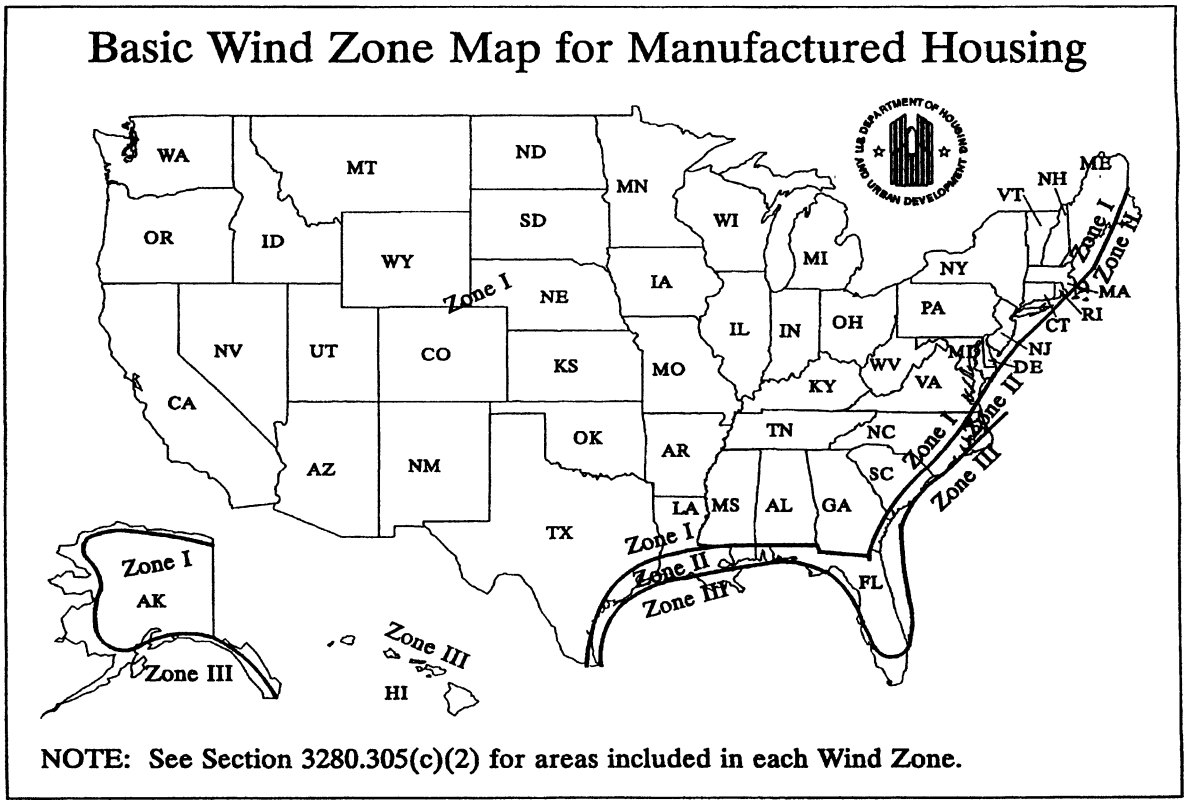
MHCC Recommendation: In its previous proposal, MHCC recommended that this procedure be eliminated as a method for initially qualifying roof trusses. Further, MHCC had determined that the current requirements for providing minimum quality of materials and workmanship associated with conducting the nondestructive qualification tests was impractical and probably not being adhered to in current testing of roof trusses. However, based on further review of economic factors and other considerations, MHCC decided to retain the nondestructive test procedure in its new proposal. MHCC also decided to change the name of the procedure to the "proof load truss test procedure" and added the requirement that trusses for the initial qualification and testing be of average quality of materials and workmanship. MHCC also provided for an increased factor of safety from 1.75 to 2.0 to be used to evaluate the trusses. MHCC also recommended a reduced load duration period for the overload test period of 6 hours, rather than the 12-hour period in the current requirements. This recommendation is based on the experience of truss fabricators who, in the task force proceedings, said that failures rarely occur after 6 hours of loading. Under MHCC's proposal, at least three consecutively tested trusses must pass all requirements of the test in order to qualify the truss design. More frequent follow-up testing was also recommended by MHCC due to the lower factor of safety permitted under this revised proof load truss testing approach.

(2) *Whether upright tensions tests are needed to evaluate the uplift resistance of the trusses.*

MHCC Recommendation: Because of the variation in test results between trusses tested in the inverted and upright positions for uplift wind loads identified in earlier tests conducted by the National Association of Home Builders Research Center (NAHB–RC), MHCC recommended a factor of safety of 2.5 be used for trusses tested in the inverted position, but also recommended that the current factor of safety of 1.75 be retained for trusses tested in the upright position. Trusses tested in the inverted position consistently failed at higher average loads (30 to 40 percent), had lower mid-span deflections than trusses tested in the upright position, and in some truss designs experienced different failure modes than trusses tested in the upright position. MHCC also recommended that at least one uplift test be conducted for certain trusses designed to be used in Wind Zone I and that three consecutive uplift tests be performed for initial qualification of all trusses designed to be located in Wind Zones II or III.

Note that to ensure that manufactured homes survive the threats of hurricanes and other storms, HUD developed Wind Zone construction standards. Manufactured homes may be installed only in counties where they meet the Wind Zone construction standards that apply to that county. Wind Zone I homes have the least stringent construction standards and Wind Zone III homes have the most stringent construction standards. Homes designed and constructed to a higher Wind Zone can be installed in a lower Wind Zone (a Wind Zone III home can be installed in a Wind Zone I or II location). However, a Wind Zone I home cannot be installed in either a Wind Zone II or III area. As Figure 1 below displays, the overwhelming majority of the United States is designated as Wind Zone I.

Figure 1. Wind Zones



(3) *Should the factor of safety for uplift testing be reduced from 2.5 to the current requirement of 1.75, times the design wind pressures, in consideration of comments received regarding safety during testing?*

MHCC Recommendation: MHCC recommended the use of the higher factor of safety of 2.5 for only those trusses tested in the inverted position. The safety concerns expressed in the comments on the December 1, 2004, proposed rule were for the higher loading that would be required for trusses tested in the upright position and not for trusses tested in the inverted position and for certain methods of applying the loads.

(4) *What are the costs associated with recommended revisions to the truss testing requirements?*

MHCC Recommendation: The costs associated with its revised proposal were discussed with representatives of three truss fabricators during the discussions and deliberations of MHCC in developing its new recommendations for truss testing procedures. Two factors that would significantly reduce the cost impacts of the new MHCC proposal, from the original 2003 one, are recommendations to reinstate the nondestructive truss test procedure as the proof load truss test procedure and to generally limit the requirements for uplift tests to trusses designed for use in Wind Zones II and III (approximately 80 percent of all homes produced are designed for use in Wind Zone I).

B. Comparison Between the Two MHCC Proposals for Truss Testing

The following is a summary of the major differences between the recommendations in the original MHCC proposal, as published in the December 1, 2004, proposed rule, and their current recommendations as incorporated in this proposed rule. (*Note:* HUD did not modify the MHCC proposal for truss testing in the December 1, 2004, proposed rule.)

(1) The new proposal would maintain the nondestructive testing procedure permitted by the current rule, but would rename it as the "proof load truss test procedure" and also require three consecutive passing tests, a safety factor of 2.0 rather than the current 1.75 to be used in conducting the tests, and more frequent follow-up testing to be performed. However, the new proposal would reduce the overload test period from 12 hours to 6 hours, and allow the test specimens to be of average rather than minimum quality as required by the current rule. The December 1, 2004, proposed rule would have deleted the current provision for nondestructive tests in the Construction and Safety Standards.

(2) In general, the number of required deflection measurements in this proposed rule would be fewer than originally recommended by MHCC, which HUD incorporated in the December 1, 2004, proposed rule. Under the original MHCC recommendation, deflection measurements would have been required at each truss panel point location and at the mid-span location between each panel point. This proposed rule incorporates MHCC's current recommendation that measurements be made at least at the mid-span and quarter points of the truss. However, scissors or other unique truss configurations would require measurement at as many additional bottom truss chord panel points as necessary to obtain an accurate representation of the deflected shape of the truss, in order to locate the point(s) of maximum deflection.

(3) The recovery deflections limits after live loads are removed would be reduced, to L/360, for both the nondestructive and ultimate test procedures to be consistent with other test standards for truss testing. The December 1, 2004, proposed rule would have established recovery limits at a more restrictive level of L/480.

(4) The new proposed rule would permit trusses to be tested for uplift loads in either the upright or inverted position. However, the factor of safety would be reduced to 1.75 for upright tests, while maintaining the current 2.5 factor of safety for inverted tests. The new proposal would generally require only three consecutive successful uplift tests for trusses designed to be used in Wind Zones II and III. Only one test would be required for trusses designed for use in Wind Zone I, or, the design may be certified by a Registered Engineer or Registered Architect or independent third-party agency. The December 1, 2004, proposed rule would have required three uplift tests to be conducted in all Wind Zones in the upright position using a factor of safety of 2.5.

(5) The new proposed rule would require at least one follow-up test to be conducted for each truss design for every 2,500 trusses produced that are qualified using the revised proof load test procedure. One follow-up test would be required for every 4,000 trusses produced that are qualified under the ultimate load test procedure, and the same frequency of follow-up testing would be required for uplift load tests (1/2,500 for the proof load test and 1/4,000 for the ultimate load test) for trusses designed to be used in Wind Zones II and III. The December 1, 2004, proposal included provisions only for the ultimate load test procedure; in addition it would have required one test for every 4,000 trusses produced, and did not include specific requirements for follow-up testing for uplift load.

As a result of the above differences, the new MHCC recommendations in this proposed rule would have less of a cost impact than the recommendations that were included in the December 1, 2004, proposed rule. Cost analysis prepared by HUD suggests that the change in cost would primarily be due to a reduction in the estimated number of homes produced annually, from 170,000 homes to 145,000 homes, and by limiting the new truss testing provisions for uplift wind forces to Wind Zones II and III, which affects only about 20 percent of overall truss production. HUD estimates that this proposed rule would result in an overall reduction in the estimated cost impact from $13 million annually, as stated in the December 1, 2004, proposed rule, to about $6 million annually, and would reduce the average cost impact per home from $77 to $41.

III. Modifications to MHCC Recommendations

After reviewing the proposed recommendations for the revised truss testing procedures recommended by MHCC, HUD had concerns regarding one of MHCC's recommendations for uplift load testing. MHCC and HUD had the opportunity to discuss HUD's concerns during several teleconference meetings of MHCC, its Standards Subcommittee, and the Truss Test Task Force. The regulatory text of the MHCC recommendation, as submitted to HUD, and HUD's changes to that recommendation are published in full in this proposed rule. HUD is specifically soliciting comments from the public on both MHCC's recommendation as submitted to HUD, and HUD's modification of its recommendation.

Other editorial modifications to the document HUD received from MHCC have been made throughout this proposed rule to be consistent with the formatting of **Federal Register** documents or for consistency with other requirements of the Home Construction and Safety Standards. For the convenience of the public, rather than publishing both the entire MHCC document and HUD's edited version of the document, HUD is publishing a single proposed rule with the original text of the MHCC document following HUD's discussion.

HUD's Modifications to MHCC's Proposed Revision to § 3280.402(d)(3)

HUD is modifying the proposed recommendation from MHCC on uplift testing, because the MHCC's provisions for uplift load tests would have permitted testing in either the inverted or upright position in Wind Zones II and III. HUD's modification is based in part on the findings of a study conducted by NAHB–RC, "Comparison of Methods for Wind Uplift Load Testing of Roof Trusses for Manufactured Housing," and the requirements of the National Fire Protection Association (NFPA) consensus process related to uplift testing. In particular, the NAHB–RC study found that trusses tested in the inverted position failed at higher loads, had smaller mid-span deflections, and experienced different fail modes than trusses tested in the upright position. This is because the difference in truss orientation results in the uplift load being applied by pulling up on the top chord of the truss in the upright position (in the manner in which the wind would apply load to the trusses), while, in the inverted position, the uplift load is applied by pushing down on the bottom chord of the truss.

HUD modified the MHCC proposal by permitting use of the upright uplift load test only to evaluate trusses for use in Wind Zones II and III. HUD made this modification because resistance to high uplift wind forces is often critical in preventing major damage to the roof or structure in high-wind areas, and the inverted test may not provide appropriate assessment of the ability of certain truss designs to resist those wind loads. However, HUD did accept that part of the MHCC proposal that allowed either the upright or inverted test method to be used in Wind Zone I, using the same overload factors recommended by MHCC. This is because the wind uplift load is relatively small in Wind Zone I and rarely affects the overall design requirements for the truss.

The regulatory language submitted by MHCC on this section, including introductory language that has not been modified but which provides context for MHCC's language, is as follows:

* * * * *

(d) * * *

(3) Uplift Load Tests. Each truss design must also pass all requirements of the uplift load test, as applicable, in paragraph (i) or (ii) and paragraphs (iii) and (iv) of this section.

* * * * *

(iii) Trusses designed for use in Wind Zone I, when tested [*see* (i) above], must be tested in either the inverted position to 2.5 times the net wind uplift load or in the upright position to 1.75 times the net wind uplift load. Trusses designed for use in Wind Zones II and III must be tested in the inverted position to 2.5 times the uplift load, minus the dead load, or to 1.75 times the uplift load, minus the dead load in the upright position. [*See* Figure 3280.402(b)(3)].

(iv) The following describes how to conduct the uplift test with the truss in the upright position. Similar procedures must be used if conducting the test in the inverted position.

* * * * *

(D) Continue to load the truss to 1.75 times the net uplift load and maintain the full load for one minute. (When tested in the inverted position, continue to load the truss to 2.5 times the net uplift load and maintain the load for 3 hours.) *See* paragraph (i) for the net uplift load in Wind Zone I and paragraph (ii) for the uplift load for Wind Zones II and III. Regardless of the test position of the truss, upright or inverted, trusses maintain the overload for the specified time period without rupture, fracture, or excessive yielding.

* * * * *

IV. Specific Issues for Comment

The public is invited to comment on any of the specific provisions included in this proposed rule and is also invited

to comment on the following questions and on any other related matters or suggestions regarding this proposed rule:

(1) Under the proposed rule, the proof load test or the ultimate load test can be used to qualify trusses in high snow load areas. Should the more stringent and reliable ultimate load test procedure be required only to qualify roof trusses designed for use in high snow load areas such as the North and Middle Roof Load Zones, where the risk of roof and truss failure is greater?

(2) Should the spacing between hydraulic or pneumatic cylinders for the test fixture be increased from 12 inches to 24 inches in Figures 3280.402(b)(1) and 3280.402(e)(1)? Should the distance between friction pads along the top chord of the truss of the test fixture be increased from 6 inches to 12 inches in Figure 3280.402(b)(1)? Should the distance between one-inch straps attached around the cylinder shoe and the top chord of the truss of the test fixture be increased from 6 inches to 12 inches in Figure 3280.402(e)(1)?

(3) Should the overload period for all wind uplift tests be increased from one minute to 3 hours, as is currently required for uplift tests in the standards for the inverted test procedure?

(4) Should a wind uplift test always be required for trusses qualified for use in Wind Zone I instead of allowing the determination to be made by a Registered Engineer or Registered Architect or independent third-party agency that is certifying the design?

V. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 *Regulatory Planning and Review.* This rule was determined to be a "significant regulatory action," as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). If adopted in final, this rule would affect costs for manufactured home manufacturers in two ways. First, the cost of roof trusses would increase in order to meet the new testing standards. Second, manufactured home manufacturers would be required to assure that their truss designs have been retested and recertified by truss fabricators to comply with the revised testing requirements. Although this rule would require at least two follow-up tests per year for each truss design, at the current low production rates, no additional testing would be needed beyond current practice. Thus, the retesting provision would not add to the compliance cost of the rule. The evaluation of costs also depends on the final location placement of the manufactured homes; that is, in which Wind Zone a manufactured home is located. HUD has assessed the total costs and benefits of this rule to be between $7.476 million and $36.447 million annually.

As noted in the preamble, Wind Zone I homes have the least stringent construction standards and Wind Zone III homes have the most stringent construction standards. In addition, Figure 1 in the preamble evidences, the overwhelming majority of the United States is designated as Wind Zone I. The estimated cost impact for the proposed rule takes into consideration the impact on truss construction of the retesting requirements (which are a one-time cost and not a continuing cost), and costs for follow-up testing of roof trusses. Each of these is evaluated with respect to wind zone classifications. Eighty percent of the 55,000 units produced annually are produced to Wind Zone I standards.

The average cost to meet the new standards is $0.50 per truss in Wind Zone I and $1.00 per truss in Wind Zones II and III. Further, approximately 30 percent of trusses will require re-design in Wind Zone I, while all trusses (100 percent) will require redesign for placement in Wind Zones II and III. Based on an average of 34 trusses per transportable section in Wind Zone I and 51 in Wind Zone II and III, and 1.64 transportable sections per home, the total cost of this requirement is $1.285 million (72,000 transportable sections * 34 trusses per section * $0.50 increase in production cost * 30% of homes in Wind Zone I; plus 18,000 transportable sections * 51 trusses per section * $1.00 increase in production cost * 100% of homes in Wind Zones II & III) annually.

After truss fabricators make any needed changes to truss designs, manufactured home manufacturers must ensure that all truss designs being used have been retested and re-certified. The average cost to re-test and re-certify each truss design is $500. HUD estimates that 1,200 truss designs for Wind Zone I and 300 for Wind Zones II and III will require re-certification. Thus, the total cost for this requirement equals $750,000 ($500 cost of re-certification * 1,200 truss designs in Wind Zone I; plus $500 cost of re-certification * 300 truss designs in Wind Zones II and III). Totaling the increased construction cost and the cost of re-certification, this proposed rule, if adopted in final, would impose a total one-time cost of $2,035,200 on manufacturers of manufactured housing. Both the re-design and re-certification costs are one-time costs borne at the time of production. This rule would not impose any recurring costs.

With respect to benefits, the proposed standards will make manufactured housing less susceptible to wind damage and downward pressure by enhancing roof construction. In addition, there will be less collateral damage to housing and other structures adjacent to manufactured housing. HUD estimates that the median annual property damage from hurricanes and tropical storms is $1,879.5 million. Based on 2008 housing data from the U.S. Postal Service and the Census Bureau's Survey of Manufactured Housing, newly shipped manufactured housing accounts for 0.076 percent of the total housing stock in States prone to hurricane strikes. An approximation of the damage occurring to manufactured housing totals $1.42 million ($1,879.5 million * 0.076 percent). If this proposed rule were adopted in final, a portion of this $1.42 million would be avoided annually. Assuming an annual reduction of the expected property damage by one-fourth ($355,922) to one-half ($711,904) because of the stronger trusses, the discounted present value of the annual benefits of the rule would range from $12.221 to $34.442 million, assuming a 3 percent discount rate, and from $5.441 to $20.882 million, assuming a 7 percent discount rate. In addition to avoiding property damage, this rule would also prevent injuries and deaths that occur during hurricanes, tropical storms, and other high wind events; although it is difficult to estimate the number of injuries and deaths that would be prevented. However, it is reasonable to expect that deaths and injuries would decrease in response to these proposed standards.

In summary, this proposed rule, if implemented in final, would impose one-time costs totaling $2.035 million, and create discounted benefits of $5.441 million to $34.442 million, depending on the discount rate. Thus, the total impact of this rule—the sum of the total costs and benefits—would be between $7.476 million and $36.447 million annually.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the public comments by calling the Regulations Division at 202–402–3055

(this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would regulate establishments primarily engaged in making manufactured homes under North American Industry Classification Standard (NAICS) 32991. The Small Business Administration's size standards define as small an establishment primarily engaged in making manufactured homes if it does not exceed 500 employees. Of the 137 manufactured home operations included under this NAICS definition, 60 are small manufacturers that fall below the small business threshold of 500 employees. The rule would apply to all of the manufacturers and would, therefore, affect a substantial number of small entities. For the reasons stated below, HUD knows of no instance in which a manufactured home manufacturer with fewer than 500 employees would be significantly affected by this rule.

HUD, with the concurrence of the MHCC, conducted an economic cost impact analysis for this rule. A copy of the analysis is available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. The analysis determined the average potential cost impact, based on a per-home cost, to be approximately $37, multiplied by an estimated number of 55,000 homes produced in a year, which equals about $2.035 million annually. The per-home cost impact would range from approximately $22 in Wind Zone I, based on an annual production estimate of 44,000 manufactured homes, to $97 in Wind Zone II and Wind Zone III, based on a production estimate of 11,000 manufactured homes. This does not represent a significant economic effect on either an industry-wide or per-unit basis.

These two relatively small increases in cost would not impose a significant burden for a small business for homes that typically cost the purchaser between $40,000 and $100,000. Therefore, although this rule would affect a substantial number of small entities, it would not have a significant economic impact on them. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Notwithstanding HUD's view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and on the private sector. This rule does not impose any Federal mandates on any State, local, or Tribal governments or the private sector within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Home Construction and Safety Standards is 14.171.

List of Subjects in 24 CFR Part 3280

Housing standards, Incorporation by reference, Manufactured homes.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 3280 to read as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

2. Revise § 3280.402 to read as follows:

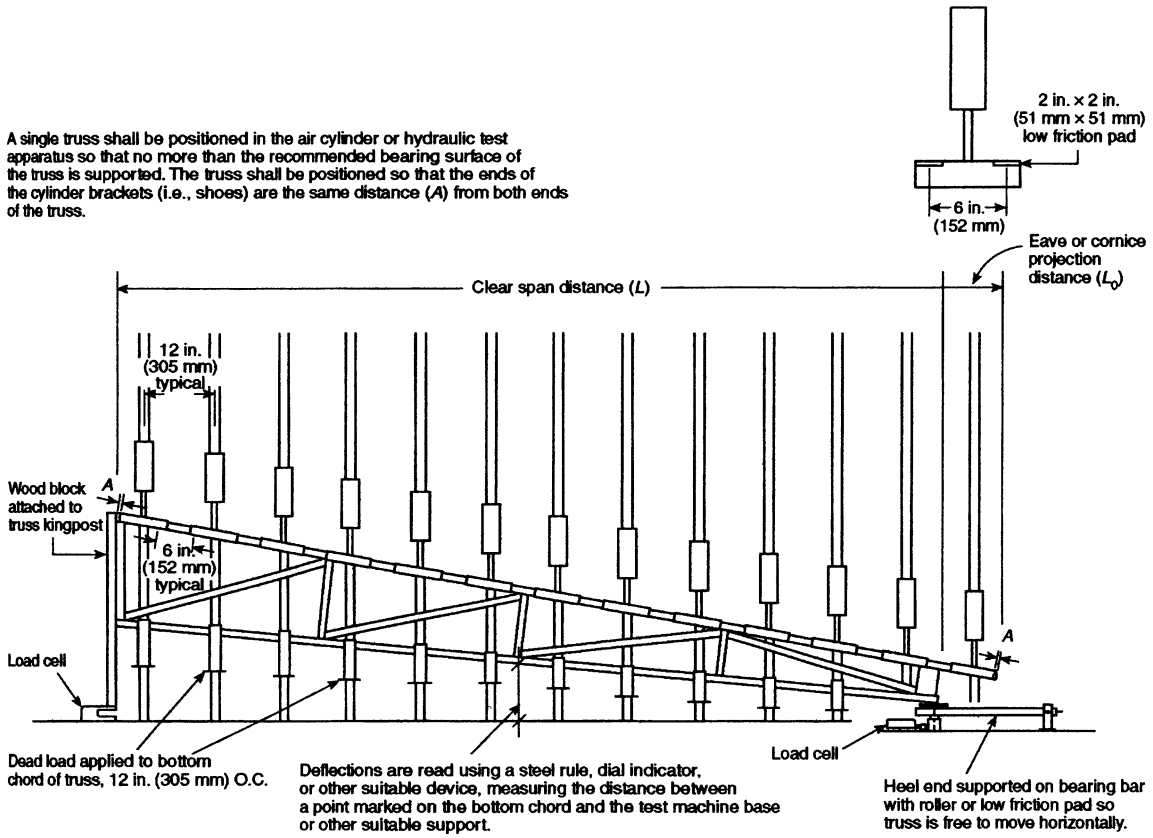
§ 3280.402 Test procedures for roof trusses

(a) *Roof load tests.* This section provides the roof truss test procedure for vertical loading conditions. Where roof trusses act as support for other members, have eave or cornice projections, or support concentrated loads, roof trusses must also be tested for those conditions.

(b) *General.* Trusses must be tested in a truss test fixture that replicates the design loads, and actual support points, and does not restrain horizontal movement. When tested singly or in groups of two or more trusses, trusses shall be mounted on supports and positioned as intended to be installed in the manufactured home in order to give the required clear span distance (L) and eave or cornice distance (Lo), if applicable, as specified in the design.

(l) When trusses are tested singly, trusses shall be positioned in a test fixture, with supports properly located and the roof loads evenly applied. *See* Figure 3280.402(b)(1).

Figure 3280.402(b)(1) – Test fixture for testing trusses singly.

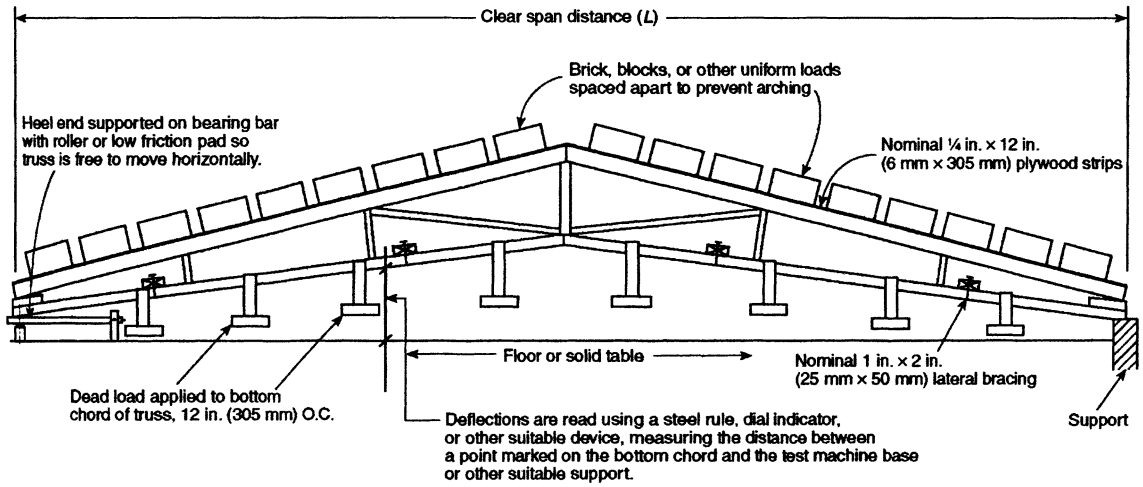


(2) When tested in groups of two or more, the top chords are permitted to be sheathed with nominal 1/4-inch x 12-inch plywood strips. The plywood strips shall be at least long enough to cover the top chords of the trusses at the designated design truss spacing. Adjacent plywood strips shall be separated by at least 1/8-inch. The plywood strips shall be nailed with 4d nails or equivalent staples no closer than 8 inches on center along the top chord. The bottom chords of the adjacent trusses shall be permitted to be one of the following:

(i) Unbraced; or

(ii) Laterally braced together (not cross-braced) with 1-inch x 2-inch stripping no closer than 24 inches on center, nailed with only one 8d nail at each truss. *See* Figure 3280.402(b)(2).

Figure 3280.402(b)(2) – Test set-up for roof trusses tested in groups of two or more.



(c) *Measuring and loading methods.* Deflections must be measured at the free end of an eave or cornice projection and at least at the truss mid-span and quarter points. Scissors or other unique truss configurations are to be measured at as many additional bottom chord panel points as necessary to obtain an accurate representation of the deflected shape of the truss so as to be able to locate and record the point(s) of maximum deflection. Deflections must be read and recorded relative to a fixed reference datum. Deflections must be read and recorded to the nearest 1/32-inch. Dead load must be applied to the top and bottom chord, and live load must be applied to the top chord through a suitable hydraulic, pneumatic, or mechanical system or weights to simulate design loads. Load unit weights for uniformly distributed top chord loads must be separated so that arch action does not occur and spaced not more than 12 inches on center so as to simulate uniform loading. Bottom chord loading must be spaced as uniformly as practical. Truss gravity loads must be calculated based on the overall truss length (horizontal projection), including eave or cornice projections.

(d) *Testing procedures.* Either the testing method in paragraph (d)(1) or (d)(2) of this section may be used, and the testing method in paragraph (d)(3) of this section must be used, to test trusses to establish compliance with the provisions of these standards.

(1) *Proof load truss test procedure.* At least three average quality/consecutively tested trusses must pass all requirements of the test, for initial qualification of the truss design. All tests for initial qualification of the truss designs evaluated by this procedure must be certified by a Registered Engineer or Registered Architect, or by an independent third-party agency. An in-house quality control and follow-up testing program (*see* paragraphs (e) and (f) of this section) must be approved prior to entering production of any truss design evaluated by this procedure.

(i) *Dead load.* Measure and record initial elevation of the truss or trusses in the test position at no load. Apply dead loads to the top and bottom chords of the truss that are representative of the actual weights of materials to be supported by the truss. However, the dead load may be applied as indicated in paragraph (e)(4) of this section for ongoing follow-up testing only. Dead loads to be applied to the truss test assembly are permitted to include only the weights of materials supported by the truss and not the weight of the truss itself. However, readings from load cells (when used) on which the test truss rests must reflect the sum of the applied load plus the weight of the truss. Apply dead loads and hold for 5 minutes. Measure and record the deflections.

(ii) *Live load.* Maintaining the dead loads, apply live load to the top chord in approximate ¼ live load increments until dead load plus the live load is reached. Measure and record the deflections no sooner than one minute after each ¼ live load increment has been applied and 5 minutes after the full live load has been reached.

(iii) *Initial recovery phase.* Remove the design live load but not the dead load. Measure and record the deflections 5 minutes after the total live load has been removed.

(iv) Continue to load the truss to dead load plus 2.0 times the design live load. Maintain this loading for 6 hours and inspect the truss for failure. Failure is rupture, fracture, or excessive yielding.

(v) *Final recovery phase.* Remove 2.0 times the design live load, but not the dead load. Measure and record deflections within 4 hours after removing 2.0 times the design live load.

(vi) *Acceptance criteria.* The truss design shall be considered to have passed if all of the following conditions are met:

(A) The maximum deflection between no load and dead load must be L/480 or less for simply supported clear spans and Lo/180 or less for eave and cornice projections; and

(B) The maximum deflection between dead load and design live load must be L/180 or less for simply supported clear spans and Lo/90 or less for eave and cornice projections; and

(C) After the design live load is removed and with the dead load still applied, the maximum recovery deflection must be L/360 or less for simply supported spans and Lo/180 or less for eave and cornice projections; and

(D) The truss must maintain the overload condition for 6 hours without rupture or fracture, or excessive yielding; and

(E) After 2.0 times the design live load has been removed, and with the dead load still applied, the maximum recovery deflection must be L/180 or less for simply supported clear spans and Lo/90 or less for eave and cornice projections; and

(F) As applicable, each truss design must also meet all requirements for uplift loads required by paragraph (d)(3) of this section. For Wind Zone I uplift load requirements, *see* paragraph (d)(3)(i) of this section. For Wind Zones II and III uplift load requirements, *see* paragraph (d)(3)(ii) of this section.

(2) *Ultimate load truss test procedure.* (i) At least three average quality/consecutively tested trusses must pass all requirements of the test, for initial qualification of the truss design. All tests for initial qualification of the truss designs evaluated by this procedure must be certified by a Registered Engineer or Registered Architect, or by an independent third-party agency. An in-house quality control and follow-up testing program (*see* paragraphs (e) and (f) of this section) must be approved prior to entering production of any truss design evaluated by this procedure.

(ii) *Dead load.* Measure and record initial elevation of the truss or trusses in the test position at no load. Apply dead loads to the top and bottom chords of the truss that are representative of the actual weights of materials to be supported by the truss. However, the dead load may be applied as indicated in paragraph (e)(4) of this section for ongoing follow-up testing only. Dead loads to be applied to the truss test assembly shall be permitted to include only the weights of materials supported by the truss, and not the weight of the truss itself. However, readings from load cells (when used) on which the test truss rests must reflect the sum of the applied load plus the weight of the truss. Apply dead loads and hold for 5 minutes. Measure and record the deflections.

(iii) *Live load.* Maintaining the dead loads, apply live load at a uniform rate to the top chord in approximate ¼ live load increments until the dead load plus the live load is reached. Measure and record the deflections no sooner than one minute after each ¼ live load increment has been applied and 5 minutes after the full live load has been reached.

(iv) *Initial recovery phase.* Remove the design live load but not the dead load. Measure and record the deflections 5 minutes after the design live load has been removed.

(v) *Overload phase.* After the recovery phase is completed, reapply the full live load to the truss assembly. Additional loading shall then be applied continuously until the dead load plus 2.5 times the design live load is reached. This overload condition must be maintained for at least 5 minutes.

(vi) *Final recovery phase.* Remove 2.5 times the design live load but not the dead load. Measure and record deflections within 4 hours after 2.5 times the design live load has been removed.

(vii) *Acceptance criteria.* The truss design is considered to be acceptable if all of the following conditions are met:

(A) The maximum deflection between no load and dead load must be L/480 or less for simply supported clear spans and Lo/180 or less for eave and cornice projections; and

(B) Dead load-to-design live load deflections shall be L/180 or less for simply supported clear spans and Lo/90 or less for eave and cornice projections; and

(C) After the design live load is removed and with the dead load still applied, the maximum recovery deflection must be L/360 or less for simply supported spans and Lo/180 or less for eave and cornice projections; and

(D) The truss shall maintain the overload condition for 5 minutes without rupture, fracture, or excessive yielding; and

(E) After 2.5 times the design live load is removed and with the dead load still applied, the truss must recover to at least L/180 for simply supported clear spans, and Lo/90 for eave and cornice within 4 hours after the total live load has been removed; and

(F) As applicable, each truss design must also meet all requirements for uplift loads in Wind Zone I or Wind Zone II and III, as required by paragraph (d)(3) of this section. For Wind Zone I uplift load requirements, *see* paragraph (d)(3)(i) of this section. For Wind Zones II and III uplift load requirements, *see* paragraph (d)(3)(ii) of this section.

(3) *Uplift load tests.* Each truss design must also pass all requirements of the uplift load test, as applicable, in paragraph (d)(3)(i) or (d)(3)(ii) and paragraphs (d)(3)(iii) and (d)(3)(iv) of this section.

(i) *Wind Zone I uplift load test.* Where there are engineered connectors between the top chord and web members of the truss, such as metal connector plates or wood gussets or their equivalents, uplift testing in Wind Zone I is at the discretion of the Registered Engineer or Registered Architect or independent third-party agency certifying the truss design. When testing is deemed necessary by the Registered Engineer or Registered Architect or independent third-party agency certifying the truss design, a minimum of one average quality uplift load test is to be conducted for each such truss design and must pass all requirements of the test for initial qualification of the truss design. The net uplift load for trusses designed for use in Wind Zone I is 9 psf for the clear span of the truss and 22.5 psf for eave or cornice projections.

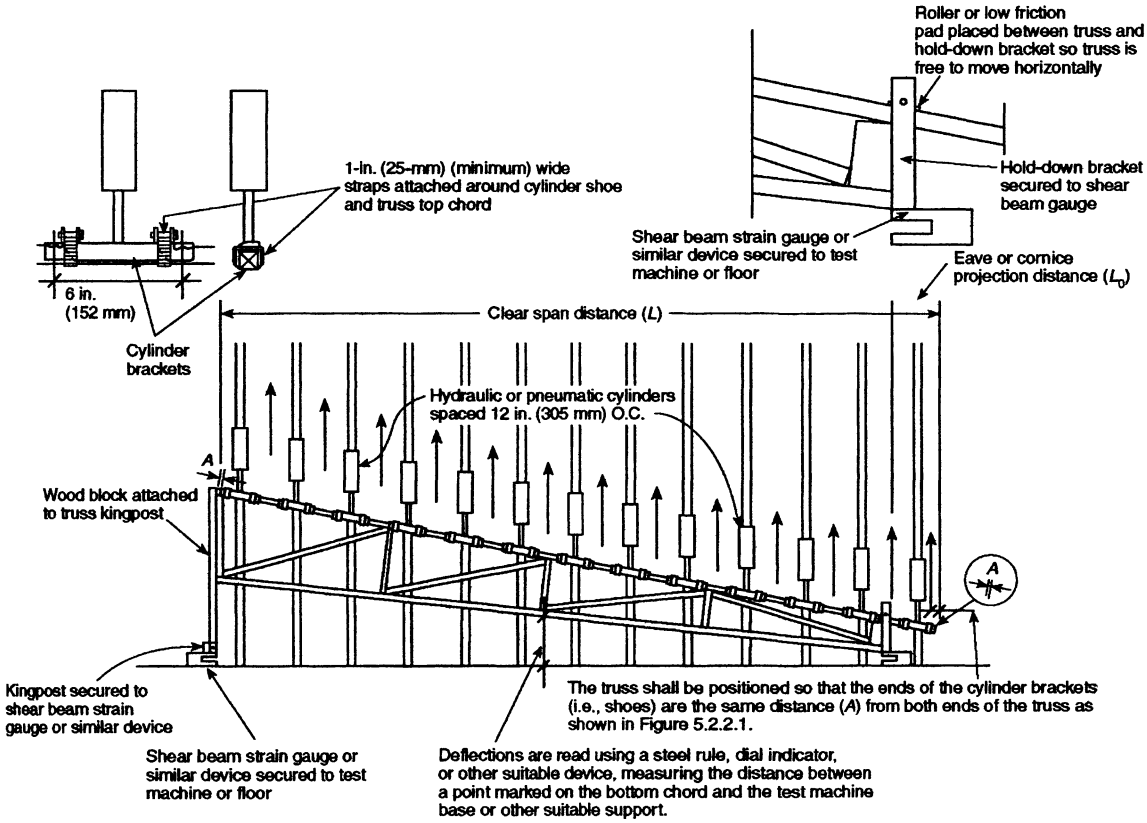
(ii) *Wind Zones II and III uplift loads test.* This test is required for all trusses designed for use in Wind Zones II and III. A minimum of three average quality/consecutive uplift load tests are to be conducted for each truss design, and the trusses must pass all requirements of the test for initial qualification of the truss design. The uplift load for trusses designed to be used in Wind Zones II and III for the clear span or eave cornice projections is to be determined by subtracting the dead load applied to the truss from the uplift load provided in the Table of Design Wind Pressures in § 3280.305(c)(1)(ii)(B).

(iii) Trusses designed for use in Wind Zone I, when tested (*see* paragraph (d)(3)(i) of this section), must be tested in either the inverted position to 2.5 times the net wind uplift load or in the upright position to 1.75 times the net wind uplift load. Trusses designed for use in Wind Zones II and III (*see* paragraph (d)(3)(ii) of this section) must be tested to 1.75 times the uplift load minus the dead load in the upright position. (*See* Figure 3280.402(b)(3).)

(iv) The following describes how to conduct the uplift test with the truss in the upright position. Similar procedures must be used if conducting the test in the inverted position.

(A) Place the truss in the test fixture and position as it is intended to be installed in the manufactured home. *See* Figure 3280.402(b)(3).

Figure 3280.402(b)(3) – Test set-up for roof trusses tested for uplift in the upright position.



(B) Position the load measurement devices to register the wind uplift loads that will be applied to the top chord of the truss. The uplift loads shall be applied through tension devices not wider than one inch and spaced not greater than approximately 12 inches on center and shall be applied as uniform as possible, so as to simulate uniform loading. Gravity and wind uplift load tests may be performed on the same truss in this single set-up mode. For the wind uplift test, it is permissible to stabilize the bottom chord of the truss in the test fixture to simulate ceiling materials or purlin supports. Measure and record the initial elevation of the bottom chord of the truss in the test position at the mid-span and quarter points of the truss, and at the free end of an eave or cornice projection greater than 12 inches. Scissors or other unique truss configurations are to be measured at as many additional bottom chord panel points as necessary to obtain an accurate representation of the deflected shape of the truss, so as to be able to locate and record the point(s) of maximum deflection. Eave or cornice projection loads are applied separately for eaves or cornice projections greater than 12 inches. For eave or cornice projections greater than 12 inches, the additional required load must be applied to the eave simultaneously with the main body load. For eave or cornice projection 12 inches or less, add the additional required load to the main body load and apply it to the entire top chord.

(C) Measure and record the deflection 5 minutes after the net uplift load has been applied. Design load deflection shall be L/180 or less for a simply supported clear span and Lo/90 or less for eave or cornice projections.

(D) For trusses tested in the upright position, continue to load the truss to 1.75 times the net uplift load in paragraph (d)(3)(i) of this section for Wind Zone I and 1.75 times the uplift load in paragraph (d)(3)(ii) for Wind Zones II and III, and maintain the load for one minute. For trusses tested in the inverted position (Wind Zone I only), continue to load the truss to 2.50 times the net uplift load in paragraph (i) for Wind Zone I, and maintain the full load for 3 hours. Regardless of the test position of the truss, upright or inverted, trusses must maintain the overload for the specified time period without rupture, fracture, or excessive yielding.

(E) Follow-up Testing. Follow-up testing procedures must include the following:

(*1*) All trusses qualifying under these test procedures must be subject to a quality control and follow-up testing program. Manufacturers of listed or labeled trusses must follow an in-house quality control program, with follow-up testing approved by an independent third party as specified in § 3280.402(f). Those home manufacturers producing trusses for their own use, and which are not listed or labeled, must have an in-house quality control program that includes follow-up testing, as specified in this section, and approved by their Design Approval Primary Inspection Agency (DAPIA).

(*2*) Truss designs that are qualified but not in production are not subject to follow-up testing until produced. When the truss design is brought into production, a follow-up test is to be performed if the truss design has been out of production for more than 6 months.

(*3*) The frequency of truss manufacturer's quality control follow-up testing for trusses must be at least:

(*i*) One test for every 2,500 trusses for trusses qualified under the proof load truss test procedure or once every 6

months, whichever is more frequent, for every truss design produced; or

(*ii*) One test for every 4,000 trusses produced for trusses qualified under the ultimate load truss test procedure or once every 6 months, whichever is more frequent, for every truss design produced.

(*iii*) Uplift load tests are also to be conducted at the same follow-up testing frequency in paragraph (e)(3)(i) or paragraph (e)(3)(ii) of this section for trusses designed for use in Wind Zones II and III.

(*4*) For follow-up testing only, the full dead load may be applied to the top chord of the truss, when the bottom chord dead load is 5 psf or less.

(F) In-house quality control program. The in-house quality control program must include, at a minimum, procedures for quality of materials including, but not limited to, grade(s) of materials, allowable splits, knots, and other applicable lumber qualities; workmanship including, but not limited to, plate placement and embedment tolerances; other manufacturing tolerances; description and calibration of test equipment; truss re-testing criteria; and procedures in the event of noncomplying results.

Dated: May 4, 2010.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2010–14277 Filed 6–15–10; 8:45 am]

BILLING CODE 4210–67–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3010

[Docket No. RM2010–9; Order No. 469]

Postal Pricing Methods

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is initiating an investigation into the methodologies for estimating volume changes due to pricing incentive programs. If a change in analytical principles is warranted, the Commission may propose a specific methodology for adoption. This document announces establishment of a docket to consider this investigation and provides an opportunity for public comment.

DATES: Initial comments are due July 16, 2010. Reply comments are due August 16, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at *stephen.sharfman@prc.gov* or 202–789–6824.

SUPPLEMENTARY INFORMATION:

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II. Background
III. Established Methodology
IV. Methodologies for Estimating Short–Term Volume Changes
V. Comments
VI. Ordering Paragraphs

I. Introduction

The Commission is initiating this proceeding to investigate methodologies for estimating volume changes due to pricing incentive programs. Upon consideration of various methodologies, the Commission may, if a change in analytical principles is warranted, propose a specific methodology for adoption. Initial comments are due 30 days from publication of this notice in the **Federal Register**.

II. Background

In the past year, the Postal Service has conducted two pricing incentive programs, and a third program is scheduled to begin in July. The purpose of the incentive programs is to generate new volume and additional revenue. Rebates are offered to mailers who mail more pieces than they would mail without rebates. The first of these programs occurred in the summer of 2009.[1] This program offered rebates of 30 percent to Standard mailers who increased their volume above the same period in 2008 (SPLY) adjusted for each mailer's volume trend. The Commission evaluated this program in the recently issued 2009 Annual Compliance Determination (2009 ACD). In the 2009 ACD, the Commission noted that the Postal Service had developed a new methodology for estimating the profitability of the program. That methodology produced an estimated $24.1 million contribution to institutional costs, while the Commission's traditional estimating methodology produced a negative contribution of $36.9 million. The Commission announced that it would conduct a rulemaking to "explore the merits of these alternate methodologies * * * ." 2009 ACD at 88.

On February 26, 2010, the Postal Service filed notice of another Standard Mail pricing incentive program. The Commission established a docket to consider the incentive program and appointed a Public Representative.[2] The Public Representative proposed a third methodology for estimating the profitability of pricing incentive programs.[3] Another commenter, Robert W. Mitchell, described several qualitative adjustments to the Commission's established methodology.[4]

Estimating the profitability of a pricing incentive program depends on accurately estimating what volume of mail mailers would mail in the absence of a rebate. Rebates for mail volume that would have been sent without a rebate result in a loss of contribution. However, it is not possible to know ahead of time what volume a mailer would have sent without a rebate. The Commission evaluates the profitability of rebate programs after the fact by applying a measure of price sensitivity (elasticity) to volumes actually mailed during the rebate program. This method is described in the next section.

III. Established Methodology

The Commission's experience with pricing incentive programs began in Docket No. MC2002–2.[5] The Postal Service had negotiated declining block rates with Capital One Services, Inc. (Capital One). The essential feature of a declining block rate is that a customer must purchase a minimum quantity to be eligible for a reduced rate. The reduced rate then applies only to quantity in excess of the minimum. So long as the reduced rate covers cost, the additional volume is profitable. This assumes that the minimum quantity (or threshold) is set at the quantity the customer would have purchased at regular rates.

In fact, the Postal Service cannot know what a mailer would have mailed at regular rates. There is always a possibility that the threshold is set below the volume the mailer would have mailed. In this situation, the Postal Service loses revenue on pieces that

[1] The second incentive program occurred in the fall of 2010, and offered rebates of 20 percent to bulk First–Class mailers. Docket No. R2009–5, Order Approving First–Class Mail Incentive Pricing Program, September 16, 2009.

[2] Docket No. R2010–3, Notice and Order Concerning Standard Mail Volume Incentive Pricing Program, March 2, 2010.

[3] Docket No. R2010–3, Comments of the Public Representatives, March 22, 2010, at 9–10, 15–16.

[4] Docket No. R2010–3, Comments of Robert W. Mitchell on Proposed Summer Sale 2010, March 22, 2010 (Mitchell Comments).

[5] Docket No. MC2002–2, Opinion and Recommended Decision, May 15, 2003; *see also* Errata Notice, May 21, 2003.

would have been mailed at regular rates but are only charged the reduced rate. This loss must be accounted for when calculating the contribution (profit) earned from the reduced rate. In the Capital One case, the Postal Service estimated the additional volume effect of the volume–based discount provision of the Capital One NSA using the analysis of Capital One witness Elliot.[6] Elliot's analysis applied price elasticities from the Postal Service's demand model to the marginal discount.

Elasticity is a measure of the volume response to a price change. Roughly speaking, elasticity is the percentage change in quantity divided by the percentage change in price. Thus, if the elasticity, price change, and volume (either before or after the price change) are known, the volume change associated with the price change can be determined.

Beginning in Docket No. MC2004–3, the Commission has applied an elasticity–based approach similar to that of witness Elliot for estimating the effect of volume–based discounts both before implementation, and based on after–the–fact analysis of actual results.[7] The Commission described the accepted analytical principle for this type of analysis as "the analytical principle that the financial impact of price incentives to increase mail volume or to shift mail volume between products should be based on the Postal Service's best estimate of the price elasticity of the discounted product."[8]

IV. Methodologies for Estimating Short–Term Volume Changes

In evaluating pricing initiatives that apply to multiple eligible mailers, the elasticity–based approach can be applied to each discounted mailer's actual volume to determine its before–rates volume. The discounts on all pieces up to the mailer's before–rates volume (leakage) are then subtracted from the contribution of the increased volume that results from the discount incentive. Since this approach is dependent on the after–rates volume, it is most readily applied *ex post,* when the actual after–rates volumes is known. Nevertheless, it can also be used to estimate a range of potential effects *ex ante* by applying the same approach to a range of potential after–rates volumes.

An elasticity–based approach has many advantages, not the least of which is that price elasticities implicitly control for all other variables that affect volume. Therefore, other exogenous variables that cause changes in volume are held constant, thus isolating the volume generated in response to the discount from the volume change due to all other factors. The most significant weakness is the difficultly of identifying the price elasticity that applies to the specific details of the pricing initiative in question. While the Postal Service develops price elasticities annually as part of its demand analysis, they are not perfectly suited to the analysis of the Postal Service's volume–based pricing initiatives. These initiatives have been generally shorter in duration, larger in magnitude, and more narrowly focused in terms of mailer eligibility than the historical price changes from which the elasticities in the Postal Service's demand analysis are estimated.

Commenting on the 2010 summer initiative, Robert Mitchell discussed several ways in which a mailer's response to temporary volume–based discounts that are available to both a few mailers or one mailer might not be properly modeled with long–term elasticity estimates like the Postal Service's. He identified four factors that would suggest a potentially smaller volume response than the Postal Service's demand analysis elasticities would indicate. These are the temporary nature of the discounts (which might preclude mailer investments), the potential lag in response to the discount, the absence of mailers entering and leaving the market, and a mailer's uncertainty as to whether it will reach the discount threshold. He also explained that if the discount is not available to a mailer's competitors, the response might be greater than indicated by the market elasticity. Mitchell Comments at 4–6.

Postal Service method. In its data collection report for the 2009 Standard Mail pricing incentive, the Postal Service presented a new method for estimating the portion of the discounted volume that would have been sent in the absence of the discount. It calculated a "spring threshold" for each mailer using the same trend used to develop the summer thresholds for discount eligibility. After calculating the difference between the actual spring 2009 volume and the spring 2009 threshold for each mailer, the sum of these differences for the mailers with actual volume above the threshold was divided by actual spring 2008 volume for all participating customers. The 7.07 percent result was referred to as "loyalty growth" by the Postal Service. This percentage was then multiplied by the total actual (after–rates) summer 2009 volume sent by participating customers to estimate "loyalty growth" volume for the 2009 pricing initiative.[9] As the source of revenue leakage (discounts paid on before–rates volume), the volume identified as "loyalty growth" is roughly analogous to "anyhow" volume, *i.e.,* volume that would have been mailed absent the discount.

The Postal Service's method attempts to control for non–price factors that affect volume by assuming that the extent of above–trend volume growth that occurred in the period immediately preceding the discount period also occurred during the discount period. Because the above–trend growth occurred in the absence of the discount incentive, this volume is deemed to be unrelated to the incentive.

The Postal Service also used a variation of this approach in its development of a forward–looking estimate of anyhow volume in its 2010 summer pricing initiative. It applied the 7.07 percent from the 2009 initiative to the aggregate SPLY (summer 2009) volume of mailers expected to participate in the 2010 initiative.[10] As a practical matter, since volume data for the period immediately preceding a discount period are not available in advance, the application of the Postal Service's "spring threshold" approach in an *ex ante* analysis requires the use of a "loyalty growth" factor developed from a previous initiative.

Some of the details of the application of this methodology by the Postal Service raise potential questions that should be explored in this case. For example, the 7.07 percent "loyalty growth" was developed as a percentage of SPLY volumes (the period exactly 1 year prior to the discount period) and, for the 2010 initiative, was applied to SPLY volumes to produce the *ex ante* estimate of discounted volume attributable to exogenous (non–price) factors. In contrast, the 7.07 percent was applied to actual after–rates volume sent during the discount period, rather than SPLY, to produce the *ex post* estimate of "loyalty growth" from the 2009 initiative.

Public Representatives' method. The decision to apply the trend–based approach collectively to aggregate volumes sent by participants, instead of

[6] Direct Testimony of Stuart Elliott (COS–T–2) on Behalf of Capital One Services, Inc., September 19, 2002.

[7] Docket No. MC2004–3, Opinion and Further Recommended Decision, April 21, 2006 at 21–38.

[8] Docket No. RM2008–4, Notice of Proposed Rulemaking Prescribing Form and Content of Periodic Reports, August 22, 2008, at 9, citing 2007 Annual Compliance Determination, March 27, 2008, at 127.

[9] Docket No. ACR2009, Responses of the United States Postal Service to Questions 1–5 of Chairman's Information Request No. 8, March 8, 2010, questions 1 and 2.

[10] Docket No. R2010–3, Response of the United States Postal Service to Chairman's Information Request No. 1, March 16, 2010, questions 1 and 3.

on a mailer–by–mailer basis, was identified as an issue by the Public Representatives in the review of the 2010 initiative.[11] In their comments, they presented a variation of the trend–based approach to estimate the "loyalty growth" from participants in the 2009 initiative.[12] While the Postal Service's method was applied to aggregate participant volumes, the Public Representatives applied the same method to individual mailer data. For each participant that earned discounts, if the mailer's actual spring 2009 volume exceeded that of its trend–based "spring threshold," the difference was divided by the mailer's actual spring 2008 volume. The resulting percentage (equivalent to the Postal Service's 7.07 percent, but unique to each mailer) was multiplied by that mailer's actual summer 2009 volume to estimate the amount of anyhow volume. *Id.* at 8–10.

Because of the wide variation in the volume patterns of individual participants, the disaggregated application of the trend–based approach yielded results very different from the aggregated method. Whereas the Postal Service estimated a relatively low amount of revenue leakage from discounts on mail that would have been sent absent the incentive, the Public Representatives' disaggregated method estimated a larger revenue leakage and a correspondingly smaller amount of contribution from new mail. As a result, the estimated net increase in contribution was nearly 90 percent less than the Postal Service's estimate.[13]

V. Comments

The Commission invites comments from interested persons on the volume–estimating methodologies to be used in connection with pricing incentive programs. The Commission also invites interested persons to propose other methodologies for estimating the new volume caused by pricing incentive programs and alternative estimates of price elasticity for use in evaluating these programs.[14]

Initial comments are due 30 days after publication of this notice in the **Federal Register**. Reply comments, if any, are due 60 days after publication of this notice in the **Federal Register**. The Commission will evaluate comments and, if appropriate, propose a new methodology for estimating volume changes due to pricing incentive programs. Interested persons will be provided an opportunity to comment on any such proposal.

John P. Klingenberg is appointed to represent the interests of the general public in this proceeding.

VI. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2010–9 to consider volume–estimation methodologies for pricing incentive programs.

2. Comments by interested parties are due 30 days after publication of this notice in the **Federal Register.** Reply comments are due 60 days after publication of this notice in the **Federal Register.**

3. Pursuant to 39 U.S.C. 505, John P. Klingenberg is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary of the Commission shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–14483 Filed 6–15–10; 8:45 am]

BILLING CODE 7710–FW–S

[11] Docket No. R2010–3, Comments of Public Representatives, March 22, 2010, at 15–17.

[12] The Public Representatives did not present an application of this trend–based approach to an *ex ante* analysis of the 2010 initiative in the manner that the Postal Service applied its aggregate 2009 "loyalty growth" rate (7.07 percent) to the 2010 initiative. The Public Representatives' estimated net impact of the 2010 initiative on Postal Service finances was instead based on an analysis of historical distribution of annual mailer volume growth rates.

[13] The Public Representatives also stated that because volume growth in the period after the sale exceeded the volume growth during the sale period, a "fall threshold" (as opposed to "spring threshold"), trend–based approach would lead to the conclusion that all of the discounted volume was anyhow volume. Using this method, the initiative generated net contribution losses equal to the sum of discounts awarded ($67.9 million). *Id.* at 9.

[14] The Commission has required the Postal Service to provide panel data on the results of each pricing initiative. This data should allow for improved understanding of mailers' reactions to these incentive programs, including quantified measures of the response such as price elasticity. *See, e.g.,* Docket No. R2010–3, Order Approving Standard Mail Volume Incentive Pricing Program, April 7, 2010, at 23–24.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–OPPT–2009–0757; FRL–8831–8]

RIN 2070–AJ38

Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations; Extension of Comment Period and Additional Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of comment period and additional public meetings.

SUMMARY: EPA issued an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** of April 7, 2010, concerning the reassessment of the use authorizations for PCBs. This document extends the comment period for 45 days, from July 6, 2010, to August 20, 2010. This extension is necessary to provide the public with an opportunity to provide additional and more thorough comments. Also, EPA is holding two additional public meetings to enable additional public comment on the ANPRM during the comment period extension.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2009–0757, must be received on or before August 20, 2010.

Meetings will be held on July 22, 2010, from 9 a.m. until the last speaker has spoken or until 1 p.m., in San Francisco, CA and on July 29, 2010, from 6 p.m. to 9 p.m., in New York, NY. Requests to participate in a meeting must be received 10 days prior to the date of the meeting.

To request accommodation of a disability, please contact the technical person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of April 7, 2010, for submission of comments.

The July 22, 2010 meeting will held in the Hawaii/Palau Room, First Floor Conference Room, 75 Hawthorne St., San Francisco, CA 94105 and the July 29, 2010 meeting will be held in the Empire Room at the Hilton Times Square, 234 West 42nd St., New York, NY 10036. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPPT–2009–0757, may be submitted to the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: John H. Smith, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0512; e-mail address: *smith.johnh@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY

14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of April 7, 2010 (75 FR 17645) (FRL–8811–7). In that document, EPA seeks information about the use authorizations for PCBs. EPA is hereby extending the comment period, which was set to end on July 6, 2010, to August 20, 2010.

The additional meeting in New York, NY will be held in the evening at the request of New York City parents who would like to attend to comment on our request for comments on the excluded products provisions, e.g., caulk, of the current PCB regulations. The additional meeting in San Francisco, CA will be held to accommodate West Coast stakeholders. In San Francisco, the meeting attendees will need photo identification.

You may submit a request to participate in the public meeting as a speaker or observer either in person or as an observer only by teleconference. Do not submit any information in your request to participate that is considered Confidential Business Information (CBI).

To access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the April 7, 2010 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: June 9, 2010.

Stephen A. Owens,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2010–14522 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R1-ES-2010–0012]

[MO 92210-0-0008-B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on five petitions to list seven species of Hawaiian yellow-faced bees (*Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*) as endangered and designate critical habitat under the Endangered Species Act of 1973, as amended (Act).

We find that the petitions present substantial scientific or commercial information indicating that listing these seven species of Hawaiian yellow-faced bees may be warranted. Therefore, with the publication of this notice we are initiating a status review of these species and will issue 12–month findings on our determination as to whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we are soliciting scientific and commercial data and other information regarding these species. We will make a determination on critical habitat for these species if, and when, we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that information you submit be received by us on or before August 16, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see "**ADDRESSES**" section, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

After August 16, 2010, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS-R1-ES-2010-0012. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R1-ES-2010-0012; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Loyal Mehrhoff, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3-122, Honolulu, HI 96850; by telephone (808–792–9400); or by facsimile (808–792–9581). Persons who use a telecommunications device for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the seven species of Hawaiian yellow-faced bees (*H. anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*) from governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat or both.

(2) Information about the seven Hawaiian yellow-faced bees relevant to the factors that are the basis for making

a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Whether insect collecting presents a threat to any of the seven Hawaiian yellow-faced bee species.

(4) The potential cumulative effects of these factors that may threaten or endanger the seven Hawaiian yellow-faced bee species.

(5) Management programs for the conservation of the seven Hawaiian yellow-faced bee species.

(6) The potential effects of climate change on the seven Hawaiian yellow-faced bee species and their habitat.

If, after the status reviews, we determine that listing any of the seven Hawaiian yellow-faced bees is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by these species, we also request data and information on what may constitute physical or biological features essential to the conservation of these species; where these features are currently found; and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by these species that are essential to the conservation of these seven species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if these species are proposed for listing, and why such habitat meets the requirements of section 4 of the Act. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, is available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours at the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12–month finding.

We received five petitions dated March 23, 2009, from Scott Hoffman Black, Executive Director of the Xerces Society (hereafter, "the petitioner"). The petitioner requested that we list seven species of Hawaiian yellow-faced bees as endangered and that critical habitat be designated under the Act. The petitions were clearly identified as petitions and included the requisite identification of addresses and telephone numbers, but did not include the signature of the petitioner, as stipulated in 50 CFR 424.14(a). Nevertheless, we recognize the five documents as petitions. Each petition contained information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline and current and potential imminent threats.

On May 8, 2009, we sent a letter to the petitioner acknowledging our receipt of the petitions and explaining that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted at that time. This notice constitutes our 90–day finding for the petitions to list seven species of Hawaiian yellow-faced bees (*Hylaeus anthracinus, H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*).

Species Information

Taxonomy and Description of Hylaeus

The seven species of bees described in the petitions belong to the genus *Hylaeus*. *Hylaeus* is a large, globally distributed genus comprised of over 500 species worldwide. In the Hawaiian Islands, the genus *Hylaeus* is widespread and very diverse, with 60 native species, including 20 that are endemic to single islands (Magnacca 2007, p. 174). All 60 Hawaiian species are in the subgenus *Nesoprosopis* (Magnacca and Danforth 2006, p. 393). The *Hylaeus* genus belongs to the Colletidae family of bees, also known as plasterer bees due to their habit of lining their nests with salival secretions.

The species of *Hylaeus* are commonly known as yellow-faced bees or masked bees for their yellow-to-white facial markings. All of the *Hylaeus* species roughly resemble small wasps in appearance, due to their slender bodies and their seeming lack of setae (sensory hairs). However, *Hylaeus* bees have plumose (branched) hairs on the body that are longest on the sides of the thorax. To a discerning eye, it is these plumose setae that readily distinguish them from wasps (Michener 2000, p. 55).

Life History of Hylaeus

Nests of *Hylaeus* species are usually constructed opportunistically within dead twigs or plant stems, or other similarly small natural cavities under bark or rocks. This is unlike the nests of many other bee species, which are purposefully excavated or constructed underground. Like other *Hylaeus*, Hawaiian *Hylaeus* also lack strong mandibles and other adaptations for digging and often use nest burrows abandoned by other insect species (Daly and Magnacca 2003, p. 9). The adult male and female bees feed upon flower nectar for nourishment. Many species, including the Hawaiian *Hylaeus*, lack an external structure for carrying pollen, called a scopa, and instead internally transport collected pollen, often mixed with nectar, within their crop (stomach). Hawaiian *Hylaeus* species are grouped within two categories: Ground-nesting species that require relatively dry conditions and wood-nesting species which are found within wetter areas (Zimmerman 1972, p. 533; Daly and Magnacca 2003, p. 11).

The female *Hylaeus* bee lays eggs in brood cells that she constructs in the nest and lines with a self-secreted cellophane-like material. Prior to sealing the nest, the female provides her young with a mass of semiliquid nectar and pollen that is left alongside her eggs. Upon hatching, the grub-like larvae eat the provisions left for them, pupate, and eventually emerge as adults (Michener 2000, p. 24).

The role of bees as pollinators maintaining communities of native flora in a diversity of habitats is widely recognized (Cane and Tepedino 2001, p. 1; Kremen *et al.* 2007, pp. 302, 307; National Research Council 2007, p. 13). Recent studies of visitation records of Hawaiian *Hylaeus* bees to native flowers (Daly and Magnacca 2003, p. 11) and pollination studies of native plants (Sakai *et al.* 1995, pp. 2524–2528; Cox and Elmqvist 2000, p. 1,238; Sahli *et al.* 2008, p. 1) have demonstrated that Hawaiian *Hylaeus* species almost exclusively visit native plants to collect nectar and pollen and, in the process, pollinate these plants. *Hylaeus* bees are very rarely found visiting nonnative plants for nectar and pollen (Magnacca 2007, pp. 186, 188), and are almost completely absent from habitats dominated by nonnative plant species (Daly and Magnacca 2003, p. 11). Sahli *et al.* (2008, p. 1) quantified pollinator visitation rates to all of the flowering plant species in communities on a Hawaiian lava flow dating from 1855 to understand how pollination webs and the integration of native and alien species changes with elevation. In that study, eight flowering plants were observed at six sites, which ranged in elevation from 880 to 2400 meters (m) (2,887 to 7874 feet (ft)). The study also found that the proportion of native pollinators changed along the elevation gradient; at least 40 to 50 percent of visits were from alien pollinators at low elevation, as opposed to 4 to 20 percent of visits by alien pollinators at mid to high elevations. *Hylaeus* bees were less abundant at lower elevations, and there were lower visitation rates of any pollinators to native plants at lower elevations, which suggests that *Hylaeus* may not be easily replaceable by nonnative pollinators (Sahli *et al.*, 2008, p. 1). Because *Hylaeus* species are likely critical pollinators of one or more native Hawaiian plant species, it is believed that their decline or eventual extinction may negatively impact dependent native plant species (Hopper *et al.* 1996, p. 8; Cox and Elmqvist 2000, p. 1238).

Taxonomy and Description of Each Petitioned *Hylaeus* Species

Unless clearly stated that the information is from our files, all information, statements, and references cited regarding the taxonomy, descriptions, life history, and range and distribution are based on information submitted in the petitions.

Hylaeus anthracinus

Taxonomy

Hylaeus anthracinus was first described as *Prosopis anthracina* by Smith in 1873 (Daly and Magnacca 2003, p. 55), and transferred to *Nesoprosopis* 20 years later (Perkins 1899, pp. 75), and then *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). Although the distinctness of this species is unquestioned, recent genetic evidence (Magnacca and Brown, submitted) suggests that *H. anthracinus* may be composed of three cryptic (not recognized) species which represent the populations on Hawaii; Maui and Kahoolawe; and Molokai and Oahu.

Description

Hylaeus anthracinus is a medium-sized black bee with clear to smoky wings and black legs. The male has a single large yellow spot on his face, while below the antennal sockets the face is yellow. The female is entirely black and can be distinguished by the black hairs on the end of the abdomen and an unusual mandible that has three teeth, a characteristic that is shared only with *H. flavifrons*, a closely related species on Kauai (Daly and Magnacca 2003, p. 53).

Life History

The diet of the larval stage of *Hylaeus anthracinus* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the adult female. Likewise, the nesting habits of *H. anthracinus* are not known, but the species is thought to nest within the stems of coastal shrubs (Magnacca 2005a, p. 2).

Hylaeus anthracinus adults have been observed visiting the flowers of *Sesbania tomentosa* (oahi), *Scaevola sericea* (naupaka kahakai), *Sida fallax* (ilima), *Argemone glauca* (pua kala), *Chamaesyce celastroides* (akoko), *Chamaesyce degeneri* (akoko), *Heliotropium anomalum* (hinahina), and *Myoporum sandwicense* (naio). This species has also been collected from inside the fruit capsule of *Kadua coriacea* (kioele) (Magnacca 2005a, p. 2). *Hylaeus anthracinus* has also been observed visiting *Tournefortia argentea* (tree heliotrope), a tree native to tropical Asia, Madagascar, tropical Australia, and Polynesia, for nectar and pollen (Wagner *et al.* 1999, p. 398; Daly and Magnacca 2003, p. 55; Magnacca 2007a, p. 181). The species was first collected on Oahu in 1864-1865, and is naturalized and documented from all of the main islands except Kahoolawe (Wagner *et al.* p. 398). It is described as introduced by Magnacca (2007, p. 181). *Hylaeus anthracinus* commonly occurs alongside other *Hylaeus* species, including *H. longiceps* and *H. flavipes*.

Range and Distribution

Hylaeus anthracinus was historically known from numerous coastal strand and lowland dry forest locations up to 2,000 feet (ft) (610 meters (m)) in elevation on the islands of Hawaii, Lanai, Maui, Molokai, and Oahu. According to the petition, between 1997 and 2008, surveys for Hawaiian *Hylaeus* were conducted at 43 sites throughout the Hawaiian Islands that were either historic collecting localities for *H. anthracinus,* or potentially suitable habitat for this species. *Hylaeus anthracinus* was observed at 14 of the 43 survey sites, but had disappeared from each of the 9 historically occupied sites that were surveyed (petition p. 7). Several of the historical collection sites, such as Honolulu and Waikiki on Oahu, and Kealakekua Bay on Hawaii, no longer contain *Hylaeus* habitat, which has been replaced by urban development or is dominated by nonnative vegetation (Liebherr and Polhemus 1997, pp. 346–347; Daly and

Magnacca 2003, p. 55; Magnacca 2007, pp. 186–188).

Hylaeus anthracinus is currently restricted to small populations in a few small patches of coastal and lowland dry habitat (Magnacca 2005a, p. 2); one location on Kahoolawe; five locations on the island of Hawaii, two locations on Maui, three locations on Molokai, and two locations on Oahu (Xerces 2009a, pp. 9-10). The petition does not define the context applied to the term "small," and we have no additional information in our files. Accordingly, we are presenting the population information as characterized by the petitioner. The 2004 *H. anthracinus* collection on the island of Hawaii occurred in montane dry forest (Magnacca 2005a, p. 2). Although it was previously unknown from the island of Kahoolawe, *H. anthracinus* was observed at one location on the island in 2002 (Daly and Magnacca 2003, p. 55). According to the petition, it is believed to be extirpated from Lanai (Daly and Magnacca 2003, p. 55).

Hylaeus assimulans

Taxonomy

Hylaeus assimulans was first described as *Nesoprosopis assimulans* (Perkins 1899, pp. 75, 101–102), and then *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). The species was most recently described as *Hylaeus assimulans* by Daly and Magnacca in 2003 (pp. 55–56).

Description

Hylaeus assimulans is distinguished by its large size relative to other coastal *Hylaeus* species and slightly smoky to smoky-colored wings. The male is black with yellow face marks, with an almost entirely yellow clypeus (lower face region) with additional marks on the sides that narrow dorsally (towards the top). The male also has brown appressed (flattened) hairs on the tip of the abdomen. The female is entirely black, large-bodied, and has no distinct punctuation on the abdomen (Daly and Magnacca 2003, p. 56).

Life History

The diet of the larval stage of *Hylaeus assimulans* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the female adult (Xerces 2009b, p. 11). Likewise, the nesting habits of *H. assimulans* are not known, but the species is thought to nest underground, as do other closely related species (Magnacca 2005b, p. 2).

Hylaeus assimulans adults have been observed visiting the flowers of *Lipochaeta lobata* (nehe) and *Sida fallax* (ilima), this species' likely primary host plant (Xerces 2009b, p. 10). *Hylaeus assimulans* appears to be closely associated with plants in the genus *Sida*, and the petitioner suggests this yellow-faced bee species may be more common where this plant is abundant (Daly and Magnacca 2003, pp. 58, 217; Magnacca 2007, p. 183). The petition contains information indicating that in recent collections, *H. assimulans* seems to be more common in dry forest at relatively higher elevations, and is less often found in coastal strand habitat. The petition states that the frequency of *H. assimulans* observations in higher, dry forest may be related to the abundance of *Sida* in the understory (Magnacca 2005b, p. 2). The petitioner also states that it is likely that *H. assimulans* visits several other native plants, including *Acacia koa* (koa), *Metrosideros polymorpha* (ohia), *Styphelia tameiameiae* (pukiawe), and species of *Scaevola* (naupaka) and *Chamaesyce* (akoko), which are frequented by other *Hylaeus* species as well.

Range and Distribution

Historically, *Hylaeus assimulans* was known from numerous coastal strand and lowland dry locations up to 2,000 ft (610 m) in elevation on the islands of Lanai, Maui, and Oahu. Although there are no collections from Molokai, the petition states that *H. assimulans* also occurred there because all other species of *Hylaeus* known from Maui, Lanai, and Oahu also occurred on Molokai (Xerces 2009b, p. 6). Between 1997 and 2008, surveys for Hawaiian *Hylaeus* were conducted in 25 sites on Oahu, Maui, Kahoolawe, Lanai, and Molokai. *Hylaeus assimulans* was absent from six of its historic localities on Oahu, Maui, and Lanai (Xerces 2009b, pp. 6-7). *Hylaeus assimulans* was not observed at 19 other sites with potentially suitable habitat on Oahu, Maui, Lanai, and Molokai, including several sites from which other native *Hylaeus* species have been recently collected (Daly and Magnacca 2003, p. 56; Xerces 2009b, p. 7).

Currently, *Hylaeus assimulans* is found in a few small patches of coastal and lowland dry habitat at two locations on Lanai, two locations on Maui, and one location on Kahoolawe (Daly and Magnacca 2003, p. 58; Magnacca 2005, p. 2). According to the petition, this species has likely been extirpated from Oahu since it was absent from the island's best extant coastal strand habitat at Kaena Point (Kaena Point Natural Area Reserve (NAR)) (Magnacca 2005, p. 2).

Hylaeus facilis

Taxonomy

According to the petitioner, *Hylaeus facilis* is a member of the *H. difficilis* species group, and is closely related to *H. chlorostictus* and *H. simplex*. *Hylaeus facilis* was first described as *Prosopis facilis* by Smith in 1879 (Daly and Magnacca, p. 80), based on a specimen erroneously reported from Maui. According to Blackburn and Cameron (1886 and 1887), the species' type locality was Pauoa Valley on Oahu (Daly and Magnacca 2003, p. 80). The species was later transferred to the genus *Nesoprosopis* (Perkins 1899, pp. 75, 77). *Nesoprosopis* was subsequently reduced to a subgenus of *Hylaeus* (Meade-Waldo 1923, p. 1). The species was most recently recognized by Daly and Magnacca (2003, p. 80) as *Hylaeus facilis*.

Description

Hylaeus facilis is a medium-sized bee with smoky colored wings. The male has an oval yellow mark on its face that covers the entire clypeus (lower face region), and a narrow stripe beside the eyes, but is otherwise unmarked. The large, externally visible gonoforceps (paired lateral outer parts of the male genitalia) distinguish *H. facilis* from the closely related *H. simplex* (Daly and Magnacca 2003, p. 83). The female is entirely black, and indistinguishable from females of *H. difficilis* and *H. simplex* (Daly and Magnacca 2003, pp. 81–82).

Life History

The diet of the larval stage of *Hylaeus facilis* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the adult female. The nesting habits of *H. facilis* have not been observed, but the species is thought to nest underground as do the closely related species *H. chlorostictus* and *H. simplex* (Daly and Magnacca 2003, p. 83; Magnacca 2005c, p. 2).

According to the petition, the native host plants of adult *Hylaeus facilis* are unknown, but it is likely that this species visits several plants that other *Hylaeus* species are known to frequent, including *Acacia koa* (koa), *Metrosideros polymorpha* (ohia), *Styphelia tameiameiae* (pukiawe), *Scaevola* spp. (naupaka), and *Chamaesyce* spp. (akoko). *Hylaeus facilis* has also been observed visiting the nonnative *Tourneforia argentea* (tree heliotrope) for nectar and pollen (Magnacca 2007, p. 181).

Range and Distribution

Hylaeus facilis was historically known from Lanai, Maui, Molokai, and Oahu, in dry shrubland to wet forest, from coastal to montane habitat up to 3,281 ft (1,000 m) in elevation (Gagne and Cuddihy 1999, p. 93; Daly and Magnacca 2003, pp. 81, 83). Perkins (1899, p. 77) remarked that *H. facilis* was among the most common and widespread *Hylaeus* species on Oahu and all of Maui Nui (Lanai, Molokai, and Maui) (Magnacca 2007, p. 183). The petitioner contends that although the species was widely collected within a diverse range of habitats, it probably prefers dry to mesic forest and shrubland (Magnacca 2005c, p. 2), which are increasingly rare and patchily distributed habitats (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66-67, 75; Magnacca 2005c, p. 2).

The petition states that *Hylaeus facilis* has almost entirely disappeared from most of its historical range (Daly and Magnacca 2003, p. 7; Magnacca 2007, p. 183), and the abundance of specimens in the collections at the Bishop Museum in Honolulu demonstrates the historic prevalence of this species in a diverse array of habitats and elevations (Magnacca 2007, p. 183). Between 1998 and 2006, 39 sites on Oahu, Maui, Lanai, and Molokai were surveyed; *H. facilis* was absent from each of the 13 historical localities that were revisited (Magnacca 2007, p. 183). *Hylaeus facilis* was not observed at 26 other sites with potentially suitable habitat, including many sites from which other native *Hylaeus* species have been recently collected (Daly and Magnacca 2003, pp. 7, 81–82; Magnacca 2007, p. 183).

Currently, *Hylaeus facilis* is only known from three sites, one each on the islands of Maui, Molokai, and Oahu (Daly and Magnacca 2003, pp. 81–82; Magnacca 2005c, p. 2). According to the petitioner, this species is likely extirpated from Lanai (Xerces 2009c, p. 7).

Hylaeus hilaris

Taxonomy

Hylaeus hilaris was first described as *Prosopis hilaris* by Smith in 1879 (Daly and Magnacca 2003, pp. 103–104), transferred to the genus *Nesoprosopis* 20 years later (Perkins 1899, pp. 75), and then *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). In 2003, Daly and Magnacca described the species as *Hylaeus hilaris* (Daly and Magnacca 2003, pp. 103–104).

Description

Hylaeus hilaris is distinguished by its large size (male wing length is 0.185 inches (in) (4.7 millimeters (mm)) relative to other coastal *Hylaeus* species. The wings of this species are slightly smoky to smoky colored, and it is the most colorful of the Hawaiian *Hyaleus* species. The face of the male is almost entirely yellow, with yellow markings on the legs and thorax, and the metasoma (middle portion of the abdomen) are usually predominantly red. Females are drably colored, with various brownish markings. As with other cleptoparasitic (see "Life History" below) species, *H. hilaris* lacks the specialized pollen-sweeping hairs of the front legs (Daly and Magnacca 2003, pp. 9, 106). It is also one of only two Hawaiian *Hyaleus* species to possess apical (at the end or tip of a structure) bands of fine white hairs on the segments of the metasoma.

Life History

Most adult Hawaiian *Hylaeus* species consume nectar for energy; however, *Hylaeus hilaris* has yet to be observed actually feeding from flowers. *Hylaeus hilaris* and the four species related to it (*H. hostilis, H. inquilina*, *H. sphecodoides*, and *H. volatilis*) are known as cleptoparasites or cuckoo bees. The mated female does not construct a nest or collect pollen, but instead enters the nest of another species and lays an egg in a partially provisioned cell. Upon emerging, the cleptoparasitic larva kills the host egg and consumes the provisions, pupates, and eventually emerges as an adult. As a result of this lifestyle shift, *H. hilaris* bees have lost the pollen-collecting hairs that other species possess on the front legs. Cleptoparasitism is actually quite common among bees: approximately 25 percent of known bee species have evolved to become cleptoparasites. Among the world's bees, other than the Hawaiian *Hylaeus* group, no cleptoparasites are known from the family Colletidae (Daly and Magnacca 2003, p. 9). The larvae of *H. hilaris* and their diet are unknown (Magnacca 2005d, p. 2); however, the species is known to lay its eggs within the nests of *H. anthracinus, H. assimulans*, and *H. longiceps* (Perkins 1913, p. lxxxi). Although the species has never been observed at flowers, *H. hilaris* adults presumably consume nectar as a food source (Xerces 2009 d, p. 9). *Hylaeus hilaris* depends on a number of related *Hylaeus* host species for its parasitic larvae, and its population size is inherently much smaller than its host species (Xerces 2009d, p. 9).

Range and Distribution

Hylaeus hilaris was historically known from coastal strand habitat on the islands of Lanai, Maui, and Molokai. The petitioner states that it is believed to have occurred along much of the coast of these islands since its primary hosts, *H. anthracinus, H. assimulans*, and *H. longiceps*, likely extended throughout this habitat. According to the petition, nearly all of the coastal strand habitat has been either developed or degraded, and is no longer suitable for *H. hilaris* (Liebherr and Polhemus 1997, pp. 346–347; Magnacca 2007, pp. 186–188). *Hylaeus hilaris* was absent from three of its historical population sites revisited by researchers between 1998 and 2006. It was also not observed at 10 additional sites with potentially suitable habitat where other native *Hylaeus* species have been recently collected (Daly and Magnacca 2003, pp. 103, 106).

The petitioner states that this species has been collected only twice in the last 70 years, but acknowledges a gap of about 70 years between major collecting efforts (Xerces 2009d, p. 6). *Hylaeus hilaris* has recently been collected on two occasions; once in 1989 and again in 1999. The species was absent from each of its historical localities that were revisited between 1998 and 2006 (Xerces 2009d, p. 6). Currently, the only known population of *H. hilaris* is located on The Nature Conservancy's Moomomi Preserve on Molokai (Daly and Magnacca 2003, pp. 103, 106; Magnacca 2005d, p. 2). According to the petition, it is no longer extant on Lanai (Xerces 2009d, p. 6).

Hylaeus kuakea

Taxonomy and Description

Hylaeus kuakea was first described by Daly and Magnacca (2003, pp. 1, 125–127) from specimens collected in 1997 in the Waianae Mountains on Oahu. *Hylaeus kuakea* is a small, black bee with slightly smoky colored wings. This species does not fit into any of the well-defined *Hylaeus* species groups. Its facial marks are similar to those of the *H. difficilis* group and to *H. anthracinus*, but it can be distinguished by its unusual ivory facial marking covering the clypeus (the lower face region). *Hylaeus kuakea* also resembles *H. anthracinus,* but has a denser, more distinct arrangement of setae (sensory hairs) on the head and generally narrower marks next to the compound eyes (Daly and Magnacca 2003, p. 125; Magnacca 2005e, p. 2). Only two adult

male specimens have been collected; females have yet to be collected or observed.

Life History

The diet of the larval stage of *Hylaeus kuakea* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the adult female (Xerces 2009e, p. 7). The nesting habits of *H. kuakea* have not been observed, but the species is believed to be related to other wood-nesting Hawaiian *Hylaeus* species (Magnacca and Danforth 2006, p. 403).

According to information in the petition, the native host plants of the adult *Hylaeus kuakea* are unknown, but it is likely that this species visits several plants that other *Hylaeus* species are known to frequent, including *Acacia koa, Metrosideros polymorpha*, *Styphelia tameiameiae, Scaevola* spp., and *Chamaesyce* spp. (Magnacca 2005e, p. 2).

Range and Distribution

Hylaeus kuakea is only known from two collections made in Moho Gulch Ridge, at the northern end of Honouliuli Preserve, at an elevation of about 1,900 ft (579 m) in the Waianae Mountains on Oahu. *Hylaeus kuakea* is found in lowland mesic forest, which is increasingly rare and patchily distributed on Oahu (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66–67, 75).

According to the petitioner, although there is potentially suitable lowland mesic habitat in Honouliuli Preserve, no other individuals of *Hylaeus kuakea* were found in surveys subsequent to the type collection in 1997 (Magnacca 2007, p. 184). In addition, Perkins did not collect this species in surveys in the Honouliuli Preserve vicinity or in nearby areas in 1899, 1910, and 1911 (Xerces 2009e, p. 6). The petitioner therefore concludes that the extreme rarity of this species, its absence from nearby sites, and the fact that it was not discovered until very recently suggest that very few populations remain (Magnacca 2005e, p. 2).

Hylaeus longiceps

Taxonomy

Hylaeus longiceps was first described in 1899 as *Nesoprosopis longiceps* (Perkins 1899, pp. 75, 98), and then *Nesoprosopis* was reduced to a subgenus of *Hylaeus* in 1923 (Meade-Waldo 1923, p. 1). Daly and Magnacca (2003, pp. 133–134) most recently described the species as *Hylaeus longiceps.*

Description

Hylaeus longiceps is a small to medium-sized, black bee with clear to slightly smoky colored wings. Its distinguishing characteristics are its long head and the facial marks of the male. The lower face of the male is marked with a yellow band that extends at the sides of the face in a broad stripe above the antennal sockets. The area above the clypeus (lower face region) is very long and narrow, and the scape (the first antennal segment) is noticeably twice as long as it is wide. The female is entirely black and unmarked (Daly and Magnacca 2003, p. 133).

Life History

The diet of the larval stage of *Hylaeus longiceps* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the female adult (Xerces 2009a, p. 15). The nesting habits of *H. longiceps* are unknown, but the species is thought to nest underground, as in other closely related species (Magnacca 2005f, p. 2).

Hylaeus longiceps adults have been observed visiting the flowers of a wide variety of plants, including *Scaevola coriacea* (dwarf naupaka), *Sida fallax, Scaevola* spp. (naupaka kahakai), *Sesbania tomentosa* (ohai), *Myoposum sandwicense* (naio), *Santalum ellipticum* (iliahialoe, coast sandalwood), *Chamaesyce degeneri (*akoko), and *Vitex rotundifolia* (pohinahina) (Xerces 2009a, p. 14). The petitioner reports that it is likely that *H. longiceps* visits several plant species that other *Hylaeus* species are known to frequently visit, including *Scaevola* spp., *Chamaesyce* spp., *Tournefortia argentea, Jacquemontia ovata* (pau o hiiaka), and *Sida fallax* (Magnacca 2005f, p. 2).

Range and Distribution

Hylaeus longiceps is historically known from numerous coastal strand and lowland dry shrubland locations up to 2,000 ft (610 m) in elevation on the islands of Lanai, Maui, Molokai, and Oahu. The species is primarily known from coastal habitat, but is infrequently collected in dry shrubland. *Hylaeus longiceps* is rarely observed in higher elevation dry forests. Perkins (1899, p. 98) noted that *H. longiceps* was locally abundant, and probably occurred historically throughout much of the leeward and lowland areas on Maui Nui (Maui, Molokai, Lanai, and Kahoolawe) and Oahu, since its host plants, *Sida fallax, Chamaesyce* spp., *Scaevola* spp., and *Jaquemontia ovata*, occurred throughout these areas (Magnacca 2005f, p. 2). The petitioner states that most of the habitat in these areas has been either developed or degraded and is no longer suitable for *H. longiceps* (Liebherr and Polhemus 1997, pp. 346–347; Magnacca 2007, pp. 186–188).

Hylaeus longiceps is now restricted to small populations in small patches of coastal and lowland habitat on Lanai, Maui, Molokai, and Oahu (Magnacca 2005f, p. 2). Twenty-five sites that were either historic collecting localities for *H. longiceps* or contained potentially suitable habitat for this species were surveyed between 1997 and 2008. *Hylaeus longiceps* was observed at only six of the surveyed sites: three sites on Lanai, one site on Maui, one site on Molokai, and one site on Oahu. Only one historic location, Waieu Dune on Maui, still supports a population of *H. longiceps* (Daly and Magnacca 2003, p. 135).

Hylaeus mana

Taxonomy and Description

Hylaeus mana was first described by Daly and Magnacca (2003, pp. 135–136) from four specimens collected in 2002 on the leeward side of the Koolau Mountains on Oahu. This species is an extremely small, gracile (gracefully slender) black bee with yellow markings on the face. The smallest of all Hawaiian *Hylaeus* species, *H. mana* is a member of the *dumetorum* species group. The face of the male is largely yellow below the antennae, extending dorsally in a narrowing stripe. The female's face has three yellow lines, one against each eye, and a transverse stripe at the apex of the clypeus (lower face region). The female's other markings are the same as the male's (Daly and Magnacca 2003, p. 135). *Hylaeus mana* can be distinguished from *H. mimicus* and *H. specularis*, with whom its range overlaps, by its extremely small size, the shape of the male's genitalia, the female's extensive facial marks, and a transverse rather than longitudinal clypeal marking (Daly and Magnacca 2003, p. 138).

Life History

The diet of the larval stage of *Hylaeus mana* is unknown, although the larvae are presumed to feed on stores of pollen and nectar collected and deposited in the nest by the adult female (Xerces 2009e, p. 7). The nesting habits of *H. mana* are not well known, but it is assumed the species is closely related to other wood-nesting Hawaiian *Hylaeus* species (Magnacca and Danforth 2006, p. 403).

Adult specimens of *Hylaeus mana* were collected while they visited

flowers of *Santalum freycinetianum* var. *freycinetianum* (iliahi, sandalwood), a native Hawaiian plant found only on Oahu and Molokai (Wagner *et al.* 1999, p. 1221). The petitioner asserts that it is likely that *H. mana* visits several other native plant species, including *Acacia koa, Metrosideros polymorpha, Styphelia tameiameiae, Scaevola* spp., and *Chamaesyce* spp. (Magnacca 2005g, p. 2).

Range and Distribution

Hylaeus mana is only known from lowland mesic forest located along the Manana Trail in the Koolau Mountains on Oahu, at an elevation of about 1,400 ft (427 m). Few *Hylaeus* bees have been found in this type of koa-dominated, lowland mesic forest on Oahu (Daly and Magnacca 2003, p. 138). This type of forest is increasingly rare and patchily distributed on Oahu (Smith 1985, pp. 227–233; Juvik and Juvik 1998, p. 124; Wagner *et al.* 1999, pp. 66–67, 75).

According to the petition, because the first collection of *Hylaeus mana* was made in 2002, the historic range and current distribution, other than the collection on Manana Trail, are unknown at this time (Magnacca 2005g, p. 2). This species was not found in surveys of potentially suitable habitat in the same general area by Perkins in 1899, 1910, and 1911 (Xerces 2009e, p. 6). The petitioner therefore concludes that the extreme rarity of this species, its absence from nearby sites, and the fact that it was not discovered until very recently suggest that very few populations remain (Magnacca 2005g, p. 2).

We accept the characterization of the seven species of Hawaiian yellow-faced bees (*Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*) as described in the information provided by the petitioner.

Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90–day finding, we evaluated whether information on threats to the seven Hawaiian *Hylaeus* bee species presented in the petitions and available in our files at the time of the review of the petitions constitute substantial scientific or commercial information such that listing the species may be warranted. Our evaluation of this information is discussed below. Unless clearly stated that the information is from our files, all threats described below and their effects on the seven Hawaiian *Hylaeus* bee species are based on information submitted in the petitions. Any references provided in support of particular statements related to potential threats are the petitioner's references, unless specifically identified otherwise.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

According to the petitions, degradation and loss of coastal and lowland habitat used by *Hylaeus* bees on all of the main Hawaiian Islands is the primary threat to these seven species (Cuddihy and Stone 1990, pp. 60–61; Daly and Magnacca 2003, pp. 55, 173). Coastal and lowland habitats have been severely altered and degraded, partly because of past and present land management practices, including agriculture, grazing, and urban development; the deliberate and accidental introductions of nonnative animals and plants; and recreational activities. In addition, the petitions present information indicating that fire is a potential threat to the habitat of these seven species in some locations.

Habitat Destruction and Modification by Urbanization and Land Use Conversion

Increased access to coastal areas, and resulting habitat disturbance, has been facilitated by coastal development and roadbuilding (Cuddihy and Stone 1990, pp. 94–95). As described in the petitions, five species (*Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, and *H. longiceps*) were once widespread and common in coastal strand habitat (Perkins 1912, p. 688). These five *Hylaeus* species are now absent from all of Perkins' coastal collection localities. *Hylaeus facilis* has recently been collected in coastal habitat at Kuololimu Point, and *H. hilaris* has recently been collected in coastal habitat at Moomomi Preserve, Molokai (Xerces 2009c, p. 9).

The petitioner states that lowland dry forests and shrublands have been heavily impacted by urbanization and conversion to agriculture or pasture throughout the Hawaiian Islands, with the estimated loss of more than 90 percent of dry forests and shrublands (Bruegmann 1996, p. 26; Juvik and Juvik 1998, p. 124). Four species (*Hylaeus anthracinus, H. assimulans, H. facilis,* and *H. longiceps*) were once widespread and found within lowland dry habitat on several islands, including Hawaii, Lanai, Maui, Molokai, and Oahu, but are largely absent from their historical population sites on these islands.

Mesic forest, once abundant and considered the most diverse of all Hawaiian forest types (Rock 1913, p. 9), is now very rare, with much of it converted to pasture, or military or agricultural use, or lost to urbanization (Cuddihy and Stone 1990, p. 61; Magnacca 2007, p. 187). Fire has also negatively impacted this habitat type, as is discussed below. *Hylaeus facilis* was historically the most wide ranging of the seven bee species in terms of the variety of habitats from which it was recorded, which included mesic forest on Lanai, Maui, Molokai, and Oahu. This species is now restricted to single locations on the islands of Molokai and Oahu.

The petitioner identified the loss of coastal, dry lowland, and montane wet forest habitat on Oahu, Lanai, Maui, and Molokai as a contributing factor to the decline of *H. facilis*, but acknowledges that "although recorded from several sites currently considered to be wet forest, it is possible that *H. facilis* would not normally inhabit this [habitat] in a natural state." The petitioner attributes the current observation of this species at sites now known to be wetter than they were during the early Perkins' collecting period to the more open understory vegetation (Perkins 1899, p. 76). It is conceivable that the loss of mesic forest habitat used by *H. kuakea* is due to urbanization and land use conversion, although the petitioner presents no information in this regard, nor do we have information in our files regarding the historical locations of these two species, both of which were only recently collected (*H. kuakea* in 1997; *H. mana* in 2002).

Habitat Destruction and Modification by Nonnative Plants

The petitioner states that the spread of nonnative plant species is one of the primary causes of decline, and a current threat to the existing populations of each of the seven *Hylaeus* bee species, because they depend closely on native vegetation for nectar and pollen, and the bees are almost entirely absent from habitat dominated by invasive, nonnative vegetation (Sakai *et al.* 2002, pp. 276, 291; Daly and Magnacca 2003, p. 11; Liebherr 2005, p. 186). According to information available in our files and

presented by the petitioner, the native flora within a majority of lowland habitat on the Hawaiian Islands below 1,969 ft (600 m) is being replaced by aggressive, nonnative plant species (Cuddihy and Stone 1990, pp. 73–74; Wagner *et al.* 1999, p. 52). The petitioner states that many native plant species that are replaced by nonnative plants were once foraging resources for numerous *Hylaeus* species (Cox and Elmqvist 2000, p. 1238; Daly and Magnacca 2003, p. 11; USFWS 1999, pp. 145, 163, 171, 180; USFWS 2008, pp. 7, 9). Six of the seven *Hylaeus* bee species (*Hylaeus anthracinus, H. assimulans, H. facilis, H. kuakea, H. longiceps*, and *H. mana*) are most often found in dry and mesic forest and shrubland habitat (Daly and Magnacca 2003, p. 11), and the greatest proportion of endangered or at-risk Hawaiian plant species are also limited to these same habitats; 25 percent of Hawaiian listed plant species are from dry forest and shrubland alone (Sakai *et al.* 2002, pp. 276, 291, 292). The petitioner asserts that lowland dry and mesic forests now support less-diverse *Hylaeus* communities because many native plants used for foraging are extirpated from these habitats (Magnacca 2007, pp. 186–187).

The petitioner states that besides *Scaevola sericea* (naupaka kahakai), native vegetation is lacking along most of the coastline of the major Hawaiian Islands, and that *Hylaeus* bees cannot survive on this plant alone (Magnacca 2007, p. 187). The petitioner also states that native coastal vegetation in many areas, such as Moomomi Preserve on Molokai, which currently is the only known location for *Hylaeus hilaris*, is threatened by *Prosopis pallida* (kiawe), an invasive, nonnative, deciduous thorny tree (Xerces 2009a, p. 25; 2009b, p. 17; 2009c, p. 21; 2009d, p. 11).

According to the petitions, many of the native plants that serve as foraging resources for the adults of the seven *Hylaeus* bee species are declining due to a lack of pollinators (Daly and Magnacca 2003, p. 11; USFWS 2008, pp. 7, 9) and are found only in very small populations (USFWS 1999, pp. 145, 163, 171, 180; Cox and Elmqvist 2000, p. 1238). The petitioner points out, for example, that *H. longiceps* and *H. anthracinus* are known to forage on the federally endangered plant *Sesbania tomentosa* (ohai). Both *H. longiceps* and *H. anthracinus* also visit *Chamaesyce celastroides* var. *kaenana* (akoko), a federally endangered plant endemic to coastal dry shrubland on Oahu (Daly and Magnacca 2003, pp. 55, 74). *Hylaeus longiceps* is also known to forage on the endangered *Scaevola coriacea* (dwarf naupaka) (USFWS 1999, p. 145; Daly and Magnacca 2003, pp. 55, 135). In addition, *H. anthracinus* has been collected from inside the fruit capsule of *Kadua coriacea* (kioele), a federally endangered dry forest plant, known from fewer than 300 individuals on the island of Hawaii (USFWS 2008, p. 5; Christian Torres, USFWS, pers. comm. 2009).

Habitat Destruction and Modification by Nonnative Ungulates

The petitioner claims that the decline of native plant communities has likely had a negative impact on Hawaii's *Hylaeus* bee species (Cuddihy and Stone 1990, pp. 59–66, 88–94, 73–76; USFWS 2006, p. 2684). The presence of nonnative mammals, such as feral pigs (*Sus scrofa*), cattle (*Bos taurus*), goats (*Capra hircus*), and axis deer (*Axis axis*), is considered one of the primary factors underlying the alteration and degradation of native vegetation and habitat in the Hawaiian Islands (Stone 1985, pp. 262–263; Cuddihy and Stone 1990, pp. 60–66; 73 FR 73801). Beyond the direct effects of trampling and consuming native plants, nonnative ungulates contribute significantly to increased erosion, and their behavior (i.e., rooting, moving across large expanses) facilitates the spread and establishment of competing, invasive, nonnative plant species (Xerces 2009a, p. 26; 2009b, p. 18; 2009c, pp. 21–22, 2009d, pp. 12–13, 2009e, p. 10). Several endangered coastal and lowland plant species that are threatened by the browsing, trampling, and digging activities of nonnative ungulates are confirmed foraging sources for *Hylaeus* species and, therefore, are likely foraging sources for these seven *Hylaeus* species (USFWS 1999, pp. 145, 163, 171, 180; Daly and Magnacca 2003, pp. 11, 13).

Habitat Destruction and Modification by Fire

The petitions state that fire can dramatically alter the species composition of plant communities in coastal and lowland habitats (Hughes *et al.* 1991, p. 743; Blackmore and Vitousek 2000, p. 625), and thus potentially impact *Hylaeus* populations. The petitioner also suggests that ordnance-induced fires on the Army's Pohakuloa Training Area on the island of Hawaii may threaten the dry forest habitat of *Hylaeus anthracinus*. Fires were uncommon in the Hawaiian Islands until the arrival of humans about 2,000 years ago (Smith and Tunison 1992, pp. 394–395). Native habitat in the Hawaiian Islands has been increasingly colonized by fire-adapted invasive plant species that take the place of, and permanently replace, native plant species (Cuddihy and Stone, pp. 88–94; Smith and Tunison 1992, pp. 394–395; D'Antonio *et al.* 2000, pp. 73–74). This process has been facilitated by nonnative ungulates, which alter the floral composition of native habitats, making conditions more conducive to fire. This impact occurs because of the browsing and trampling of native vegetation, and the spreading of seeds of nonnative, fire-adapted plant species such as *Melinis minutiflora* (molasses grass) and *Schizachyrium condensatum* (tufted beardgrass) (D'Antonio *et al.* 2000, pp. 73–74).

Habitat Destruction and Modification by Recreational Activities

The petitions state that some of the best habitat areas for *Hylaeus* species are also popular recreational sites, particularly those areas located within coastal strand habitat (Xerces 2009a, p. 27; 2009c, p. 22). Human impacts at recreational sites may include removal or trampling of vegetation on or near trails and the compaction of vegetation by off-road vehicles (Xerces 2009a, p. 27; 2009c, p. 22). In particular, the petitioner claims that *Hylaeus facilis* habitat may be threatened by recreational activities, such as hunting and hiking on the Poamoho Trail on Oahu (Hawaii Department of Land and Natural Resources 2000, p. 15; Xerces 2009c, p. 22). According to the petitions, some of the best remaining habitat for *H. anthracinus* and *H. longiceps* includes Kaena Point (on Oahu), Kona Coast State Park, Makalawena, Mokuauia, and South Point (on the island of Hawaii), areas that are popular recreational sites with largely unregulated access (Xerces 2009a, p. 27).

Habitat Destruction and Modification by Climate Change

The petitioner asserts that a changing climate may cause shifts in the range of *Hylaeus* host plant species, which can be especially detrimental to dependent pollinators like these seven species when combined with habitat loss (National Research Council 2007, p. 102). Most bees have difficulty crossing large geographical barriers (Michener 2000, p. 103), and successive generations of solitary species like *Hylaeus* tend to nest in the same area year after year. The petitioner points out that the seven *Hylaeus* bee species are restricted to habitat patches where native host plant species are present, and argues that they are not likely to disperse far to find new habitat (Xerces 2009a, p. 30; 2009b, p. 21; 2009c, p. 25; 2009d, p. 14; 2009e, p. 13). Thus, the

ecology of these seven species, combined with the patchy distribution of their remaining habitat, may hinder their dispersal if relocation becomes necessary due to climate-influenced changes in distribution of host plant species (Magnacca 2007, pp. 173, 181–183, 188) and cause the extirpation of remaining populations of *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*.

The petitioner states that climate change may also have a deleterious effect upon the seven *Hylaeus* bee species due to climate-induced changes in rainfall patterns, since these species prefer relatively dry habitats, some of which lack groundwater sources. The petitioner presents a concern that a predicted rise in sea level in the Hawaiian Islands (Baker *et al.* 2006, p. 1) might threaten coastal strand populations of the seven *Hylaeus* bee species. The petitions cite one study that predicted that sea level rise in the Northwestern Hawaiian Islands will cause a median projected loss of land of 3 to 65 percent with a 19-in (48-cm) sea level rise, and a maximum projected loss of land of 5 to 75 percent with a 35-in (88-cm) sea level rise (Baker *et al.* 2006, p. 1). Although none of the seven *Hylaeus* bees occurs on the Northwestern Hawaiian Islands, the petitioner concludes that sea level rise will also impact the populations of the five species of Hawaiian yellow-faced bees (*Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris*, and *H. longiceps*) inhabiting coastal sites on the main Hawaiian Islands.

Summary of Factor A

In summary, we find that the information provided in the petitions presents substantial scientific or commercial information indicating that the petitioned actions may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range. The petitioner has provided no information, and we have no information in our files to substantiate the claim that there will be climate-induced changes in rainfall patterns in the areas where the seven species occur, or that relatively dry habitats will be negatively impacted. The petitions did identify numerous potential factors that may be affecting *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*, including habitat loss and degradation due to urbanization and land conversion; replacement of native host plants by nonnative plants caused by the browsing, trampling, and rooting activities of nonnative ungulates, which facilitates the establishment of nonnative plants in disturbed areas; conversion by fire of native plant communities to plant communities dominated by nonnative, fire-adapted plants; and the removal or trampling of native vegetation by people and compaction of native vegetation by off-road vehicles in popular recreational areas, particularly in coastal strand habitat. Information in our files also indicates these factors may present a threat to the seven species of *Hylaeus*. We, therefore, conclude the petitions present substantial information to indicate that the present or threatened destruction or modification of habitat may present a threat to *H. anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana*.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

According to the petitioner, *Hylaeus facilis, H. hilaris*, *H. kuakea*, and *H. mana*, each with two or fewer known populations, are especially vulnerable to overcollection because the collection of even a few individuals could significantly reduce the production of offspring (Xerces 2009c, p. 23; 2009d, p. 13; 2009e, p. 11). However, the petitions also acknowledge that because of the high fecundity of individual insects, the collection of insects does not pose a threat to their populations (Xerces 2009c, p. 23; 2009d, p. 11; 2009e, p. 11), which introduces an element of uncertainty concerning this claim.

Insect collecting is a valuable component of research, including taxonomic work, and is often necessary for documenting the existence of populations and population trends. The petitioner has not presented information with which we can evaluate whether the overcollection of *Hylaeus facilis, H. hilaris*, *H. kuakea*, or *H. mana* may present a threat to any of these species, or determine whether this activity has resulted in population declines. In this regard, neither the petitions, nor information available in our files, presents information that would indicate overcollection may present a significant threat to *H. anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, or *H. mana*.

C. Disease or predation

Neither the petitions nor information in our files presents information that would indicate disease is a current threat to *Hylaeus anthracinus, H. assimulans, H. facilis, H. hilaris, H. kuakea, H. longiceps*, or *H. mana*.

Predation by Nonnative Ants

Ants are known to prey upon *Hylaeus* species (Medeiros *et al.* 1986, pp. 45–46; Reimer 1994, p. 17), thereby directly eliminating them from specific areas. The petitions state that ants are not a natural component of Hawaii's arthropod fauna, and the native species of the islands evolved in the absence of predation pressure from ants. They also state that ants can be particularly destructive predators because of their high densities, recruitment behavior, aggressiveness, and broad range of diet (Reimer 1993, pp. 17–18). The petitions also state that the threat of ant predation on the seven *Hylaeus* bee species is amplified by the fact that most ant species have winged reproductive adults (Borror *et al.* 1989, p. 738) and can quickly establish new colonies in suitable habitats (Staples and Cowie 2001, p. 55). In addition, the petitions state that these attributes allow some ants to destroy otherwise geographically isolated populations of native arthropods (Nafus 1993, pp. 19, 22–23).

According to the petitions, at least 47 species of ants are known to be established in the Hawaiian Islands (Hawaii Ants 2008, pp. 1–11). Native insect fauna, likely including *Hylaeus* bees (Zimmerman 1948, p. 173; Reimer *et al.* 1990, pp. 40–43; HEAR database 2005, pp. 1–2), have been severely impacted by at least four particularly aggressive ant species: The big-headed ant (*Pheidole megacephala*), the long-legged ant (also known as the yellow crazy ant) (*Anoplolepis gracilipes*), *Solenopsis papuana* (no common name), and *Solenopsis geminata* (no common name). The petitions state that numerous other species of ants are recognized as threats to Hawaii's native invertebrates, and an unknown number of new species of ants are established every few years (Staples and Cowie 2001, p. 53). The petitions state that due to their preference for drier habitat sites, ants are more likely to occur in high densities in the dry and mesic habitat currently occupied by the seven bees (Xerces 2009a, p. 28; 2009b, p. 19; 2009c, p. 24; 2009d, pp. 13–14; 2009e, pp. 11–12).

The petitions state that the long-legged ant appeared in Hawaii in 1952; now occurs on Kauai, Oahu, Maui, and Hawaii (Reimer *et al.* 1990, p. 42); and inhabits low-to-mid-elevation (less than 2,000-ft (600-m)) rocky areas of moderate rainfall (less than 100 in (250 cm) annually) (Reimer *et al.* 1990, p. 42). The petitioner also states that direct observations indicate that Hawaiian arthropods are susceptible to predation by this species; Gillespie and Reimer

(1993, p. 21) and Hardy (1979, p. 34) documented the impacts to native insects within the Kipahulu area on Maui after this area was invaded by the long-legged ant. The petitioner concludes that although only cursory observations exist, long-legged ants are thought to be a threat to populations of the seven *Hylaeus* bees within dry to mesic areas within their elevation range (Reimer *et al.* 1990, p. 42).

Solenopsis papuana is the only abundant, aggressive ant that has invaded intact mesic to wet forest from sea level to over 2,000 ft (600 m) on all of the main Hawaiian Islands, and is still expanding its range (Reimer 1993, p. 14). The petitions state that because of this species' expanding range, it may threaten populations of *Hylaeus facilis* in mesic areas up to 2,000 ft (600 m) in elevation (Reimer 1993, p. 14).

The petitions state that the presence of ants in nearly all of the low-elevation habitat sites historically and currently occupied by the seven *Hylaeus* bee species may increase the uncertainty of *Hylaeus* recovery within these areas. *Hylaeus* populations are known to be drastically reduced in ant-infested areas (Medeiros *et al.* 1986, pp. 45–46; Stone and Loope 1987, p. 251; Cole *et al.* 1992, pp. 1313, 1317, 1320; Reimer 1994, p. 17). Although ant species' primary impact on the native invertebrate fauna is via predation (Reimer 1994, p. 17), they also compete for nectar (Howarth 1985, p. 155; Hopper *et al.* 1996, p. 9; Holway *et al.* 2002, pp. 188, 209; Daly and Magnacca 2003, p. 9; Lach 2008, p. 155) and nest sites (Krushelnycky *et al.* 2005, pp. 6–7). Some ant species may impact *Hylaeus* species indirectly as well, by predating on seeds of native plants (Bond and Slingsby 1984, p. 1031). The petitioner suggests that the greatest ecosystem-level effect of invasive ants has been on pollination. Additionally, where ranges overlap, ants compete with native pollinators such as *Hylaeus* species and preclude them from pollinating native plants. For example, the big-headed ant is known to actively rob nectar from flowers without pollinating them (Howarth 1985, p. 157). Lach (2008, p. 155) found that *Hylaeus* species that regularly collect pollen from flowers of *Metrosideros polymorpha* were entirely absent from trees that had their flowers exposed to big-headed ant foraging.

The *Hylaeus* egg, larvae, and pupal stages are more vulnerable to attack by ants than the mobile adult bee (Daly and Magnacca 2003, p. 10). Invasive ants have severely impacted ground-nesting *Hylaeus* species in particular (Cole *et al.* 1992, pp. 1317, 1320; Medeiros *et al.* 1986, pp. 45–46), because their nests are easily accessible, and in or near the ground. Since *Hylaeus anthracinus, H. facilis, H. hilaris*, and *H. longiceps* are related to other ground-nesting *Hylaeus* species, they may also be susceptible to ant predation (Magnacca 2005g, p. 2).

The rarity or disappearance of native *Hylaeus* species, including the seven petitioned Hawaiian yellow-faced bee species, from historically documented localities over the past 100 years is likely due to a variety of factors. There is no information that conclusively correlates the decrease in *Hylaeus* observations with the establishment of nonnative ants in low-to-montane and dry-to-wet habitats on the Hawaiian Islands; however, their collective presence suggests that nonnative ants may have played a role in the decline of some populations of the seven *Hylaeus* bee species evaluated in this finding.

Predation by Nonnative Western Yellowjacket Wasps

The petitioner suggests that *Vespula pensylvanica* (the western yellowjacket wasp) is a potentially serious threat to the seven *Hylaeus* bees. This assertion is supported by literature available in our files (Gambino *et al.* 1987, p. 170; Wilson *et al.* 2009, pp. 1–5). The western yellowjacket wasp is a social wasp species native to the mainland of North America. It was first reported from Oahu in the 1930s (Sherley 2000, p. 121), and an aggressive race became established in 1977 (Gambino *et al.* 1987, p. 170). In temperate climates, the western yellowjacket wasp has an annual life cycle, but in Hawaii's tropical climate, colonies of this species persist through a second year, allowing them to have larger numbers of individuals (Gambino *et al.* 1987, p. 170) and thus a greater impact on prey populations. Most colonies are found between 1,969 and 3,445 ft (600 and 1,050 m) in elevation (Gambino *et al.* 1990, p. 1,088), although they can also occur at sea level. The western yellowjacket wasp is known to be an aggressive, generalist predator (Gambino *et al.* 1987, p. 170), and has been documented preying upon Hawaiian *Hylaeus* species (Wilson *et al.* 2009, p. 2). The petitioner argues that predation by the western yellowjacket wasp is a potentially significant threat to *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana* because of their small population sizes. This may present a particular threat to *H. facilis, H. hilaris*, *H. kuakea*, and *H. mana* because each species has two or fewer populations. The petitions also suggest that the western yellowjacket wasp may compete for nectar with *Hylaeus* species, but the petitions provide no information indicating that competition for nectar is a threat.

Predation by Nonnative Parasitoid Wasps

The petitions state that native and nonnative parasitoid wasps parasitize some Oahu *Hylaeus* species and may pose a threat to *H. kuakea* and *H. mana* (Xerces 2009e, p. 12). The petitions also state that *Hylaeus* larvae are known to be attacked by parasitoid wasps within the Encyrtidae and Eupelmidae families, although it is unconfirmed whether parasitoid wasps utilize *H. kuakea* and *H. mana* as nutritional hosts for their larvae (Xerces 2009e, p. 12). However, the petitions did not provide any evidence, and we have nothing in our files, to support these claims.

Summary of Factor C

Overall, the petitions provided substantial scientific or commercial information indicating that the petitioned actions may be warranted due to disease or predation. Neither the petitions, nor information available in our files, present data that would indicate that predation by parasitoid wasps presents a threat to any of the *Hylaeus* species addressed in this finding. Although the petitions suggest that the western yellowjacket wasp may compete for nectar with *Hylaeus* species, no information was presented that would allow us to evaluate whether this presents a significant threat to any of the petitioned species. However, observations and reports have documented that ants are particularly destructive predators because of their high densities, broad range of diet, and ability to establish new colonies in otherwise geographically isolated locations, because the reproductive adults are able to fly (Xerces 2009a, pp. 27–28; 2009b, pp. 19–20; 2009c, p. 23; 2009d, pp. 13–14, 2009e, p. 11). In addition, the western yellowjacket wasp has been documented to prey upon Hawaiian *Hylaeus* species (Xerces 2009a, p. 29; 2009b, p 20; 2009c, p. 24; 2009d, pp. 14–15, 2009e, pp. 12–13). Accordingly, we conclude the petitions present substantial information indicating that *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana* may be threatened because of predation by nonnative ants and the nonnative western yellowjacket wasp.

D. The Inadequacy of Existing Regulatory Mechanisms

The petitioner stated that there are no existing Federal, State, or local laws,

treaties, or regulations that specifically conserve or protect habitat for the seven *Hylaeus* bee species. The petitioner does acknowledge that some historic and current collection localities are protected from development by Federal or State agencies; one of two known populations of *H. facilis* occurs at Kalaupapa National Historical Park on Molokai, and three species (*H. anthracinus, H. hilaris,* and *H. longiceps*) occur at the State's Kaena Point Natural Area Reserve (NAR) on Oahu, Kanaio NAR on Maui, or The Nature Conservancy's Moomomi Preserve on Molokai. The petitioner asserts that conservation of the seven *Hylaeus* bees will likely require active management of their known population sites, involving exclusion and removal of feral ungulates, control and removal of nonnative plant and insect species, and the restoration of native vegetation (Magnacca 2007, p. 185). The petitions state that existing regulatory mechanisms are inadequate to provide the necessary active management needed to protect the seven *Hylaeus* species (Xerces 2000a, p. 29; 2000b, p. 20; 2000c, p 24; 2000d, p. 15, 2000e, p. 13). However, there was no specific information provided in the petitions about existing regulatory mechanisms that could protect these species. We are also not aware of any regulatory mechanisms that address the seven *Hylaeus* species.

The petitioners claim that there are no protections provided by existing State or Federal regulations to effectively address potential threats to the seven species of Hawaiian yellow-faced bees (Xerces 2000a, p. 29; 2000b, p. 20; 2000c, p 24; 2000d, p. 15; 2000e, p. 13). However, the petitioners did not provide any additional information about existing regulatory mechanisms that could protect these species, and we have nothing in our files that describes any regulatory mechanisms that address the seven *Hylaeus* species. While information presented by the petitioner indicates that threats to the petitioned species may be posed by habitat destruction and degradation by nonnative ungulates and nonnative plants and through predation by nonnative insects, none of these threats are posed by an inadequacy of regulatory mechanisms. We, therefore, find that the petitions do not present substantial information indicating that the inadequacy of existing regulatory mechanisms may present a threat to *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, or *H. mana*. However, we will further evaluate the adequacy of existing regulatory mechanisms for protecting the seven species of Hawaiian yellow-faced bees and their habitats during our status review.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Small Number of Populations and Individuals

Species that are endemic to single islands or known from few, widely dispersed locations are inherently more vulnerable to extinction than widespread species because of the higher risks from genetic bottlenecks, random demographic fluctuations, climate change, and localized catastrophes such as hurricanes, landslides, and drought (Lande 1988, p. 1455; Mangel and Tier 1994, p. 607; Pimm *et al.* 1988, p. 757). These problems can be further magnified when populations are few and restricted to a limited geographic area, and the number of individuals is very small. Populations with these characteristics face an increased likelihood of stochastic extinction due to changes in demography, the environment, genetics, or other factors, in a process described as an extinction vortex (Gilpin and Soulé 1986, pp. 24–25). Small, isolated populations often exhibit a reduced level of genetic variability or genetic depression due to inbreeding, which diminishes the species' capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (Frankham 2003, pp. S22–S29; Soulé 1986, pp. 31–34). The negative impacts associated with small population size and vulnerability to random demographic fluctuations or natural catastrophes can be further magnified by synergistic interactions with other threats.

The petitioner states that all of the petitioned *Hylaeus* bee species are rare, have very small populations, and are likely more vulnerable to habitat change and stochastic events due to low genetic variability (Daly and Magnacca 2003, p. 3; Magnacca 2007, p. 173, Petition p. 13). Literature cited by the petitioner states that about three-quarters of the species described from the Hawaiian Islands by Perkins (1899, 1910, 1911) have been collected recently. Some are still as rare or as abundant as he observed, yet others, formerly abundant, have not been collected recently (Daly and Magnacca 2003, p. 3). Five species have not been collected recently from one or more islands from which they are historically known, 7 are restricted to endangered habitat, 10 are considered to be very rare and potentially endangered, and 10 have not been collected recently and could be extinct (Magnacca 2007, p. 3). The petitioner asserts that *Hylaeus facilis, H. hilaris*, *H. kuakea*, and *H. mana* have not been recently observed at some historical collection sites, and that each of these species now has two or fewer known populations, which could increase the risk of extinction due to stochastic events such as hurricanes, landslides, large wildfires, or prolonged drought (Jones *et al.* 1984, p. 209; Smith and Tunison 1992, p. 398; Petition p. 13). Since *H. hilaris* is cleptoparasitic and restricted to one known remaining population, it is at particularly high risk of extinction because of the rarity of its hosts and the fact that it is the most habitat-specific of all Hawaiian bees (Daly and Magnacca 2003). The recurrence intervals for stochastic events of this nature have not been explicitly defined, which introduces some uncertainty regarding potential effects to the petitioned species. The fact that a species is potentially vulnerable to stochastic processes does not necessarily mean that it is reasonably likely to experience, or have its status affected by, a given stochastic process within timescales that are meaningful under the Act.

While we recognize the inherent species risks of small population size and small numbers of individuals, we currently lack information needed to assess this potential threat to the status of the petitioned species. We will investigate issues related to *Hylaeus* population size and species susceptibility to catastrophic stochastic events during the status review in order to better address this concern in the 12–month finding.

Competition with Nonnative Insects

There are 15 known species of nonnative bees in Hawaii (Snelling 2003, p. 342), including two nonnative *Hylaeus* species (Magnacca 2007, p. 188). According to the petitioner, most nonnative bees inhabit areas dominated by nonnative vegetation and do not compete with native Hawaiian bees (Daly and Magnacca 2003, p. 13). The European honey bee (*Apis mellifera*) is an exception; this social species is often very abundant in areas with native vegetation and aggressively competes with *Hylaeus* for nectar and pollen (Hopper *et al.* 1996, p. 9; Daly and Magnacca 2003, p. 13; Snelling 2003, p. 345). The European honey bee was first introduced to the Hawaiian Islands in 1875, and currently inhabits areas from sea level to tree line (Howarth 1985, p. 156). The petitioner reports that European honey bees have been

observed foraging on *Hylaeus* host plants such as *Scaevola* spp. and *Sesbania tomentosa.* However, the petitioner does not present information indicating that Hawaiian *Hylaeus* populations have declined because of competition with European honey bees for nectar and pollen (Magnacca 2007, p. 188). The petitioner asserts that populations of the European honey bee are not as vulnerable to predation by nonnative ant species as are *Hylaeus* bees (see Factor C above). The petitioner refers to a study by Lach (2008, p. 155), who observed that although *Hylaeus* bees that regularly collect pollen from the flowers of *Metrosideros polymorpha* trees were entirely absent from trees whose flowers had been visited by the big-headed ant, visits by the European honey bee were not affected by big-headed ant presence.

As described by the petitioner, other nonnative bees found in areas of native vegetation include *Ceratina* species (carpenter bees), *Hylaeus albonitens* (Australian colletid bees), and *Lasioglossum impavidum* (no common name) (Magnacca 2007, p. 188). The petitioner suggests that these nonnative bees may impact native *Hylaeus* bees such as *H. facilis* through competition for pollen, based on their similar size and flower preferences. However, the petitioner acknowledges that the impact of these species on native *Hylaeus* bees has not been studied (Magnacca 2007, p. 188). The petitioner also suggests that parasitoid wasps may compete for nectar with native *Hylaeus* species (Daly and Magnacca 2003, p. 10), but did not present supporting information in this regard. No information on the potential threat to the species from parasitoid wasps is available in our files.

Summary of Factor E

In summary, the petitions provided substantial scientific or commercial information indicating that the petitioned actions may be warranted due to other factors affecting the species' continued existence. The petitioner did not present information, nor is information available in our files, indicating that competition from parasitoid wasps or other nonnative bees, such as *Ceratina* species, *Hylaeus albonitens*, and *Lasioglossum impavidum*, presents a threat to the petitioned species. However, the petitions do present information indicating that *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana* may be threatened because of their very small populations and low genetic variability, which may make them vulnerable to habitat change and stochastic events such as droughts. Each of the petitions characterizes the population status of the petitioned species as "small and isolated" or "extremely rare, very small populations," and we do not have any contrary information in our files. The petitioner also presents information indicating that competition with the European honey bee may present a threat to the seven *Hylaeus* bee species. We, therefore, conclude that the petition presents substantial scientific information indicating that other natural or manmade factors affecting the species' continued existence may threaten *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana.* These factors include the species' small numbers of populations and individuals and competition with nonnative European honey bees.

Finding

We have reviewed the petitions, supporting information provided by the petitioner, and information in our files, and we evaluated that information to determine whether the sources cited support the claims made in the petitions. On the basis of our evaluation of the petition under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the seven *Hylaeus* bees as threatened or endangered may be warranted. This finding is based on information that indicates these species' continued existence may be affected by destruction or modification of their coastal strand and lowland forest and shrubland habitat from urbanization and land conversion, nonnative plants, nonnative ungulates, fire, recreational activities (Factor A); predation by nonnative ants and the western yellowjacket wasp (Factor C); inadequate protection from threats by existing regulatory mechanisms (Factor D); and other natural or manmade factors such as small population size, and competition with the European honey bee (Factor E). The petitioner does not present substantial information that these seven *Hylaeus* bees are threatened by overcollection (Factor B) currently or in the future.

Because we have found that the petition presents substantial information indicating that listing the seven *Hylaeus* bee species may be warranted, we are initiating status reviews to determine whether listing these seven species under the Act is warranted. At the conclusion of the status reviews we will issue 12–month findings, in accordance with section 4(b)(3)(B) of the Act, as to whether or not the Service believes a proposal to list *Hylaeus anthracinus*, *H. assimulans*, *H. facilis*, *H. hilaris*, *H. kuakea*, *H. longiceps*, and *H. mana* is warranted.

The "substantial information" standard for a 90–day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will determine that listing is warranted.

References Cited

A complete list of all references cited herein is available on the Internet at *http://www.regulations.govand* upon request from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff of the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 3, 2010.

Daniel M. Ashe,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–14430 Filed 6–15–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 0907211157–0224–02]

RIN 0648–AX76

Fisheries in the Western Pacific; Community Development Program Process

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would establish requirements and procedures for soliciting, reviewing, and approving community development plans for access to western Pacific fisheries. The intent of this proposed rule is to promote the participation of island communities in fisheries that they have traditionally depended upon, but may not have the capabilities to support continued and substantial participation in, possibly due to economic, regulatory, or other constraints.

DATES: Comments on the proposed rule must be received by July 20, 2010.

ADDRESSES: Comments on this proposed rule, identified by 0648–AX76, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*; or
- Mail: Mail written comments to Michael D. Tosatto, Acting Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: Comments must be submitted to one of the above two addresses to ensure that the comments are received, documented, and considered by NMFS. Comments sent to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

The Western Pacific Fishery Management Council (Council) prepared amendments to the fishery ecosystem plans (FEP) for American Samoa, Hawaii, Marianas, and western Pacific Pelagics. These amendments contain background information on the issue. The amendments and proposed regulations, which are identical for all FEPs, are available from *www.regulations.gov*, and from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Michael D. Tosatto (see ADDRESSES) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jarad Makaiau, NMFS PIR, Sustainable Fisheries, 808–944–2108.

SUPPLEMENTARY INFORMATION: This document is also accessible at *www.gpoaccess.gov/fr*.

Section 305(i)(2) of the Magnuson-Stevens Act authorizes the Council and the Secretary of Commerce (Secretary), through NMFS, to establish a western Pacific community development program for any fishery under the authority of the Council and NMFS. The intent of the program is to provide western Pacific communities access to fisheries that they have traditionally depended upon, but may not have the capabilities to support continued and substantial participation in, possibly due to economic, regulatory, or other barriers.

In 2002, NMFS published the eligibility criteria for participating in the western Pacific community development program (67 FR 18512; April 16, 2002), but did not establish a mechanism to solicit and review development plans under the program. To address this issue, the Council developed and submitted to NMFS for review, amendments to the American Samoa, Hawaii, Marianas, and western Pacific Pelagic FEPs to establish this mechanism. The amendments are identical for each FEP.

This proposed rule would codify the eligibility criteria, as previously published (67 FR 18512; April 16, 2002), for participating in the program. To be eligible, a community must:

1. Be located in American Samoa, Guam, Hawaii, or the Northern Mariana Islands (collectively, the western Pacific);
2. Consist of community residents descended from aboriginal people indigenous to the western Pacific area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the western Pacific;
3. Consist of individuals who reside in their ancestral homeland;
4. Have knowledge of customary practices relevant to fisheries of the western Pacific;
5. Have a traditional dependence on fisheries of the western Pacific;
6. Are experiencing economic or other barriers or constraints that prevent full participation in the western Pacific fisheries and, in recent years, have not had harvesting, processing or marketing capability sufficient to support substantial participation in fisheries in the area; and
7. Develop and submit a community development plan to the Council and NMFS.

This proposed rule would require a community development plan to contain:

1. A statement of the purpose and goals of the plan;
2. A description of, and justification for, the proposed fishing activity;
3. The location of the proposed fishing activity;
4. The species to be harvested, directly and incidentally;
5. The gear type(s) to be used;
6. The frequency and duration of the proposed fishing activity; and
7. A statement describing the degree of involvement by the indigenous community members including the name, address, telephone and other contact information of each person who would conduct the proposed fishing activity, and a description of how the community and or its members meet each of the eligibility criteria.

If a vessel is to be used by the community to conduct fishing activities, the community development plan must include the vessel name and official number (USCG documentation, state, territory, or other registration number), length, displacement, fish holding capacity, any valid federal fishing permit number, and the name and contact information of the owner(s) and operator(s).

The proposed rule would require the Council to review each plan to ensure that it meets the intent of Section 305(i)(2) of the Magnuson-Stevens Act and contains all required information. If the Council finds that these requirements are met, the Council would then forward the plan to the NMFS Regional Administrator for review.

This proposed rule would require the Regional Administrator to review each plan to ensure the plan is consistent with the FEPs, the Magnuson-Stevens Act, and other applicable laws. NMFS would then publish a notice in the **Federal Register** to solicit public comment on the community development plan and any associated environmental review documents.

Within 90 days after the close of the public comment period for the plan, the Regional Administrator would be required to notify the applicant in writing of the decision to approve or disapprove the plan. If the plan is

approved, the NMFS Regional Administrator would publish a notice in the **Federal Register** describing the plan's authorized activities. The Regional Administrator may attach limiting terms and conditions to the authorization to ensure proper management and monitoring of the fishing activity, including, but not limited to, catch and trip limits, times and places where fishing may or may not be conducted, vessel monitoring system, observers, and/or reporting requirements.

To be considered, comments on this proposed rule must be received by July 20, 2010, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the fishery ecosystem plans for American Samoa, Hawaii, the Marianas, and western Pacific pelagic fisheries, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

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

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

The Council has proposed to amend the FEPs for American Samoa, Hawaii, Marianas, and western Pacific pelagics to establish a process to solicit, review, and implement community development plans submitted by eligible western Pacific communities. The Council and NMFS would review each plan and, if it meets all requirements, NMFS would authorize the plan. The proposed action is intended to promote participation in fisheries that communities have traditionally depended upon, but may not have capabilities to support continued and substantial participation in, possibly due to economic, regulatory, or other constraints. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. The proposed rule would only establish a procedure for the solicitation, review, and implementation of plans under the western Pacific community development program. This procedure is not expected to result in any significant economic impact on any western Pacific community. If subsequent rulemaking to implement approved plans directly impacts the economic profitability, or proxy thereof, of a community with an approved community development plan, NMFS will prepare an IRFA for that specific action.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a new collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval.

Public reporting burden for developing and submitting a development plan is estimated to average six hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information collected, and ways to minimize the burden of the collection of information including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Michael D. Tosatto (see **ADDRESSES**), and by email to *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

Because approved plans may be subject to additional conditions, this proposed rule also contains collection-of-information requirements subject to the PRA that have been previously approved by OMB. NMFS estimates that it may receive and process up to five (5) community development plan proposals each year. Therefore, the additional estimated burden on western Pacific community development plan respondents would not exceed the currently-approved burden estimates for the existing PRA collections listed below:

(1) Approved under 0648–0214, 0648–0577, 0648–0584, 0648–0586, and 0649–0589. (a) PIR logbook family of forms estimated at 5 minutes (min) per reporting action; (b) pre-trip and post-landing notifications estimated at 5 min per reporting action; (c) experimental fishing reports estimated at 4 hours (hr) per reporting action; (d) sales and transshipment reports estimated at 5 min per reporting action; (e) report on gear left at sea estimated at 5 min per reporting action; (f) claims for reimbursement for lost fishing time estimated at 4 hr per claim; (g) request for pelagics area closure exemption estimated at 1 hr per request; and (h) observer placement meetings estimated at 1 hr per reporting action. (§§ 665.14, 665.17, 665.105, 665.144, 665.145, 665.205, 665.207, 665.244, 665.247, 665.407, 665.444, 665.445, 665.606, 665.644, 665.645, 665.803, and 665.808.)

(2) Approved under 0648–0360, 0648–0361, 0648–0584, 0648–0586, and 0648–0589. PIR gear marking and vessel identification (a) estimated at 45 min to 1 hr 15 min per vessel for vessel identification, and (b) estimated at 2 min for each gear marking. (§§ 665.16, 665.128, 665.228, 665.246, 665.428, 665.628, and 665.804.)

(3) Approved under 0648–0441, 0648–0519, and 0648–0584. PIR vessel monitoring system (a) installation, estimated at 4 hr per reporting action; (b) repair and maintenance, estimated at 2 hr per reporting action; and (c) hourly automated position reports, estimated at 24 sec per day. (§ 665.19.)

(4) Approved under 0648–0456. PIR seabird interaction reporting (a) at-sea notification, estimated at 1 hr per reporting action; (b) reporting on recovery data form, estimated at 1 hr per reporting action; and (c) specimen tagging, estimated at 30 min per reporting action. (§ 665.815.)

(5) Approved under 0648–0462. PIR coral reef logbook reporting (a) at-sea notification, estimated at 3 min per reporting action; (b) logbook reporting, estimated at 30 min hr per reporting action; and (c) transshipment reports, estimated at 15 min per reporting action. (§§ 665.14, 665.126, 665.226, and 665.426.)

(6) Approved under 0648–0463. PIR coral reef special permit (a) application, estimated at 2 hr per application; and (b) special permit appeals, estimated at 3 hr per appeal. (§§ 665.124, 665.224, 665.424, and 665.624.)

(7) Approved under 0648–0490, 0648–0577, 0648–0584, 0648–0586, and 0649–0589: (a) PIR permit family of forms estimated at 30 min hr per permit action; (b) experimental fishing permits, estimated at 2 hr per application; and (c) appeals from permit actions estimated at 2 hr per permit appeal. (§§ 665.13, 665.17, 665.142, 665.162, 665.203, 665.242, 665.262, 665.404, 665.442, 665.462, 665.603, 665.642, 665.662, 665.801, and 665.807.)

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 665

Community Development, Fisheries, Fishing, Western and central Pacific.

Dated: June 9, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 665 is proposed to be amended as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

l. The authority citation for part 665 continues to read as follows:

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

2. In part 665, add a new § 665.20 to subpart A read as follows:

§ 665.20 Western Pacific community development program.

(a) *General.* In accordance with the criteria and procedures specified in this section, the Regional Administrator may authorize the direct or incidental harvest of management unit species that would otherwise be prohibited by this part.

(b) *Eligibility.* To be eligible to participate in the Western Pacific community development program, a community must meet the following criteria:

(1) Be located in American Samoa, Guam, Hawaii, or the Northern Mariana Islands (collectively, the western Pacific);

(2) Consist of community residents descended from aboriginal people indigenous to the western Pacific area who conducted commercial or subsistence fishing using traditional fishing practices in the waters of the western Pacific;

(3) Consist of individuals who reside in their ancestral homeland;

(4) Have knowledge of customary practices relevant to fisheries of the western Pacific;

(5) Have a traditional dependence on fisheries of the western Pacific;

(6) Are currently experiencing economic or other constraints that have prevented full participation in the western Pacific fisheries and, in recent years, have not had harvesting, processing or marketing capability sufficient to support substantial participation in fisheries in the area; and

(7) Develop and submit a community development plan to the Council and the NMFS that meets the requirements in paragraph (c) of this section.

(c) *Community development plan.* An eligible community seeking access to a fishery under the authority of the Council and NMFS must submit to the Council a community development plan that includes, but is not limited to, the following information:

(1) A statement of the purposes and goals of the plan.

(2) A description and justification for the specific fishing activity being proposed, including:

(i) Location of the proposed fishing activity.

(ii) Management unit species to be harvested, and any potential bycatch.

(iii) Gear type(s) to be used.

(iv) Frequency and duration of the proposed fishing activity.

(3) A statement describing the degree of involvement by the indigenous community members, including the name, address, telephone and other contact information of each individual conducting the proposed fishing activity.

(4) A description of how the community and or its members meet each of the eligibility criteria in paragraph (b) of this section.

(5) If a vessel is to be used by the community to conduct fishing activities, for each vessel:

(i) Vessel name and official number (USCG documentation, state, territory, or other registration number).

(ii) Vessel length overall, displacement, and fish holding capacity.

(iii) Any valid federal fishing permit number(s).

(iv) Name, address, and telephone number of the vessel owner(s) and operator(s).

(d) *Council review.* The Council will review each community development plan to ensure that it meets the intent of the Magnuson-Stevens Act and contains all required information. The Council may consider advice of its advisory panels in conducting this review. If the Council finds the community development plan is complete, it will transmit the plan to the Regional Administrator for review.

(e) *Agency review and approval.* (1) Upon receipt of a community development plan from the Council, the Regional Administrator will review the plan for consistency with the FEPs, Magnuson-Stevens Act, and other applicable laws. The Regional Administrator may request from the applicant additional information necessary to make the determinations pursuant to this section and other applicable laws before proceeding with the review pursuant to paragraph (e)(2) of this section.

(2) If the Regional Administrator determines that a plan contains the required information and is consistent with the FEPs, Magnuson-Stevens Act, and other applicable laws, NMFS will publish a notice in the **Federal Register** to solicit public comment on the proposed plan and any associated environmental review documents. The notice will include the following:

(i) A description of the fishing activity to be conducted.

(ii) The current utilization of domestic annual harvesting and processing capacity (including existing experimental harvesting, if any) of the target, incidental, and bycatch species.

(iii) A summary of any regulations that would otherwise prohibit the proposed fishing activity.

(iv) Biological and environmental information relevant to the plan, including appropriate statements of environmental impacts on target and non-target stocks, marine mammals, and threatened or endangered species.

(3) Within 90 days from the end of the comment period on the plan, the Regional Administrator will notify the applicant in writing of the decision to approve or disapprove the plan.

(4) If disapproved, the Regional Administrator will provide the reasons for the plan's disapproval and provide the community with the opportunity to modify the plan and resubmit it for review. Reasons for disapproval may include, but are not limited to, the following:

(i) The applicant failed to disclose material information or made false statements related to the plan.

(ii) The harvest would contribute to overfishing or would hinder the recovery of an overfished stock, according to the best scientific information available.

(iii) The activity would be inconsistent with an FEP or other applicable law.

(iv) The activity would create a significant enforcement, monitoring, or administrative problem, as determined by the Regional Administrator.

(5) If approved, the Regional Administrator will publish a notice of the authorization in the **Federal Register**, and may attach limiting terms and conditions to the authorization including, but not limited to, the following:

(i) The maximum amount of each management unit species and potential bycatch species that may be harvested and landed during the term of the authorization.

(ii) The number, sizes, names, identification numbers, and federal permit numbers of the vessels authorized to conduct fishing activities.

(iii) Type, size, and amount of gear used by each vessel, including trip limits.

(iv) The times and places where fishing may or may not be conducted.

(v) Notification, observer, vessel monitoring, and reporting requirements.

(f) *Duration.* Unless otherwise specified, and unless revoked, suspended, or modified, a plan may be effective for no longer than five years.

(g) *Transfer.* Plans authorized under this section are not transferable or assignable.

(h) *Sanctions.* The Regional Administrator may revoke, suspend or modify a community development plan in the case of failure to comply with the terms and conditions of the plan, any other applicable provision of this part, the Magnuson-Stevens Act, or other applicable laws.

(i) *Program review.* NMFS and the Council will periodically review and assess each plan. If fishery, environmental, or other conditions have changed such that the plan's goals or requirements are not being met, or the fishery has become in an overfished state or overfishing is occurring, the Regional Administrator may revoke, suspend, or modify the plan.

[FR Doc. 2010–14550 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 0912011421–0200–01]

RIN 0648–AY41

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Weakfish Fishery

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

ACTION: Proposed rule; re-opening of comment period.

SUMMARY: NMFS is reopening the comment period on the proposed rule to set the commercial possession limit for weakfish caught in the Exclusive Economic Zone (EEZ) at 100 lb (45 kg) per day or trip, whichever is longer in duration, and set the recreational possession limit at 1 fish per person per day or trip, whichever is longer in duration. The intent of the proposed rule is to modify regulations for the Atlantic coast stock of weakfish to be more compatible with Addendum IV to Amendment 4 of the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan (ISFMP) for weakfish. Such action is authorized under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act).

DATES: The deadline for written comments on the May 12, 2010 (75 FR 26703), proposed rule is re-opened. Comments will be accepted through June 30, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–AY41, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Suite 13317, Silver Spring, MD 20910, Attn: State-Federal Team. Mark the outside of the envelope: AComments on Weakfish Addendum IV.@
- Fax: (301) 713–0596, Attn: State-Federal Team.

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://regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, (301) 713–2334.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2009, the Commission adopted Addendum IV to Amendment 4 to the ISFMP for Weakfish (Addendum IV), in response to the stock status of weakfish. A recent peer-reviewed assessment found the weakfish stock to be depleted, with spawning stock biomass estimated to be three percent of an unfished stock, well below the 20–percent threshold and 30–percent target reference points approved by the Commission's Weakfish Management Board as part of Addendum IV. The decline in biomass reflects a sustained rise in natural mortality after 1995, rather than an increase in fishing mortality, which has been modest and stable over the same time period. In response to these findings, the Commission's Weakfish Management Board approved management measures to reduce exploitation of weakfish by more than 50–percent in both the recreational and commercial sectors. Addendum IV requires states to implement a one-fish recreational creel limit, 100 lb (45 kg) commercial trip limit, and 100 lb (45 kg) commercial bycatch limit during closed seasons. Addendum IV maintains the current 12–inch (30.5 cm) minimum size for weakfish, and reduces the number of undersized fish that may be retained per commercial trip from 300 to 100 fish. The sale of undersized fish continues to be prohibited. In implementing Amendment 4 to the weakfish plan, NMFS never adopted the 300 undersized fish exception to the 12–inch (30.5 cm) minimum fish size in Federal waters. NMFS continues the policy of no exemptions to the minimum size limit in the weakfish fishery here by not proposing a 100 undersized fish exception to the current minimum size limit in Federal waters. The Commission recommended in Addendum IV that NMFS promulgate all necessary regulations to implement complementary measures to those approved in the addendum.

On May 12, 2010, NMFS published a proposed rule that would implement compatible management measures in the EEZ in the **Federal Register** (75 FR 26703) with a 30–day comment period that ended on June 11, 2010. NMFS received a request from the State of North Carolina to extend the comment period for the proposed rule so that they could complete an analysis of the economic impacts of the proposed rule on North Carolina fisheries and submit that information as part of the State's comments on the rule. This additional information would be beneficial to our analysis of economic impacts of the proposed rule. Therefore, to allow for additional public comment to be submitted beyond the initial 30–day deadline, NMFS is reopening the comment period on the proposed rule through June 30, 2010.

Dated: June 11, 2010.

Eric C. Schwab,

Assistant Administrator for Fisheies, National Marine Fisheries Service.

[FR Doc. 2010–14541 Filed 6–11–10; 4:15 pm]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 115
Wednesday, June 16, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection to measure Rural Development implementation of and compliance with the Equal Treatment Rule (7 CFR part 16) and Executive Order (EO) 13279 Equal Protection of the Laws for Faith-Based and Community Organizations.

DATES: Comments on this notice must be received by August 16, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Rhonda Brown, Faith-Based and Neighborhood Partnerships Coordinator, Operations and Management, U.S. Department of Agriculture, Stop 0720, Room 4045, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 692–029, e-mail: *rhonda.brown@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rural Development-Voluntary Survey on the Equal Treatment Rule.

OMB Number: 0757–0192.

Expiration Date of Approval: October 31, 2010.

Type of Request: Intent to extend the clearance for collection of information under the Equal Treatment Rule (7 CFR part 16) and Executive Order (EO) 13279 Equal Protection of the Laws for Faith-Based and Community Organizations.

Abstract: The primary purpose of Faith-Based and Neighborhood Partnerships (formerly Faith-Based and Community Initiatives) is to improve non-profit participation, both faith-based and secular, through education and technical assistance. The primary objective of the Equal Treatment survey is results will enable Rural Development to measure the results and overall effectiveness of the FBNP outreach and implementation of and compliance with the Equal Treatment Rule and EO Orders 13279, 13199 Amended, and 13280.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Program non-profit applicants.

Estimated Number of Respondents: 4000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 4000.

Estimated Total Annual Burden on Respondents: 320 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 7, 2010.

Tammye Trevino,

Administrator, Rural Housing Service.

[FR Doc. 2010–14490 Filed 6–15–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; General Program Administration

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Farm Service (FSA) is requesting comments from individuals and organizations on an extension with revision of a currently approved information collection that supports Farm Loan Programs (FLP) for the General Program Administration.

DATES: We will consider comments that we receive by August 16, 2010.

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

- *Mail:* Clarence (Chuck) Ropp, Senior Loan Officer, USDA/FSA/FLP, STOP 0521, 1400 Independence Avenue, SW., Washington, DC 20250–0521.
- *E-mail: clarence.ropp@wdc.usda.gov.*
- *Fax:* 202–720–8474.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. Copies of the information collection may be requested by contacting Clarence (Chuck) Ropp at the above address.

FOR FURTHER INFORMATION CONTACT: Clarence (Chuck) Ropp, Senior Loan Officer, Farm Service Agency, (202) 690–4008.

SUPPLEMENTARY INFORMATION:

Title: Farm Loan Programs—General Program Administration (7 CFR part 761).

OMB Number: 0560–0238.

Expiration Date: 11/30/2010.

Type of Request: Extension with revision.

Abstract: FSA established the requirements that are applicable to both

making and servicing direct loans, as specified in 7 CFR part 761. Information collections are necessary to ensure that program applicants and participants meet statutory eligibility requirements, loan funds are used for authorized purposes and the Government's interest in security is adequately protected. Specific information collection requirements include financial information in the form of a balance sheet and cash flow projection used in loan making and servicing decisions; information needed to establish joint bank accounts in which loan funds, proceeds derived from the sale of loan security and insurance proceeds may be deposited; collateral pledges from financial institutions when the balance of a supervised bank account will exceed $100,000; and documents showing that construction plans and specifications comply with State and local building standards.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Average Time To Respond: Public reporting for this collection of information is estimated to average 53 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Estimated Annual Number of Respondents: 90,947.

Estimated Number of Responses per Respondent: 2.40.

Estimated Annual Number of Responses: 218,482.

Estimated Total Annual Burden Hours: 245,762.

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

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

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

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

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget (OMB) approval.

Signed at Washington, DC, on June 8, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–14428 Filed 6–15–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Saguache County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Saguache County Resource Advisory Committee will meet in Moffat, Colorado. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on June 30, 2010, and will begin at 1 p.m.

ADDRESSES: The meeting will be held at the Joyful Journey Conference Center, 28640 County Road 58 EE, Moffat, Colorado. Written comments should be sent to Mike Blakeman, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144. Comments may also be sent via e-mail to *mblakeman@fs.fed.us,* or via facsimile to 719–852–6250.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144.

FOR FURTHER INFORMATION CONTACT: Mike Blakeman, RAC coordinator, USDA, San Luis Valley Public Lands Center, 1803 West U.S. Highway 160, Monte Vista, CO 81144; 719–852–6212; E-mail *mblakeman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Introductions of all committee members, replacement members and Forest Service personnel. (2) Selection of a chairperson by the committee members. (3) Receive materials explaining the process for considering and recommending Title II projects; and (4) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: June 4, 2010.

Andrew S. Archuleta,

Designated Federal Officer.

[FR Doc. 2010–14436 Filed 6–15–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No.: 100611262–0262–01]

Re-Opening of Solicitation Period for the Opportunity To Serve on the Board of Directors of the Corporation for Travel Promotion

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: On April 19, 2010, the Department of Commerce's Office of the Secretary published a notice in the **Federal Register** (75 FR 20325) inviting expressions of interest to serve on the initial Board of Directors of the Corporation for Travel Promotion (Board). The April 19, 2010 notice provided that all information must be received by the Office of the Secretary of the Department of Commerce by the close of business on May 10, 2010. This notice re-opens the solicitation period in order to provide the public with additional opportunity to express interest and submit information. The selection criteria contained in the April 19, 2010 notice shall continue to apply. The purpose of the initial Board is to, among other things, serve as incorporators and establish the Corporation for Travel Promotion.

Interested parties representing the passenger air sector are strongly encouraged to consider this opportunity.

DATES: All information must be received by the Office of the Secretary at the e-mail or postal address below by close of business (EDT) on June 30, 2010.

ADDRESSES: Please submit relevant information via e-mail to *TPABoard@doc.gov* or by mail to John Connor, Office of the Secretary, U.S. Department of Commerce, Room 5835, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The Office of the Secretary is re-opening the period for receiving information and expressions of interest to serve on the Board of the Corporation for Travel Promotion (Corporation). Although the Department has received many applications, the Department re-opens the solicitation period to seek a broader applicant pool representative of each sector of the travel and tourism industry as described in the Travel Promotion Act of 2009 (TPA). The deadline for submitting information and expressions of interest is June 30, 2010. Information and expressions of interest received after the prior deadline of May 10, 2010 but before the issuance of this notice will be considered timely and will be given full consideration. Interested parties with appropriate expertise and experience from the passenger air sector are strongly encouraged to consider this opportunity. The selection criteria contained in the April 19, 2010 notice continue to apply and are republished herein for convenience. Information and expressions of interest already received remain under consideration and do not need to be resubmitted.

The Travel Promotion Act of 2009 (TPA) was passed on February 25, 2010 and signed into law on March 4, 2010. The TPA establishes the Corporation, a nonprofit corporation that will communicate United States entry policies and otherwise promote leisure, business, and scholarly travel to the United States.

The TPA states that the Corporation shall develop and execute a plan to (A) Provide useful information to those interested in traveling to the United States; (B) identify and address perceptions regarding U.S. entry policies; (C) maximize economic and diplomatic benefits of travel to the United States through the use of various promotional tools; and (D) ensure that international travel benefits all States and the District of Columbia, and identify opportunities to promote tourism to rural and urban areas equally, including areas not traditionally visited by international travelers.

The Corporation will be governed by a board of directors of eleven members with knowledge of international travel promotion and marketing and with appropriate expertise and experience in specific sectors of the travel and tourism industry. These members will broadly represent various regions of the United States.

Selection Criteria

The TPA directs the Secretary of Commerce (after consultation with the Secretary of Homeland Security and the Secretary of State) to appoint the board of directors for the Corporation for Travel Promotion. Thus, in accordance with the TPA, the Department of Commerce will be selecting individuals with the appropriate expertise and experience from specific sectors of the travel and tourism industry to serve on the Board as follows:

(A) 1 shall have appropriate expertise and experience in the hotel accommodations sector;

(B) 1 shall have appropriate expertise and experience in the restaurant sector;

(C) 1 shall have appropriate expertise and experience in the small business or retail sector or in associations representing that sector;

(D) 1 shall have appropriate expertise and experience in the travel distribution services sector;

(E) 1 shall have appropriate expertise and experience in the attractions or recreations sector;

(F) 1 shall have appropriate expertise and experience as officials of a city convention and visitors' bureau;

(G) 2 shall have appropriate expertise and experience as officials of a State tourism office;

(H) 1 shall have appropriate expertise and experience in the passenger air sector;

(I) 1 shall have appropriate expertise and experience in immigration law and policy, including visa requirements and United States entry procedures; and

(J) 1 shall have appropriate expertise in the intercity passenger railroad business.

To be eligible for Board membership, one must have international travel and tourism marketing experience and must also be a U.S. citizen. In addition, individuals cannot be federally registered lobbyists or registered as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Those selected for the initial Board must be able to meet the time and effort commitments of the Board to establish the new Corporation. Priority may be given to individuals with experience as a Chief Executive Officer or President (or comparable level of responsibility) of an organization or entity in the travel and tourism sector in the United States.

Board members will serve at the discretion of the Secretary of Commerce (who may remove any member of the Board for good cause). The term of office of each member of the Board will be 3 years, except that, of the members first appointed: (A) 3 shall be appointed for terms of 1 year; (B) 4 shall be appointed for terms of 2 years; and (C) 4 shall be appointed for terms of 3 years. Board members can serve a maximum of two consecutive full three-year terms.

Board members are not considered Federal government employees by virtue of their service as a member of the Board and will receive no compensation from the Federal government for their participation in Board activities. Members participating in Board meetings and events will be paid actual travel expenses and per diem when away from their usual places of residence.

To be considered for membership, please provide the following:

1. Name, title, and personal resume of the individual requesting consideration; and

2. A brief statement of why the person should be considered for membership on the Board. This statement should also address the individual's relevant international travel and tourism marketing experience and indicate clearly the sector or sectors enumerated above in which the individual has the requisite expertise and experience. Individuals who have the requisite expertise and experience in more than one sector can be appointed from only one of those sectors.

Appointments of members to the Board will be made by the Secretary of Commerce.

Dated: June 11, 2010.

John Connor,

Director, Office of the Secretary.

[FR Doc. 2010–14590 Filed 6–14–10; 11:15 am]

BILLING CODE 3510–DR–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 July 6, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be

examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–025. Applicant: University of Minnesota (Dept. of Chemical Engineering and Materials Science), 151 Amundson Hall, 421 Washington Ave. SE, Minneapolis, MN 55455. Instrument: High Pressure Oxygen Sputtering System. Manufacturer: Forschungszentrum Juelich GmbH, Germany. Intended Use: The instrument will be used to synthesize thin films, or coatings, of very high crystalline quality materials known as complex oxides. A pertinent characteristic of this instrument is that the special design of the sputter sources and vacuum chamber/pumping system allows it to operate properly at pressures in excess of 1 Torr. It also is designed to work in pure oxygen and is capable us substrate heating to over 900 C in a high pressure such an environment. Justification for Duty–Free Entry: No instruments of the same general category as the foreign instrument being manufactured in the U.S. Application accepted by Commissioner of Customs: May 20, 2010.

Docket Number: 10–027. Applicant: Argonne National Laboratory, 9700 South Cass Ave., Lemont, IL 60439. Instrument: MultiView 400 SPM/NSOM/Confocal Multi Probe System Probe and Sample Scanning Scan Head Assembly. Manufacturer: Nanonics Imaging, Ltd., Israel. Intended Use: The instrument will be used to study the optical properties of nanoscale materials made of metal, semiconducting, or organic materials. The instrument can detect small changes in absorption, emission, and light–scattering properties of materials with a spatial resolution of under 100 nanometers. The system has dual scanning probe heads that are independently controlled, which enables illumination and detection with sub–wavelength spatial resolution. Justification for Duty–Free Entry: No instruments of the same general category as the foreign instrument being manufactured in the U.S. Application accepted by Commissioner of Customs: June 1, 2010.

Docket Number: 10–028. Applicant: Boston College, 140 Commonwealth Ave., Chestnut Hill, MA 02467. Instrument: Infrared Mirror Furnace 4 Mirror Furnace. Manufacturer: Crystal Systems Corp., Japan. Intended Use: To synthesize a large array of known crystals along with future exploration of novel new crystalline materials. A unique characteristic of this furnace is that it can synthesize extremely high quality crystals without crucible contact during growth, which prevents contamination. The technique employed during crystal growth is the "traveling solvent, floating zone" method, which produces ultra–high purity crystal due to the fact that no crucible touches or contaminates the crystal and feed material during crystal growth. The instrument also allows for visual monitoring of the crystal during its growth and nucleation and can achieve heating gradients greater than 1500 Celsius per centimeter. Justification for Duty–Free Entry: No instruments of the same general category as the foreign instrument being manufactured in the U.S. Application accepted by Commissioner of Customs: May 28, 2010.

Dated: June 10, 2010.

Christopher Cassel,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–14544 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–DS–S

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 July 6, 2010. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 10–019. Applicant: Saint Louis University Department of Chemistry, 3501 Laclede Ave., St. Louis, MO 63103. Instrument: Electron Microscope. Manufacturer: FEI Co., Czech Republic. Intended Use: This instrument will be used for the study of nanomaterial and microchip structure. Justification for Duty–Free Entry: There are no domestic manufactures of this instrument. Application accepted by Commissioner of Customs: May 26, 2010.

Docket Number: 10–021. Applicant: South Dakota School of Mines and Technology, 501 E. Saint Joseph St. Rapid City, SD 57701. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: This instrument will be used for the understanding and materials development of photovoltaic power conversion for terrestrial and space applications, enhanced thermal conductivity (lubricants), thermally stable, light–weight materials for space applications, catalytic nanomaterials for energy storage and conversion, such as fuel cells. Justification for Duty–Free Entry: There are no domestic manufactures of this instrument. Application accepted by Commissioner of Customs: May 18, 2010.

Docket Number: 10–024. Applicant: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Laboratory of Cell Biochemistry and Biology, 8 Center Drive, Rm 1A03 Bethesda, MD 20892–0851. Instrument: Electron Microscope. Manufacturer: FEI Co., the Netherlands. Intended Use: This instrument will be used to examine purified proteins, including the protein dynamin, using negative stain nad cryo–electron microscopy methods. Justification for Duty–Free Entry: There are no domestic manufactures of this instrument. Application accepted by Commissioner of Customs: May 19, 2010.

Docket Number: 10–026. Applicant: National institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Laboratory of Cell Biochemistry and Biology, 8 Center Drive, Rm 1A03, Bethesda, MD 20892–0851. Instrument: Electron Microscope. Manufacturer: FEI Co., the Netherlands. Intended Use: This instrument will be used to examine purified proteins, including the protein dynamin, using negative stain nad cryo–electron microscopy methods. Justification for Duty–Free Entry: There are no domestic manufactures of this instrument. Application accepted by Commissioner of Customs: May 20, 2010.

Dated: June 10, 2010.

Christopher Cassel,

Director, IA Subsidies Enforcement Office.

[FR Doc. 2010–14542 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1684]

Expansion of Foreign-Trade Zone 119; Minneapolis-St. Paul Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of FTZ 119, submitted an application to the Foreign-Trade Zones (FTZ) Board (the Board) for authority to add proposed Sites 7 and 8 in the Minneapolis-St. Paul area, adjacent to the Minneapolis-St. Paul Customs and Border Protection port of entry (FTZ Docket 23–2009, filed 05/21/09);

Whereas, notice inviting public comment was given in the **Federal Register** (74 FR 26652, 6/3/09), and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 119 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and subject to the standard 2,000-acre activation limit for the overall general-purpose zone project, and further subject to a sunset provision that would terminate authority on June 30, 2017 for Sites 7 and 8 where no activity has occurred under FTZ procedures before that date.

Signed at Washington, DC, this 4th day of June 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2010–14549 Filed 6–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Extension of the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

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

FOR FURTHER INFORMATION CONTACT: Michael A. Romani, 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) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. *See Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 5964 (February 5, 2010). The review covers the period May 1, 2008, through April 30, 2009. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, we have exercised our discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. *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. The final results of the review are currently due no later than June 12, 2010.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the final results within this time period and if the Department did not extend the time for issuing the preliminary results, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the completion of the final results to not later than 300 days after the date on which the preliminary results are published.

We determine that it is not practicable to complete the final results of this review within the original time limit because we need additional time to analyze certain complicated issues, *e.g.,* model-match issues, for the final results. Therefore, we are extending the time period for issuing the final results of this review by 37 days until July 19, 2010.

This notice is published in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: June 10, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–14561 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstance Review, and Intent To Revoke the Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 7, 2010, the Department of Commerce ("Department") received a request for a changed circumstances review to revoke the antidumping duty order on natural bristle paint brushes and brush heads from the People's Republic of China ("PRC"). *See generally, Antidumping Duty Order: Natural Bristle Paint Brushes and Paint Brush Heads from the People's Republic of China, 51 FR 5580 (Feb. 14, 1986) and Amended Antidumping Duty Order: Natural Bristle Paint Brushes and Paint Brush Heads from the People's Republic of China,* 51 FR 8342 (March 11, 1986) ("*Order*"). The domestic industry submitted a letter to the Department expressing a lack of interest in antidumping duty relief from imports of the subject merchandise. Therefore, we are notifying the public of our intent to revoke the above referenced *Order* and are inviting interested parties to comment on these preliminary results.

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

FOR FURTHER INFORMATION CONTACT: Bob Palmer or Catherine Bertrand, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–9068 and (202) 482–3207, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2010, the Department published the *Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 75 FR 13489 (March 22, 2010).

On May 7, 2010, the Department received a request, pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.222(g), to revoke the *Order* based on an expression of no interest from the Paint Applicators Trade Action Coalition ("PATAC"), an *ad hoc* coalition of producers of the domestic like product, and the Paint Applicator Division of the American Brush Manufacturers Association ("ABMA"), a trade association (collectively the "Paint Applicators"). On May 17, 2010, the Department requested that the Paint Applicators demonstrate that they account for substantially all of the U.S. production of the domestic like product for the period of April 1, 2009, through March 31, 2010. On May 24, 2010, the Paint Applicators responded to the Department's request and indicated that, to the best of their knowledge, they represented at least 85 percent of the production of domestic like product during the period identified by the Department.

Scope of the Order

The merchandise covered by the scope of the Order are natural bristle paintbrushes and brush heads from the PRC. Excluded from the scope of the Order are paint brushes and brush heads with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of the merchandise is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke the Order

At the request of the Paint Applicators, and in accordance with sections 751(d)(1) and 751(b)(1) of the Act and 19 CFR 351.216, the Department is initiating a changed circumstances review to determine whether the revocation of the *Order* is warranted. Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all (*i.e.,* at least 85 percent) [1] of the production of the domestic like product have expressed no further interest in the order. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with section 751(b) of the Act, and 19 CFR 351.222(g) and 351.216(b), we are initiating this changed circumstances review and have determined that, pursuant to 19 CFR 351.221(c)(3)(ii), expedited action is warranted. We find that the Paint Applicators' affirmative statement of no interest, and its statement that it produced substantially all of the domestic like product during the period identified by the Department, provides a reasonable basis for the Department's determination to conduct an expedited review. Based on the expression of no interest and claims of accounting for substantially all of the domestic production of the domestic like product by the Paint Applicators, and absent any objection by any other domestic interested parties or any evidence to the contrary, we have also preliminarily determined that substantially all of the domestic producers of the domestic like product have no interest in the continued application of the *Order.* Therefore, we are notifying the public of our intent to revoke the *Order.* If we make a final determination to revoke the *Order,* this determination will apply to all unliquidated entries of subject merchandise covered by the *Order* which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the Department. *See* section 751(d)(3) of the Act. Suspension of liquidation is considered removed upon publication of the final results in the **Federal Register** and the Department will instruct U.S. Customs and Border Protection to liquidate without regard to antidumping duties and to refund any estimated antidumping duties collected. *See* 19 CFR 351.222(g)(4). The current requirement for a cash deposit of estimated antidumping duties on subject merchandise covered by the *Order* will continue unless, and until, we publish a final determination to revoke.

[1] The Department has defined "substantially all" to mean accounting for over 85% of the total production of the domestic like product. *See Certain Orange Juice from Brazil: Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent Not to Revoke, In Part,* 73 FR 60214 (October 10, 2008), unchanged in *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Changed Circumstances Review,* 74 FR 4733 (January 27, 2009).

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Any interested party may request a hearing within 10 days of the date of publication of this notice. Any hearing, if requested, will be held no later than 25 days after the date of publication of this notice, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 21 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than 5 days after the due date for case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

The preliminary results of this review and notice are in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.221(b)(1).

Dated: June 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14552 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received

information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on certain new pneumatic off–the-road tires ("OTR tires") from the People's Republic of China ("PRC"). Specifically, based upon a request filed by LingLong North America LLC, d/b/a Atlas Tire ("Atlas Tire"), an affiliated importer of record, the Department is initiating a changed circumstances review to determine whether Shandong Linglong Tyre Co., Ltd. ("Shandong Linglong") is the successor–in-interest to Zhaoyuan Leo Rubber Co., Ltd. ("Leo Rubber"), a separate–rate respondent in the original investigation.

EFFECTIVE DATE: June 16, 2010.

FOR FURTHER INFORMATION CONTACT: Raquel Silva or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–6475 or 202–482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2008, the Department published in the **Federal Register** an antidumping duty order on OTR tires from the PRC. *See Certain New Pneumatic Off–the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 73 FR 51624 (September 4, 2008) ("*Order*"). As part of that order, Leo Rubber received the separate–rate respondent amended rate of 12.91 percent. Id. at 51627. On April 21, 2010, Atlas Tirefiled a submission requesting that the Department conduct a changed circumstances review of the *Order* to confirm that Shandong Linglong is the successor–in-interest to Leo Rubber. In its submission, Atlas Tire provided an Enterprise Changing List, an Ownership Declaration, and business licenses for Leo Rubber and Shandong Linglong demonstrating that Leo Rubber has changed its name to Shandong Linglong. *See* Letter from Atlas Tire to the Department regarding Certain New Pneumatic Off–The-Road Tires from the People's Republic of China, Request for Changed Circumstances Review (Case No. A–570–912) (April 21, 2010).

Scope of the Order

The products covered by the order are new pneumatic tires designed for off–the-road (OTR) and off–highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off–road or off–highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[1] combine harvesters,[2] agricultural high clearance sprayers,[3] industrial tractors,[4] log–skidders,[5] agricultural implements, highway–towed implements, agricultural logging, and agricultural, industrial, skid–steers/mini–loaders;[6] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[7] front end loaders,[8] dozers,[9] lift trucks, straddle carriers,[10] graders,[11] mobile cranes,[12] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid–steers/mini–loaders, and smooth floor off–the-road counterbalanced lift trucks.[13] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all–inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off–road and off–highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube–type[14] or tubeless, radial or non–radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on–highway or on–road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on–road or on–highway trailers, light trucks, and trucks and buses. Such tires generally have in

[1] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[2] Combine harvesters are used to harvest crops such as corn or wheat.

[3] Agricultural sprayers are used to irrigate agricultural fields.

[4] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[5] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[6] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[7] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[8] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[9] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, etc., typically around construction sites. They can also be used to perform "rough grading" in road construction.

[10] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[11] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[12] *i.e.*, "on-site" mobile cranes designed for off-highway use.

[13] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

[14] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

• P - Identifies a tire intended primarily for service on passenger cars;
• LT - Identifies a tire intended primarily for service on light trucks; and,
• ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

• TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156" or plus 0.250"
• MH - Identifies tires for Mobile Homes;
• HC - Identifies a heavy duty tire designated for use on "HC" 15" tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
• Example: 8R17.5 LT, 8R17.5 HC;
• LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
• MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non–pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all–terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended ("Act"), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from, an interested party for a review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.

In accordance with 19 CFR 351.216(d), the Department has determined that the information submitted by Atlas Tire constitutes sufficient evidence to conduct a changed circumstances review. In an antidumping duty changed circumstances review involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Certain Activated Carbon From the People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 74 FR 19934, 19935 (April 30, 2009). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006). Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Based on the information provided in its submission, Atlas Tire has provided sufficient evidence to warrant a review to determine if Shandong Linglong is the successor–in-interest to Leo Rubber. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review.

The Department will issue questionnaires requesting additional information for the review and will publish in the **Federal Register** a notice of the preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). That notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216.

Dated: June 7, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–14539 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests, the Department of Commerce (the Department) is conducting an administrative review and a new-shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The period of review (POR) is September 1, 2008, through August 31, 2009.

With respect to the administrative review, we have preliminarily determined that sales have been made below normal value by Xiping Opeck Food Co., Ltd., Shanghai Ocean Flavor International Trading Co., Ltd., China Kingdom (Beijing) Import & Export Co., Ltd., and Xuzhou Jinjiang Foodstuffs Co., Ltd.

With respect to the new-shipper review, we have preliminarily determined that Nanjing Gemsen International Co., Ltd., has made sales in the United States at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

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

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, 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) 482–0665 and (202) 482–1690, respectively.

Background

On September 15, 1997, the Department published in the **Federal Register** an amended final determination and antidumping duty order on freshwater crawfish tail meat from the PRC. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China,* 62 FR 48218 (September 15, 1997). On September 1, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 45179 (September 1, 2009).

On October 26, 2009, based on timely requests for an administrative review, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 54956 (October 26, 2009). The review was initiated with respect to Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor), China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Xiping Opeck Food Co., Ltd. (Xiping Opeck), Xuzhou Jinjiang Foodstuffs Co., Ltd. (Jinjiang), and Yancheng Hi-King Agriculture Developing Co., Ltd. (Hi-King).

On December 9, 2009, we determined to examine all companies for which we received requests for an administrative review. See Memorandum entitled "Freshwater Crawfish Tail Meat From the People's Republic of China: Issuance of Questionnaires," dated December 9, 2009.

On January 25, 2010, in accordance with 19 CFR 351.213(d)(1), the petitioner withdrew its request for an administrative review of Hi-King. Because the petitioner was the only party that requested a review of Hi-King, the Department rescinded the review with respect to this company. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part,* 75 FR 13497 (March 22, 2010).

On September 17, 2009, Nanjing Gemsen International Co., Ltd. (Nanjing Gemsen), an exporter of crawfish tail meat from the PRC, requested a new-shipper review in accordance with 19 CFR 351.214(c).

On October 30, 2009, the Department initiated a new-shipper review of Nanjing Gemsen covering the period September 1, 2008, through August 31, 2009. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Notice of Initiation of Antidumping Duty New-Shipper Review,* 74 FR 56180 (October 30, 2009).

On March 29, 2010, in accordance with 19 CFR 351.214(j)(3), Nanjing Gemsen agreed to waive the applicable time limits for conducting the new-shipper review and consented to the alignment of the new-shipper review with the concurrent administrative review. *See* letter from Nanjing Gemsen dated March 29, 2010.

On March 25, 2010, the petitioner submitted certain surrogate-value information. On April 23, 2010, we received comments from Jinjiang on the selection of surrogate values. On April 30, 2010, we received rebuttal comments from the petitioner concerning the surrogate- value information submitted by Jinjiang. On May 5, 2010, we received comments from Xiping Opeck and Nanjing Gemsen on the selection of surrogate values. On May 21, 2010, we received additional comments from Jinjiang.

We are conducting these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Bona-Fides Analysis

Consistent with our practice, we analyzed whether the U.S. transactions reported by Nanjing Gemsen during the POR were *bona-fide* sales. We examined the prices and quantities of the U.S. sales and other relevant factors. Based on our analysis, we preliminarily determine that Nanjing Gemsen's sales constitute *bona-fide* transactions. For our complete analysis, see the Memorandum from Bryan Hansen to the File entitled "New-Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China—*Bona-Fides* Sales Analysis of Nanjing Gemsen International Co., Ltd.," dated June 9, 2010, on file in room 1117 of the main Department of Commerce building.

We preliminarily determine that Nanjing Gemsen has met the requirements to qualify as a new shipper during the POR based on the following findings: (1) Nanjing Gemsen's sales are *bona fide;* (2) Nanjing Gemsen is eligible for a separate rate (*see* the "Separate Rates" section below); (3) Nanjing Gemsen is not affiliated with any exporter or producer that had shipped subject merchandise previously to the United States; (4) Henan Baoshu Aquatic Products Co. Ltd. (Henan Baoshu), the producer of the subject merchandise, did not export the subject merchandise to the United States during the period of investigation. Therefore, for these preliminary results of review, we are treating the sales of subject merchandise produced by Henan Baoshu and exported to the United States by Nanjing Gemsen during the POR to be appropriate transactions for this review.

Verification

On October 30, 2009, the petitioner requested a verification of the data submitted by all of the firms for which the Department initiated an administrative review. Due to our resource constraints in conducting these reviews, we selected Xiping Opeck and Nanjing Gemsen for verification, pursuant to section 782(i)(2) of the Act and 19 CFR 351.307. We used standard verification procedures, including on-site inspection of the manufacturers' and exporters' facilities, and examination of relevant sales and financial records. Our verification

results are outlined in the verification report for each company.

Non-Market-Economy Country Status

The Department considers the PRC to be a non-market-economy (NME) country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Brake Rotors from the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2005 Administrative Review and Preliminary Notice of Intent To Rescind the 2004/2005 New Shipper Review,* 71 FR 26736 (May 8, 2006) (unchanged in *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 has contested NME treatment for the PRC. Therefore, for these preliminary results of administrative and new-shipper reviews we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

In antidumping proceedings involving NME countries, pursuant to section 773(c)(1) of the Act, the Department generally bases normal value on the value of the NME producer's factors of production (FOP). In accordance with section 773(c)(4) of the Act, in valuing the FOP the Department uses, to the extent possible, the prices or costs of the FOP in one or more market-economy countries that are at a level of economic development comparable to that of the NME country which are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that India, Indonesia, the Philippines, Peru, Ukraine, and Thailand are countries that are at a level of economic development comparable to that of the PRC.[1] While none of these countries is a significant producer of freshwater crawfish tail meat,[2] India has a seafood-processing industry that is comparable to the crawfish industry with respect to factory overhead, selling, general, and administrative (SG&A) expenses, and profit.[3] Therefore, we have selected India as the primary surrogate country in which to value all inputs with the exception of live crawfish, the primary input, and the by-product, crawfish-shell scrap.

Because India does not have a fresh-crawfish industry (although it has a sea-crawfish industry) and we have determined that other forms of seafood are not sufficiently comparable to crawfish to serve as surrogates for live crawfish, we have valued live crawfish using the data submitted by the petitioner which was obtained from the same source that was used to value live crawfish in several previous segments of this proceeding.[4] The petitioner submitted data on imports of live crawfish from Portugal into Spain as reported by *Agencia Tributaria,* the Spanish government agency responsible for trade statistics. Spain is a significant producer of comparable merchandise, *i.e.,* whole processed crawfish,[5] and there are publicly available import statistics for Spain that are contemporaneous with the POR.

We have selected Indonesia as a secondary surrogate country for purposes of valuing the crawfish shell by-product because there are no appropriate Indian surrogate values for crawfish shell by-product on the records of these reviews. We find that Indonesia is appropriate to use for the following reasons: (a) It is at a level of economic development comparable to the PRC; (b) it produces wet crab and shrimp shells, which are merchandise comparable to the shell by-product; (c) it has publicly available data, *i.e.,* a public price quote from an Indonesian company that has been used in prior segments of this proceeding.[6]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to a proceeding involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The Department assigns separate rates in NME proceedings only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities under a test developed by the Department and described in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), and *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 an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; (3) any other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

In their questionnaire responses, Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen stated that they are independent legal entities and placed evidence on the records of the reviews indicating that the government of the PRC does not have de jure control over their export activities. Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen submitted evidence of their legal right to set prices independent of all governmental oversight. Furthermore, the business licenses of these five companies indicate that they are permitted to engage in the exportation of freshwater crawfish tail meat. We also found no evidence of *de jure* government control restricting Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen's exportation of freshwater crawfish tail meat. In their responses, Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen stated that no export quotas apply to crawfish. Prior verifications have confirmed that there are no

[1] *See* Memorandum entitled"Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Freshwater Crawfish Tail Meat ('FCTM') from the People's Republic of China ('PRC')" dated February 16, 2010.

[2] *See* Memorandum entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Selection of a Surrogate Country," dated June 9, 2010 (Surrogate-Country Memorandum).

[3] *See id.*

[4] *See* the March 25, 2010, submission by the petitioner entitled "Freshwater Crawfish Tail Meat from the People's Republic of China: Whole Crawfish Surrogate Values." For an example of a previous segment of the proceeding where this source was used, *see Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part,* 74 FR 27109 (June 8, 2009) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part,* 74 FR 52180 (October 9, 2009)).

[5] *See* Surrogate-Country Memorandum.

[6] *See* Memorandum entitled "Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China, Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01" dated August 5, 2002, which has been placed on the records of these reviews.

commodity-specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non-Tariff Handbook* for 1996 and 1997. *See Freshwater Crawfish Tail Meat from The People's Republic of China; Preliminary Results of New Shipper Review,* 64 FR 8543 (February 22, 1999) (*1999 Crawfish NSR Preliminary Results*) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China; Final Results of New Shipper Review,* 64 FR 27961 (May 24, 1999)).

In addition, we have confirmed previously that freshwater crawfish tail meat is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities. See 1999 Crawfish NSR Preliminary Results,* 64 FR at 8544.

Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen placed on the records of these reviews the *Company Law of the People's Republic of China.* The Department has found previously that the *Company Law of the People's Republic of China,* made effective on July 1, 1994, with the amended version promulgated on August 28, 2004, states that a company is an enterprise legal person, that shareholders shall assume liability towards the company to the extent of their shareholdings, and that the company shall be liable for its debts to the extent of all its assets. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results and Partial Rescission of the 2005–2006 Antidumping Duty Administrative Review and Preliminary Intent to Rescind 2005–2006 New Shipper Reviews,* 72 FR 57288 (October 9, 2007) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results and Partial Rescission of the 2005–2006 Antidumping Duty Administrative Review and Rescission of 2005–2006 New Shipper Reviews,* 73 FR 20249 (April 15, 2008)).

Additionally, the *Foreign Trade Law of the People's Republic of China* also indicates a lack of *de jure* government control. Specifically, this document identifies the rights and responsibilities of organizations engaging in foreign trade, grants autonomy to foreign-trade operators in management decisions, and establishes the foreign-trade operator's accountability for profits and losses. Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen also provided copies of their business licenses stating their right to conduct business within the scope of their licenses. Based on the foregoing, the Department has preliminarily determined that there is an absence of *de jure* governmental control over the export activities of Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen.

Absence of De Facto Control

Typically the Department considers the following four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or are subject to the approval of, a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995); *see also Silicon Carbide,* 59 FR at 22586–87. The Department considers an analysis of *de facto* control to be critical in determining whether a respondent is, in fact, subject to a degree of governmental control that would preclude the Department from assigning the respondent a separate rate.

Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen have each asserted the following: (1) Each establishes its own export prices through direct negotiations with its customers; (2) each negotiates contracts not subject to review or guidance from any governmental entities or organizations; (3) the shareholders of each elect managers and make personnel decisions independent of the PRC government's approval or review; (4) each is not required to sell any portion of the foreign currency it earns to the government, each retains the proceeds of its export sales, and each uses profits according to its business needs. Moreover, the Department verified that Xiping Opeck and Nanjing Gemsen are free of *de facto* government control.

Based upon the information on the record of these reviews, the Department has preliminarily determined that there is an absence of *de facto* governmental control over the export activities of Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen. Given that the Department has found that Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen operate free of *de jure* and *de facto* governmental control, it has preliminarily determined that Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, Jinjiang, and Nanjing Gemsen have satisfied the criteria for a separate rate.

U.S. Price

In accordance with section 772(a) of the Act, we based each respondent's U.S. price on export price because the first sales to unaffiliated purchasers were made prior to importation and constructed export price was not otherwise warranted by the facts on the record. We calculated export price based on packed Free on Board or Cost and Freight price to the first unaffiliated purchaser in the United States, as appropriate. In accordance with section 772(c) of the Act, we calculated net export price by deducting foreign inland-freight expenses, foreign brokerage and handling expenses, ocean-freight expenses (where applicable), and cold-storage expenses (where applicable) from the starting price (gross unit price) charged to the first unaffiliated customer in the United States. We based all movement expenses on surrogate values because a PRC company provided the movement services for all respondents (*see* the "Normal Value" section of this notice for further details).

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value using an FOP methodology if the merchandise is exported from an NME country and the available information does not permit the calculation of normal value using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39744, 39754 (July 11, 2005) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517 (January 17, 2006)).

In accordance with section 773(c) of the Act, we relied on the FOP data reported by the respondents for the POR.[7] We calculated normal value by adding together the value of the FOP, general expenses, profit, and packing costs. Specifically, we valued material, labor, energy, and packing by multiplying the reported per-unit rates for the factors consumed in producing the subject merchandise by the average per-unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the decision by the United States 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 FOP for surrogate general expenses and profit. *See* Memorandum to the File entitled "Fresh Crawfish Tail Meat from the People's Republic of China: Surrogate-Value Memorandum," dated June 9, 2010 (Surrogate-Value Memo).

Surrogate Values

In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the data. For these preliminary results, in selecting the best available data for valuing FOPs in accordance with section 773(c)(1) of the Act, we followed our practice of choosing publicly available values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. *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)). We also considered the quality of the source of surrogate information in selecting surrogate values. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China,* 59 FR 55625, 55633 (November 8, 1994). Where we could only obtain surrogate values that were not contemporaneous with the POR, we inflated the surrogate values using, where appropriate, the Indian Wholesale Price Index (Indian WPI) and the Indonesian Wholesale Price Index (Indonesian WPI) as published in the *International Financial Statistics* of the International Monetary Fund. See Surrogate-Value Memo.

In calculating surrogate values from import statistics and in accordance with our practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (*i.e.,* Indonesia, the Republic of Korea, and Thailand). *See, e.g., Frontseating Service Valves from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination,* 73 FR 62952 (October 22, 2008) (unchanged in *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009)). *See, also, China National Machinery Import & Export Corporation* v. *United States*, 293 F. Supp. 2d 1334 (CIT 2003). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We used the following surrogate values in our margin calculations for these preliminary results of review. We valued coal and packing materials using September 2008–August 2009 weighted-average Indian import values derived from the *World Trade Atlas* online (*WTA*). The Indian import statistics that we obtained from the *WTA* were published by the Directorate General of Commercial Intelligence & Statistics, Ministry of Commerce of India, and are contemporaneous with the POR.

We valued whole live crawfish using the publicly available data for Spanish imports of whole live crawfish from Portugal during the POR submitted by the petitioner. We valued the crawfish shell by-product using a 2001 price quote from Indonesia for wet crab and shrimp shells and inflated this value using the Indonesian WPI to make it contemporaneous with the POR.

We valued water using data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) because this source includes a wide range of industrial water tariffs. Specifically, this source provides numerous industrial water rates within the Maharashtra province for April 2009 (for the "inside industrial areas" usage category and for the "outside industrial areas" usage category). We excluded industrial areas where either no data were reported or a "0" was reported. We inflated the surrogate value for water using the Indian WPI to make it contemporaneous with the POR.

To value electricity, we used March 2008 electricity price rates from *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* published by the Central Electricity Authority of the Government of India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation.

We valued non-refrigerated truck-freight expenses using an average of the per-unit average rates for September 2008, December 2008, March 2009, and June 2009 which we calculated from data at *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains rates for inland-freight trucking between many large Indian cities. We inflated (or deflated, depending on the month) the per-unit average truck-freight rates for the selected months of the POR using the Indian WPI to make it contemporaneous with the POR. We valued refrigerated-truck freight expenses based on price quotations for April 2004 from CTC Freight Carriers of Delhi, India, placed originally on the record of the antidumping investigation of certain frozen warmwater shrimp from the PRC. We inflated this surrogate value using the Indian WPI.

We valued brokerage and handling expenses 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 2009: India,* published by the World Bank. Because these data were current throughout the POR, we did not inflate the value for brokerage and handling. See Surrogate-Value Memo for further details.

We valued international freight using the data obtained from the Descartes Carrier Rate Retrieval Database (Descartes), which is available at *http://descartes.com/*. The Descartes database

[7] We based the values of the FOPs on surrogate values (*see* "Surrogate Values" section below).

is a Web-based service which publishes the ocean-freight rates of numerous carriers. In prior administrative reviews the Department did not use the Descartes database as an ocean-freight surrogate-value source because the data did not appear to be publicly available. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews,* 71 FR 26329 (May 4, 2006), and accompanying Issues and Decision Memorandum at Comment 7. Upon reexamination, however, we have found that this database is accessible to government agencies without charge in compliance with Federal Maritime Commission regulations and, thus, we now find that this is a publicly available source.

In addition to being publicly available, the Descartes data reflect rates for multiple carriers, the Web site reports rates on a daily basis, the price data are based on routes that correspond closely to those used by the respondents, and they reflect merchandise similar to subject merchandise. Therefore, the Descartes data are product-specific, publicly available, a broad-market average, and contemporaneous with the POR. Accordingly, we find that the Descartes database is the best available source for valuing international freight on the record of these reviews because it provides rates that are representative of the entire POR and a broader representation of product-specificity.

While we find that the Descartes database is the superior source on the record of the reviews for valuing international freight, to make the source less impractical, we had to define certain parameters in our selection of data. For example, we calculated the period-average international-freight rate by obtaining rates from multiple carriers for a single day in each quarter of the POR. Further, we did not include rates in the period-average international-freight calculation that we determined were from NME carriers. Additionally, we excluded from any individual rate calculation any charges that are covered by the brokerage and handling expenses that the respondents incurred and which are valued by the appropriate surrogate value. See Surrogate-Value Memo for further details.

For Xiping Opeck, we valued cold storage using a rate published in an article from Dawn Wire Service. Because data reported in this source were not contemporaneous with the POR, we inflated the surrogate value for cold storage using the Indian WPI. See Surrogate-Value Memo. This source was used in *Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews,* 69 FR 24123, 24126 (May 3, 2004) (unchanged in *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews,* 69 FR 46498 (August 3, 2004)). When the product is fully processed and packed and then placed into a cold-storage facility not located at the production/processing facility prior to the date of shipment from the exporting country, our practice is to treat cold storage as a movement expense and deduct it from the U.S. price. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews,* 69 FR 46498, 46500 (August 3, 2004).

The Department's regulations require the use of a regression-based wage rate. *See* 19 CFR 351.408(c)(3). Therefore, to value labor, we used the regression-based wage rate for the PRC published on the Import Administration (IA) Web site. See the IA Web site at *http://ia.ita.doc.gov/wages/07wages/final/final-2009-2007-wages.html. See also 2009 Calculation of Expected Non-Market Economy Wages,* 74 FR 65092 (December 9, 2009). We applied the same wage rate to all skill levels and types of labor (*i.e.,* direct production, indirect, packing) reported by the respondents because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor. *See* Surrogate-Value Memo for further details.

We valued SG&A, factory-overhead costs, and profit using the 2007–2008 financial statements of Nekkanti Sea Foods Ltd., an Indian seafood processor. *See* Surrogate-Value Memo.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. These exchange rates are available on the IA Web site at *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of the Reviews

As a result of the administrative review, we preliminarily determine that the following weighted-average percentage dumping margins exist for the period September 1, 2008, through August 31, 2009:

Company	Margin (percent)
Xiping Opeck Food Co., Ltd	11.46
Shanghai Ocean Flavor International Trading Co., Ltd	41.95
China Kingdom (Beijing) Import & Export Co., Ltd	18.90
Xuzhou Jinjiang Foodstuffs Co., Ltd	5.44

As a result of the new-shipper review, we preliminarily determine that a weighted-average dumping margin of 12.42 percent exists for merchandise produced by Henan Baoshu Aquatic Products Co., Ltd., and exported by Nanjing Gemsen International Co., Ltd., for the period September 1, 2008, through August 31, 2009.

Comments

We will disclose the calculations used in our analysis to interested parties in these reviews within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit publicly available information to value factors no later than 20 days after the date of publication of these preliminary results of reviews. *See* 19 CFR 351.301(c)(3)(ii). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310. Interested parties who wish to request a hearing or to participate in a hearing if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) The party's name, address, and telephone number; (2) the number of participants; (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 case briefs. *See* 19 CFR 351.310(c). Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice of preliminary results of reviews. *See* 19 CFR 351.309(c)(1)(ii). Rebuttal briefs from interested parties, limited to the issues raised in the case briefs, may be submitted not later than five days after the time limit for filing the case briefs or comments. *See* 19 CFR 351.309(d)(1). If requested, any hearing will be held two days after the scheduled date for submission of rebuttal briefs. *See* 19 CFR 351.310(d). Parties who submit case briefs or rebuttal briefs in these segments of the proceeding are requested to submit with each argument a statement of the issue, a summary of the arguments not exceeding five pages,

and a table of statutes, regulations, and cases cited. *See* 19 CFR 351.309(c)(2).

The Department will issue the final results of these reviews, including the results of its analysis of issues raised by parties in their comments, within 120 days after the date of publication of this notice. *See* section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific (or customer-specific) assessment rates for merchandise subject to these reviews.

For these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and export price) for each of the respondents' importers or customers by the total number of kilograms the exporter sold to that importer or customer. We will direct CBP to assess the resulting per-kilogram dollar amount against each kilogram of merchandise in each of that importer's/customer's entries during the review period.

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of reviews.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Xiping Opeck, Shanghai Ocean Flavor, China Kingdom, and Jinjiang, and for subject merchandise produced by Henan Baoshu and exported by Nanjing Gemsen, the cash-deposit rate will be that established in the final results of reviews;[8] (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash-deposit rate will be PRC-wide rate of 223.01 percent; (4) for all non-PRC exporters of subject merchandise the cash-deposit rate will be the rate applicable to the PRC entity that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These reviews and this notice are in accordance with sections 751(a)(1), 751(a)(2)(B)(iv), 751(a)(3), and 777(i) of the Act and 19 CFR 351.214.

Dated: June 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–14534 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–DS–P

[8] For subject merchandise exported by Nanjing Gemsen but not produced by Henan Baoshu, the cash-deposit rate will be the PRC-wide rate.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW71

Taking and Importing of Marine Mammals

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

ACTION: Notice; affirmative finding.

SUMMARY: The Assistant Administrator for Fisheries (Assistant Administrator), NMFS, has granted a request for an affirmative finding to the Government of Mexico under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The affirmative finding is effective from April 1, 2010, through March 31, 2015, subject to annual review by NMFS.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–4000; fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Mexico and obtained from the IATTC and the Department of State, and has determined that Mexico has met the MMPA's requirements to receive an affirmative finding.

After consultation with the Department of State, the Assistant Administrator issued an affirmative finding to Mexico, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested

in the ETP by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction. Mexico's affirmative finding will remain valid through March 31, 2015, subject to subsequent annual reviews by NMFS.

Dated: June 11, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–14557 Filed 6–15–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 16, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 11, 2010.

Darrin A. King,

Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: NAEP 2011 Wave II (Writing and Math Multi-Stage Computer-based, KASA Math and PR, NIES, NAEP–TIMSS Alignment)

Frequency:

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 152,900.

Burden Hours: 78,269.

Abstract: The National Assessment of Educational Progress (NAEP) is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, and the arts. In the current legislation that reauthorized NAEP (The No Child Left Behind Act of 2001 (Pub. L. 107–110)), Congress mandated again the collection of national education survey data through a national assessment program. The 2011 Wave 2 submittal contains the grades 8 and 12 writing non-cognitive (computer-delivered) questions; the National Indian Education Study (NIES) student, teacher, and school questions; and the non-cognitive questions for three special studies: The Mathematics Computer-Based Study (MCBS), Knowledge and Skills Appropriate (KaSA) Study, and the alignment study between NAEP and TIMSS (Trends in International Mathematics and Science Study) mathematics and science questions.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4337. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–14527 Filed 6–15–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10–547–000]

Commission Information Collection Activities (FERC–547); Comment Request; Extension

June 9, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments in consideration of the collection of information are due August 16, 2010.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC10–547–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) paper copies of their comments to: Federal Energy Regulatory Commission, Secretary of the

Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC10–547. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–547, "Gas Pipeline Rates: Refund Report Requirements" (OMB No. 1902–0084), is used by the Commission to implement the statutory refund provisions governed by sections 4, 5 and 16 of the Natural Gas Act (NGA).[1] Sections 4 and 5 authorize the Commission to order a refund, with interest, for any portion of a natural gas company's increased rate or charge found to be unjust or unreasonable. Refunds may also be instituted by a natural gas company as a stipulation to a Commission-approved settlement agreement or a provision under the company's tariff. Section 16 of the NGA authorizes the Commission to prescribe rules and regulations necessary to administer its refund mandates. The Commission's refund reporting requirements are found in 18 CFR 154.501 and 154.502.

The Commission uses the data to monitor refunds owed by natural gas companies to ensure that the flow-through of refunds owed by these companies are made as expeditiously as possible and to assure that refunds are made in compliance with the Commission's regulations.

Action: The Commission is requesting a three-year extension of the FERC–547 reporting requirements, with no changes.

Burden Statement: The estimated annual public reporting burden for FERC–547 is reduced from the estimate made three years ago due to a reduction in the average number of filings received annually, from 60 in 2007, to 30 presently.

FERC data collection	Number of respondents (1)	Average number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–547	30	1	75	2,250

The total estimated annual cost burden to respondents is $149,143 (2,250 hours/2,080 hours[2] per year, times $137,874[3]).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14438 Filed 6–15–10; 8:45 am]

BILLING CODE 6717–01–P

[1] 15 U.S.C. 717–717w.

[2] Estimated number of hours an employee works each year.

[3] Estimated average annual cost per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–24–000]

National Grid USA; Notice of Filing

June 9, 2010.

Take notice that on May 19, 2010, pursuant to Rule 215 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), National Grid USA filed an amended petition supplementing and clarifying its request, originally filed on December 17, 2008, for waiver of certain of the affiliate pricing rules as established by the Commission's Order Nos. 707 and 707–A.[1]

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the

[1] *Cross-Subsidization Restrictions on Affiliate Transactions,* Order No. 707, 73 FR 11013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264, at P 4–5, *order on rehearing,* Order No. 707–A, 73 FR 43072 (Jul. 24, 2008), FERC Stats. & Regs. ¶ 31,272 (2008).

comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 16, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–14437 Filed 6–15–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0981; FRL–9162–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Motor Vehicle and Engine Compliance Program Fees (Renewal); EPA ICR No. 2080.04, OMB Control No. 2060–0545

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 16, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2009–0981, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number: 734–214–4869; e-mail address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 22, 2010 (75 FR 3723), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0981, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Motor Vehicle and Engine Compliance Program Fees (Renewal).

ICR numbers: EPA ICR No. 2080.04, OMB Control No. 2060–0545.

ICR Status: This ICR is scheduled to expire on July 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9 and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA charges user fees for administering its vehicle and engine certification programs. In 2004 the fees were extended to include certification applications for recently regulated categories of off-road vehicles and engines. In 2008 the fees program was further expanded to include fees for certification of evaporative system components (primarily fuel lines and fuel tanks). Manufacturers and importers of covered vehicles, engines, and components are required to pay the applicable certification fee prior to their certification applications being reviewed. This involves submitting payments along with a filing form identifying the family to be covered by the fee. There are also correction and refund forms. This ICR estimates the paperwork burden of submitting these fees and associated forms. This information collection covers the entire certification fees program, both on-road and off-road.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.31 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the

existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers or importers of passenger cars, motorcycles, light trucks, heavy duty truck engines, non-road vehicles or engines, and evaporative emissions components required to receive a certificate of conformity from EPA prior to selling or introducing these products into commerce in the U.S.

Estimated Number of Respondents: 495.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,207.

Estimated Total Annual Cost: $100,577, including $19,739 for maintenance or operational costs.

Changes in the Estimates: There is an increase of 512 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This cost estimate makes the same cost assumptions as the previous renewal. The increase is due entirely to the increase in the number of forms received, based on actual counts of fee forms received.

Dated: June 10, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–14513 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0413; FRL–9163–1; EPA ICR No. 0234.10; OMB Control No. 2080–0021]

Agency Information Collection Activities; Proposed Collection; Comment Request; Performance Evaluation Studies on Wastewater Laboratories (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2010–0413, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: docket.oeca@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Enforcement and Compliance Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2010–0413. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Patrick Yellin, Office of Compliance, Agriculture Division, 2225A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2970; fax number: 202–564–0085; e-mail address: *yellin.patrick@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA–2010–0413, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Enforcement and Compliance Docket is 202–566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are NPDES permitted facilities.

Title: Performance Evaluation Studies on Wastewater Laboratories (Renewal)

ICR numbers: EPA ICR No. 0234.10, OMB Control No. 2080–0021.

ICR status: This ICR is currently scheduled to expire on December 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Discharge Monitoring Report-Quality Assurance (DMR–QA) participation is mandatory for major and selected minor permit holders under the Clean Water Act's National Pollution Discharge Elimination System (NPDES), Section 308. The DMR–QA study is designed to evaluate the analytic ability of the laboratories that perform chemical, microbiological and whole effluent toxicity (WET) analyses required in the NPDES permits for reporting results in the Discharge Monitoring Reports (DMR). Under DMR–QA, the permit holder is responsible: For having their in-house and/or contract laboratories perform proficiency test samples and submit results for grading by proficiency testing (PT) providers. Graded results are transmitted by either the permittee or PT provider to the appropriate Federal or State NPDES regulatory authority. Permit holders are responsible for submitting corrective action reports to the appropriate regulatory authority.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 6.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 6,589.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 41,511 hours.

Estimated total annual costs: $2,461,426. This includes an estimated burden cost of $1,209,516 and an estimated cost of $1,251,910 for capital investment or maintenance and operational costs. The number of affected facilities is 6,589.

Are there changes in the estimates from the last approval?

There is a decrease of 5,840 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's granting a waiver for four States to use their laboratory certification program as a substitute for the DMR–QA program. This resulted in a reduction in the average number of participants from 7,516 to 6,589. The maintenance and operational cost has increased by $11,770 due to increased costs for obtaining proficiency testing samples. Labor costs have also been adjusted for inflation.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact Patrick Yellin.

Dated: June 2, 2010.

Al Havinga,

Acting Director, Agriculture Division.

[FR Doc. 2010–14516 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0443; FRL–8827–6]

Notice of Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), publishes a Notice of Intent to Suspend issued by EPA pursuant to section 3(c)(2)(B) of FIFRA. The Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In notice (DCI), which required the registrant of the affected pesticide product containing a certain pesticide active ingredient to take appropriate steps to secure certain data, and following the registrant failure to submit these data or to take other

appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registration of the affected product. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registration under section 3(c)(2)(B) of FIFRA.

DATES: The Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or 30 days after the date of publication of this notice in the **Federal Register** (if the mailed Notice of Intent to Suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so), unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV. explains what must be done to avoid suspension under this notice (i.e., how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Terria Northern, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7093; e-mail address: *northern.terria@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0443. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Registrant Issued Notice of Intent to Suspend Active Ingredient, Product Affected, and Date Issued

The Notice of Intent to Suspend was sent via the U.S. Postal Service (USPS) return receipt requested to the registrant for the product listed in Table 1 of this unit.

TABLE 1. — LIST OF PRODUCT

Registrant Affected	Active Ingredient	EPA Registration Number	Product Name	Date EPA Issued Notice of Intent to Suspend
Thor GmbH	1,2-Benzisothiazolin-3-one (BIT)	67071–52	Acticide MBL 5505	May 10, 2010

III. Basis for Issuance of Notice of Intent to Suspend; Requirement List

The registrant failed to submit the required data or information or to take other appropriate steps to secure the required data for their pesticide product listed in Table 2 of this unit.

TABLE 2. — LIST OF REQUIREMENTS

EPA Registration Number	Guideline Number as Listed in Applicable DCI	Requirement Name	Date EPA Issued DCI	Date Registrant Received DCI	Final Data Due Date	Reason for Notice of Intent to Suspend
67071–52	830.6317	Storage Stability	March 3, 2008	March 2008	December 8, 2008	No data received
	830.6320	Corrosion Characteristics				

IV. How to Avoid Suspension Under this Notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail, return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or

legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product. A request for a hearing pursuant to this notice must:

• Include specific objections which pertain to the allowable issues which may be heard at the hearing.

• Identify the registrations for which a hearing is requested.

• Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to:

Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001.

An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration by operation of law and, under such circumstances, the suspension of the registration for your affected product will be final and effective at the close of business on the applicable 30th day deadline as measured from the date of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30–day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) Data Call-In notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2. — List of Requirements in Unit II., for each product by submitting all required supporting data/information described in Table 2. of Unit. II. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail):

Office of Pesticide Programs, Pesticide Re-evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001.

For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30–day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product. The suspension of the registration of your company's product pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

V. Status of Products that Become Suspended

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this notice, including all supplemental registrants of the product listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. Persons other than the registrant subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registration for your product listed in Table 1 of Unit II. is currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In notice or Section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In notice, should be

addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is contained in sections 3(c)(2)(B) and 6(f)(2) of FIFRA, 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 3, 2010.

Richards P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–14331 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0425; FRL–8828–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before July 16, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0425, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0425. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marianne Lewis, Registration Division (7505), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8043; e-mail address: *lewis.marianne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *File Symbol*: 264-RRRI. *Docket Number*: EPA –HQ-OOP-2010-0425. *Applicant*: Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: Penflufen TC. *Active ingredient*: Fungicide with Penflufen at 98.72%. *Proposed classification/Use*: Manufacturing use product. For formulation into an end-use fungicide for terrestrial food use for in-furrow potato use and seed piece treatment on vegetable, turberous and corm, (CSG1); for use as seed treatment fungicide on alfalfa, grains, cereal (CG15 & 16); vegetables, legume, including soybeans (CG 6 & 7); canola, borage, crambe, cuphea, echium, flax seed, gold of pleasure, hare's ear mustard, lesquerella, lunaria, meadowfoam, milkweed, mustard seed, oil radish, poppy seed, rapeseed, sesame, sweet rocket, calendula, castor oil plant, Chinese tallowtree, euphorbia, evening primrose, jojoba, niger seed, rose hip, safflower, stokes aster, sunflower, tallowwood, tea oil plant, veronia, cottonseed. *Contact*: Marianne Lewis, (703) 308–8043, *lewis.marianne@epa.gov*.

2. *File Symbol*: 264-RRRO. *Docket Number*: EPA–HQ-OOP-2010-0425. *Applicant*: Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: PEN 240FS. *Active ingredient*: Fungicide with Penflufen at 22.7%. *Proposed classification/Use*: Terrestrial food use for in-furrow application on potato and other tuberous and corm vegetables (CSG1C), seed piece application on potato; for use as seed treatment on alfalfa, beans and peas including soybean and legume (CG 6 & 7); cotton, cereal grains (CG 15 & 16); corn, rice, canola, borage, crambe, cuphea, echium, flax seed, gold of pleasure, hare's ear mustard, lesquerella, lunaria, meadowfoam, milkweed, mustard seed, oil radish, poppy seed, rapeseed, sesame, sweet rocket, calendula, castor oil plant, Chinese tallowtree, euphorbia, evening primrose, jojoba, niger seed, rose hip, safflower, stokes aster, sunflower, tallowwood, tea oil plant, veronia, cottonseed. *Contact*: Marianne Lewis, (703) 308–8043, *lewis.marianne@epa.gov*.

3. *File Symbol*: 264-RREN. *Docket Number*: EPA–HQ-OOP-2010-0425. *Applicant*: Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: PENRED 240FS. *Active ingredient*: Fungicide with Penflufen at 22.4%. *Proposed classification/Use*: Terrestrial food use for in-furrow application on potato and other tuberous and corm vegetables (CSG1C), seed piece application on potato; for use as seed treatment on alfalfa, beans and peas including soybean and legume (CG 6 & 7); cotton, cereal grains (CG 15 & 16); corn, rice, canola, borage, crambe, cuphea, echium, flax seed, gold of pleasure, hare's ear mustard, lesquerella, lunaria, meadowfoam, milkweed, mustard seed, oil radish, poppy seed, rapeseed, sesame, sweet rocket, calendula, castor oil plant, Chinese tallowtree, euphorbia, evening primrose, jojoba, niger seed, rose hip, safflower, stokes aster, sunflower, tallowwood, tea oil plant, veronia, cottonseed. *Contact*: Marianne Lewis, (703) 308–8043, *lewis.marianne@epa.gov*.

4. *File Symbol*: 264-RREL. *Docket Number*: EPA–HQ-OOP-2010-0425. *Applicant*: Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: PENCLO 273.5FS. *Active ingredient*: Fungicide with Penflufen at 6.0% and Clothianidin at 18.6%. *Proposed classification/Use*: Seed treatment on cotton. *Contact*: Marianne Lewis, (703) 308–8043, *lewis.marianne@epa.gov*.

5. *File Symbol*: 264-RREU. *Docket Number*: EPA–HQ-OOP-2010-0425. *Applicant*: Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: PENTRI 308FS. *Active ingredient*: Fungicide with Penflufen at 13.3% and Trifloxystrobin at 13.3%. *Proposed classification/Use*: Seed treatment on alfalfa, beans and peas including soybean (CG 6) rice, corn, cotton and wheat. *Contact*: Marianne Lewis, (703) 308–8043, *lewis.marianne@epa.gov*.

6. *File Symbol*: 264-RRER. *Docket Number*: EPA–HQ-OOP-2010-0425. *Applicant*: Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: PENCLOTRIME 310.68FS. *Active ingredient*: Fungicide with Penflufen at 0.82%, Clothiandin at 22.3%, Metalaxyl at 0.55%, and Trifloxystrobin at 0.55%, *Proposed classification/Use*: Seed treatment on canola, mustard seed, and rapeseed. *Contact*: Marianne Lewis, (703) 308–8043, *lewis.marianne@epa.gov*.

7. *File Symbol*: 264-RREE. *Docket Number*: EPA–HQ-OOP-2010-0425. *Applicant*: Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: PENPROME 177FS. *Active ingredient*: Fungicide with Penflufen at 3.59%, Metalaxyl at 5.74%, and Prothioconazole at 7.18%. *Proposed classification/Use*: Seed treatment on alfalfa, beans and peas (dried) including soybean (CG 6), rice, wheat, barley, and triticale. *Contact*: Marianne Lewis, (703) 308–8043, *lewis.marianne@epa.gov*.

8. *File Symbol*: 264-RREG. *Docket Number*: EPA–HQ-OOP-2010-0425. *Applicant*: Bayer CropScience LP2, T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: PENPRO 118FS. *Active ingredient*: Fungicide with Penflufen at 9.35% and Prothioconazole at 1.68%. *Proposed classification/Use*: Seed piece application on potato and seed treatment on wheat. *Contact*: Marianne Lewis, (703) 308–8043, *lewis.marianne@epa.gov*.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 7, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–14521 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0030; FRL–8809–5]

Pesticides; Availability of Updated Schedule for Registration Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of an updated schedule for the pesticide registration review program, the periodic review of all registered pesticides mandated by section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The updated schedule provides the timetable for opening dockets for the next 4 years of the registration review program – FY 2010 to 2013–and includes information on the FY 2007 through FY 2009 registration review cases.

FOR FURTHER INFORMATION CONTACT: Kevin Costello, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0030. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

EPA is issuing an updated schedule for the registration review program, the Agency's periodic review of all registered pesticides mandated by section 3(g) of FIFRA. This updated schedule provides the timetable for opening dockets for the next 4 years of the program, FY 2010 to FY 2013.

The Pesticide Registration Improvement Act of 2003 as amended in 2007 (PRIA II) requires EPA to complete registration review decisions by October 1, 2022 for all pesticides registered as of October 1, 2007. To ensure meeting this requirement, EPA will continue to open approximately 70 pesticide registration review dockets annually continuing through 2017, so that almost all pesticides registered at the start of the program will have dockets opened by 2017. Some biopesticide dockets will be opened in 2018 through 2020. The Agency anticipates that this scheduling will provide adequate lead times to complete registration review decisions by October 1, 2022 for all pesticides registered as of October 1, 2007. EPA expects a total of about 721 pesticide cases comprising 1,135 pesticide active ingredients to undergo registration review by 2022.

Each pesticide's place on the schedule is generally determined by its baseline date — the date of its last substantive review — with the oldest cases going first. The baseline date for a pesticide that was subject to reregistration is the date of the Reregistration Eligibility Decision (RED). The baseline date for pesticides that were not subject to reregistration is the registration date of the first product containing the active ingredient. Although, the schedule generally is constructed chronologically, some registration review cases are grouped in the schedule for greater efficiency. For example, pesticides that are chemically related or use-related (e.g., organophosphate and carbamate chemical classes, the coppers group, and the pyrethroids, pyrethrins, and syngergists group) generally will be reviewed during the same time frame.

The updated registration review schedule reflects EPA's decision to review all pesticides in two groups — the fumigants and the triazines — within the same time frame. In recent years, the Agency moved these pesticides ahead in the schedule so that dockets for all pesticides in these groups will open in FY 2013. While EPA is implementing risk mitigation decisions for the soil fumigants, new research is underway to address current data gaps and to refine understanding of factors that affect how fumigants move in the environment. New methods and technologies for fumigation are emerging. By moving the soil fumigants forward in registration review from 2017 to 2013, the Agency will be able to consider new data and new technologies sooner, determine whether mitigation included in its decisions is effectively addressing risks as EPA believes it will, and include other fumigants that were not part of the reregistration review of these pesticides.

EPA initiated a reevaluation of the triazine pesticide atrazine in fall 2009. Given the availability of new scientific information as well as the documented presence of atrazine in both drinking water sources and other bodies of water, EPA has determined it appropriate to consider the new research and to ensure that the Agency's regulatory decisions about atrazine protect health and the environment. EPA's reevaluation process is based on transparency and sound science, including independent scientific peer review. The current atrazine reevaluation will help address aspects of the atrazine registration review scheduled to begin in 2013 that involve human health risk assessment. As a result, the current reevaluation should reduce the scope and resources needed to complete the atrazine registration review.

The registration review schedule for FY 2010 to FY 2013 and an explanation of the schedule are available at: *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information about the status of individual pesticides in registration review is available at: *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm.* Background information on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review/.*

B. What is the Agency's Authority for Taking this Action?

EPA is announcing this updated schedule for the registration review program as provided in 40 CFR 155.42(d) and 155.44 of the Procedural Regulations for Registration Review: Final Rule, document number EPA–HQ–OPP–2004–0404–0052 at: *http://www.regulations.gov.* The Agency may consider issues raised by the public or registrant when reviewing a posted schedule, to schedule a pesticide registration review, or to modify the schedule of a pesticide registration review as appropriate. This schedule will be updated at least once every year.

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: June 7, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–14517 Filed 6–15–10; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8829–6]

Product Cancellation Order for Certain Pesticide Registrations; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: EPA issued a notice in the **Federal Register** of May 11, 2010, concerning the final cancellation of certain pesticide product registrations. This document is being issued to correct an error in company contact information.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: *tatinclaux.maia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–1017. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Does this Correction Do?

FR Doc. 2010–11142 published in the **Federal Register** of May 11, 2010 (75 FR 26253) (FRL–8822–4), on page 26253, 3rd column, in Table 2, EPA Registration Number 1021, the Company Name and Address, is corrected to read "McLaughlin Gormley King Co. D/B/A MGK, 8810 Tenth Ave. North, Minneapolis, MN 55427–4319."

List of Subjects

Environmental protection, Pesticides and Pests.

Dated: June 4, 2010.

Richard P. Keigwin, Jr.

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–14519 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9162–9]

Proposed CERCLA Section 122(h) Cost Recovery Settlement for the H.M. Quackenbush, Inc. Superfund Site, Herkimer, Herkimer County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed cost recovery settlement agreement pursuant to Section 122(h) of CERCLA, 42 U.S.C. 9622(h), regarding the H.M. Quackenbush, Inc. Superfund Site ("Site") in Herkimer, Herkimer County, New York. The proposed settlement requires Frederick H. Hagar ("Settling Party"), CEO, Chairman and majority shareholder of H.M. Quackenbush, Inc., to pay EPA, in nine annual installments, $225,000.00, plus interest, for EPA's past response costs incurred at the Site. The Settling Party also agrees to pay $75,000.00 pursuant to a settlement with the Village of Herkimer into an interest-bearing escrow account for Site-related restoration purposes. If the escrow funds are not utilized by Herkimer within 5 years of the effective date of the Settlement Agreement, the escrow funds, plus accrued interest, shall be paid into the EPA Hazardous Substance Superfund. The settlement includes a covenant by EPA not to sue or to take administrative action against the Settling Party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), with regard to certain past response costs related the Site. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before July 16, 2010.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866. Comments should reference the H.M. Quackenbush, Inc. Superfund Site, Herkimer, Herkimer County, New York, Index No. CERCLA–02–2010–2007. To request a copy of the proposed settlement agreement, please contact the EPA employee identified below.

FOR FURTHER INFORMATION CONTACT: Brian Carr, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway—17th Floor, New York, New York 10007–1866. E-mail: *carr.brian@epa.gov* Telephone: 212–637–3170.

Dated: May 26, 2010.

John E. LaPadula,

Acting Director, Emergency and Remedial Response Division, Region 2.

[FR Doc. 2010–14511 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010-0014; FRL–8827–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a

notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before December 13, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Attention: Maia Tatinclaux.

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0014. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: *tatinclaux.maia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identiifed.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to cancel 129 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that

warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Active Ingredients
000004-00059	Bonide Rose & Flower Dust	Malathion Carbaryl Captan
000228-00629	SFM E-PRO 75 EG Herbicide	Sulfometuron
000228-00683	ET-002	Sulfometuron
000239-02536	Ortho Pet, Flea & Tick Spray	Piperonyl butoxide Pyrethrins
000270-00352	Flea and Tick Mist	Bioallethrin MGK 326 MGK 264
000270-00353	Fastact 2 Long-Acting Flea and Tick Dip	MGK 264 Permethrin Esbiothrin
000279-03392	CB-38-3 WB	Piperonyl Butoxide Pyrethrins
000402-00076	Hill Vapo-Mist “35”	MGK 264 Piperonyl Butoxide Pyrethrins
000432-00769	Alleviate Plus Insecticide	Bioallethrin Piperonyl Butoxide Pyrethrins
000432-00800	Esbiol 90% Concentrate	S-Bioallethrin
000432-00801	Esbiothrin 90% Concentrate	Esbiothrin
000432-00802	Bioallethrin 90% Concentrate	Bioallethrin
000432-00841	DS 215 Professional Insecticide	S-Bioallethrin Deltamethrin
000432-00848	DS 210 Professional Insecticide	S-Bioallethrin Deltamethrin
000432-00870	Esbiol 300 Insecticide	S-Bioallethrin
000432-00871	Esbiol 2000 Insecticide	S-Bioallethrin
000432-01081	Alleviate Industrial Spray E.C.	Bioallethrin Piperonyl Butoxide
000432-01085	Alleviate Stabilene Horse Insecticide	Butoxypolypropylene Glycol Bioallethrin Piperonyl Butoxide
000498-00149	Chase-MM Flying and Crawling Insect Killer	Bioallethrin MGK 264 Permethrin
000498-00170	Spraypak Wasp & Hornet Killer, Formula 2	d-Allethrin Phenothrin
000499-00239	Whitmire X-clude PT 1600A	MGK 264 Piperonyl Butoxide Pyrethrins
000769-00594	R&M Permethrin Flea & Tick Dip #2	MGK 264 Permethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
000769-00598	R&M Flea & Tick Shampoo #6	Bioallethrin MGK 264 Phenothrin
000769-00616	Sureco Flea & Tick Spray #7	MGK 264 Piperonyl Butoxide Pyrethrins
000769-00965	Sureco Permethrin Powder	Permethrin
001270-00093	Zeposector Insecticide Spray	MGK 264 Piperonyl Butoxide Pyrethrins
001270-00222	Zeposector A Spray Insecticide	Bioallethrin MGK 264 Piperonyl Butoxide
001475-00146	Enoz Skat!	Napthalene
001677-00111	Ecolab Pyrethrin Spray	MGK 264 Piperonyl Butoxide Pyrethrins
001677-00112	Entrol	MGK 264 Piperonyl Butoxide Pyrethrins
002382-00092	Pet-Guard Gel Forte	Butoxypolypropylene Glycol MGK 264 Piperonyl Butoxide Pyrethrins
002382-00125	Duo-cide Shampoo with D-Trans Allethrin and Sumithrin	Bioallethrin MGK 264 Phenothrin
002382-00126	Duocide L.A.	MGK 264 Pyrethrins Permethrin
002517-00022	Double Duty Bird Guard	Paradichlorobenzene
002517-00049	Sergeant's Pump Soap for Dogs	Bioallethrin MGK 264 Phenothrin
002517-00059	Sergeant's Skip-Flea Soap (with D-Phenothrin)	MGK 264 Phenothrin
002517-00067	Sergeant's Flea and Tick Dip	MGK 264 Permethrin
002517-00074	Sergeant's Flea & Tick Spray	MGK 264 Permethrin
002596-00071	Hartz Rid Flea Dog Shampoo with Allethrin	Bioallethrin MGK 264
002596-00075	Hartz Luster Bath for Cats- with Allethrin	Bioallethrin MGK 264 Phenothrin
002596-00076	Hartz Luster Bath for Dogs- with Allethrin	Bioallethrin MGK 264 Phenothrin
002596-00124	Hartz Control Pet Care System Flea and Tick Conditioning Shampoo for Dogs	Bioallethrin MGK 264

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
002596-00133	Hartz Rid Flea Dog Shampoo with Aloe and Allethrin	Bioallethrin MGK 265
002724-00585	SPI Flea and Tick Dip for Dogs	MGK 264 Phenothrin
002724-00591	SPI Residual Pressurized Spray I	Bioallethrin MGK 264 Permethrin
002724-00593	Speer Residual Flea and Tick Dip	MGK 264 Permethrin
002724-00610	Super Swat II Fly Repellent	Butoxypolypropylene Glycol MGK 264 Tetramethrin Phenothrin
002724-00673	Speer Ant and Roach Killer II	MGK 264 Esfenvalerate Prallethrin
002724-00676	Speer-it Fogger IV Total Release Aerosol	MGK 264 Tetramethrin Esfenvalerate
002724-00698	Tetraperm Wasp & Hornet Killer FEQ 23 II	Piperonyl Butoxide Tetramethrin Permethrin
002724-00715	Elite Permethrin Flea & Tick Dip II	MGK 264 Permethrin
002724-00770	Flea Stop Linatoc Dip	MGK 264 Prallethrin Linalool
002724-00771	Permalool Home & Carpet Spray	MGK 264 Prallethrin Linalool Permethrin
002915-00065	Industrial Insect Spray III	MGK 264 Piperonyl Butoxide Pyrethrins
004822-00271	#271 Raid Roach & Ant Killer and Treatment	Tetramethrin Permethrin
004822-00274	Raid Formula 274 Insect Killer	d-Allethrin Permethrin
004822-00277	Raid Formula 277 Insect Killer	d-Allethrin Permethrin
004822-00321	Raid Fogger 15	MGK 264 Piperonyl Butoxide Pyrethrins Permethrin
004822-00423	Raid Wasp & Hornet Killer XIII	Tetramethrin Permethrin
004822-00450	Off! Yard & Deck Area Repellent II	Bioallethrin Permethrin
004822-00456	Raid Pip 1	Permethrin
004822-00462	Whitmire Flea & Tick Dip	MGK 264 Permethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
004822-00463	Whitmire Insecticidal Shampoo for Dogs	Bioallethrin MGK 264 Phenothrin
004822-00470	Raid PP	Permethrin
004822-00488	Raid - CK	MGK 264 Permethrin Pyriproxyfen
004822-00514	Raid F1K Formula H2A	Tetramethrin Permethrin
004822-00533	Raid Reach & Kill Outdoor Ant & Roach Killer	Tetramethrin Permethrin
004822-00551	Raid Yard Guard PLD	d-Allethrin Permethrin
008112-00001	Lion-Tiger Mosquito Coils	d-Allethrin
008848-00052	707 Formula Roach & Insect Bomb	MGK 264 Piperonyl Butoxide Pyrethrins
009444-00170	CB-38-2 for Insect Control	Piperonyl butoxide Pyrethrins
009688-00041	Chemsico Dual Flea Control	Bioallethrin MGK 264 Phenothrin
009688-00051	Chemsico Automatic Insect Fogger “B”	Bioallethrin MGK 264 Phenothrin
009688-00053	Chemisco Flea Control A	Bioallethrin MGK 264 Phenothrin
010088-00021	ESPC Emulsifiable Synergized Pyrethrum Concentrate	MGK 264 Piperonyl Butoxide Pyrethrins
010806-00032	Little Pal Spray Mist	MGK 264 Piperonyl Butoxide Pyrethrins
010806-00034	Contact Personal Insect Repellent	MGK 326 MGK 264 Diethyl Toluamide
010807-00003	Misty Blaster Insect Spray	MGK 264 Piperonyl Butoxide Pyrethrins
010807-00027	Misty Mizer Insecticide	MGK 264 Piperonyl Butoxide Pyrethrins
010807-00044	Misty Mizer Economy Insecticide	MGK 264 Piperonyl Butoxide Pyrethrins
010807-00096	Misty Space Spray Insecticide	MGK 264 Piperonyl Butoxide Pyrethrins
010807-00188	Misty Industrial Insect Killer	Piperonyl butoxide Pyrethrins Permethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
010807-00197	Misty Anti-Crawl III	Piperonyl Butoxide Tetramethrin Permethrin
010807-00198	Misty Wasp & Hornet Killer IV	Piperonyl Butoxide Tetramethrin Permethrin
013799-00024	Four Paws Magic Coat Plus II	Bioallethrin MGK 264 Phenothrin
015142-00001	Fly-Curb Insecticide Spray for Horses	MGK 264 Piperonyl Butoxide Pyrethrins
033176-00021	Airysol Brand Insect Killer	Bioallethrin MGK 264 Piperonyl Butoxide
040849-00016	Enforcer Flea & Tick Powder for Pets	MGK 264 Piperonyl butoxide Pyrethrins
058630-00003	Varpel Rope	Paradichlorobenzene
061483-00068	Permectrin 25% Wettable Powder	Permethrin
062355-00001	Concern Houseplant and Garden Insect Killer	Piperonyl butoxide Pyrethrins
064537-00001	Cocksec Mosquito Coil	d-Allethrin
075101-00002	Tanalith ® T	Permethrin
075101-00003	Tanalith ® T Plus	IPBC Permethrin
080203-00001	Go Away	Permethrin
084396-00008	Numb Bug Fogging and Contact Spray	Bioallethrin MGK 264 Piperonyl Butoxide
084396-00028	Sungro Pyreth #3	Piperonyl Butoxide Pyrethrins
AR030009	Fusilade DX Herbicide	Propanoic acid, 2-(4-((5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy)-butyl ester, (R)-
AZ960010	Mefenoxam EC	D-Alanine,N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester
AZ970004	Comite Agricultural Miticide	Propargite
CA010016	Ridomil Gold EC	D-Alanine,N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester
CA040009	Ordram 8-E Selective Herbicide	Molinate
CA040010	Ordram 8-E Selective Herbicide	Molinate
CA040011	Ordram 8-E Selective Herbicide	Molinate
CA050013	Scholar Fungicide	Fludioxonil
CA070004	Ridomil Gold SL	D-Alanine,N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester
CA880005	Dormant Flowable Emulsion	Mineral Oil- includes paraffin oil
CA960011	Mefenoxam EC	D-Alanine,N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester
CO920001	Furadan 4F Insecticide/Nemanticide	Carbofuran

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Active Ingredients
ID020028	Warrior Insecticide With Zeon Technology	lambda-Cyhalothrin
ID060021	Discover NG Herbicide	Clodinafop-propargyl
MN940003	Malathion 5 EC	Malathion
OR010027	Galigan 2E	Oxyfluorfen
OR010029	Direx 4L	Diuron
OR010030	Direx 80DF	Diuron
OR010033	Mankocide	MancozebCopper hydroxide
OR030022	Omite-6E	Propargite
OR030030	Prowl H2O Herbicide	Pendimethalin
OR040002	Caparol 4L	Prometryn
OR050014	Zeal Miticide	Etoxazole
OR910006	Furadan 4F	Carbofuran
TX010008	Ridomil Gold EC	D-Alanine,N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester
TX030012	Quadris	Azoxystrobin
TX040004	Ordram 8-E An Emulsifiable Liquid Herbicide	Molinate
TX040010	Dual Magnum Herbicide	S-Metolachlor
WA030037	Prowl H2O Herbicide	Pendimethalin
WA070012	Ridomil Gold SL	D-Alanine,N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-methyl ester
WA910017	Omite 6E	Propargite
WY060006	Discover NG Herbicide	Clodinafop-propargyl

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Co. Number	Company Name and Address
4	Bonide Products, Inc. Agent Registrations By Design, Inc. PO Box 1019 Salem, VA 24153-3805

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
228	Nufarm Americas INC 150 Harvester Dr, Suite 200 Burr Ridge, IL 60527
239	The Scotts Company 14111 Scottslawn Road Marysville, OH 43041

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
270	Farnam Companies, Inc. D/B/A Central Life Sciences 301 West Osborn Road Phoenix, AZ 85013
279	FMC Corp. Agricultural Products Group 1735 Market St, RM. 1978 Philadelphia, PA 19103

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
402	Hill Manufacturing Co., Inc. 1500 Jonesboro Rd. SE Atlanta, GA 30315
432	Bayer Environmental Science 2 T. W. Alexander Drive PO Box 12014 Research Triangle Park, NC 27709
498	Chase Products Co. PO Box 70 Maywood, IL 60153
499	Whitmire Micro-Gen Research Laboratories, Inc. Agent Name: BASF CORP. 3568 Tree Court Industrial Blvd. St. Louis, MO 63122-6682
769	Value Gardens Supply, LLC PO Box 585 Saint Joseph, MO 64502
1270	ZEP Inc. 1310 Seaboard Industrial Blvd. NW Atlanta, GA 30318
1475	Willert Home Products 4044 Park Ave. St Louis, MO 63110
1677	Ecolab Inc. 370 North Wabasha St. St. Paul, MN 55102
2382	Virbac AH, Inc. 13001 St. Charles Rock Rd. Bridgeton, MO 63044
2517	Sergeant's Pet Care Products, Inc. 2625 South 158th Plaza Omaha, NE 68130-1703
2596	The Hartz Mountain Corp. 400 Plaza Drive Secaucus, NJ 07094

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
2724	Wellmark International 1501 E. Woodfield Rd, Suite 200 West Schaumburg, IL 60173
2915	The Fuller Brush Company One Fuller Way Great Bend, KS 67530
4822	S.C. Johnson & Son, Inc. 1525 Howe St. Racine, WI 53403
8112	Lion Chemical Co., Ltd. 1330 Dillon Heights Ave. Baltimore, MD 21228
8848	Safeguard Chemical Corp. 411 Wales Ave. Bronx, NY 10454
9444	Waterbury Companies, Inc. 129 Calhoun St. P.O. Box 640 Independence, LA 70443
9688	Chemsico Div of United Industries Corp PO Box 142642 St Louis, MO 63114-0642
10088	Athea Laboratories Inc. PO Box 240014 Milwaukee, WI 53224
10806	Contact Industries Div. of Safeguard Chemical Corp 411 Wales Ave Bronx, NY 10454
10807	Amrep, Inc 990 Industrial Park Drive Marietta, GA 30062
13799	Four Paws Products LTD 50 Wireless Boulevard Hauppauge, NY 11788

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
15142	Wide Horizons Co. Inc 18 Huckleberry Lane Greenwich, CT 06831
33176	Amrep, Inc 990 Industrial Park Drive Marietta, GA 30062
40849	ZEP Inc. 1310 Seaboard Industrial Blvd. NW Atlanta, GA 30318
58630	Woodstream Corporation 69 North Locust St. PO Box 327 Lititz, PA 17543-0327
61483	KMG-Bernuth, Inc. 9555 W. Sam Houston Pkwy South, Suite 600 Houston, TX 77099
62355	Miracle-Gro Lawn Products Inc. 14111 Scottslawn Rd Marysville, OH 43041
64537	Dainihon Jochugiku Co., Ltd 1330 Dillon Heights Ave. Baltimore, MD 21228
75101	Arch Wood Protection Limited 5660 New Northside Drive, Ste 1100 Atlanta, GA 30328
80203	Starensier, Inc. 10 Mulliken Way PO Box 408 Newburyport, MA 01950-0508
84396	Sungro Products, LLC 810 E. 18th St. Los Angeles, CA 90021
OR050014	Valent U.S.A. Corporation 1600 Riviera Avenue, Suite 200 Walnut Creek, CA 94596

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
AZ970004; OR030022; WA910017	Chemtura Corporation ATTN: Crop Registration, Michael Dupre 199 Benson Road (2-5) Middlebury, CT 06749
OR910006; CO920001	FMC Corp., Agricultural Products Group ATTN: Michael C. Zucker 1735 Market St., RM. 1978 Philadelphia, PA 19103
OR030030; WA030037	BASF Corporation 26 Davis Drive, P.O. Box 13528 RTP., NC 27709-3528
OR010027	Makhteshim-Agan of North America Inc. 4515 Falls of Neuse Road, Suite 300 Raleigh, NC 27609
OR010029; OR010030; OR010033	E.I. DuPont De Nemours and Co., Inc. (S300/419) Mgr., US Registration, DuPont Crop Protection 1007 Market St. Wilmington, DE 19898-0001
AR030009; AZ960010; CA010016; CA040009; CA040010; CA040011; CA050013; CA070004; CA960011; ID020028; ID060021; OR040002; TX010008; TX030012; TX040004; TX040010; WA070012; WY060006	Syngenta Crop Protection, Inc. P.O. Box 18300 Greensboro, NC 27419-8300
CA880005	Loveland Products, Inc. PO Box 1286 Greeley, CO 80632-1286
MN940003	Arysta Lifescience North America, LLC 155401 Weston Parkway, Suite 150 Cary, NC 27513

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have not requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 180–day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 3, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–14329 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8827–2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registrations have been cancelled only if such sale, distribution, or use is

consistent with the terms as described in the final order.

DATES: Comments must be received on or before July 16, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–1017, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Submit written withdrawal request by mail to: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Attention: *Maia Tatinclaux*.

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–1017. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: *tatinclaux.maia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to cancel 199 pesticide products registered under FIFRA section 3 or 24(c). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Product Number	Product Name	Active Ingredients
000004–00388	Bonide Pyrenone Garden Spray Pressurized	Piperonyl butoxide Pyrethrins
000121–00084	Cutter Insect Repellent Medusa	Bioallethrin
000192–00153	Dexol Tender Leaf African Violet Insect Spray	Tetramethrin Phenothrin
000192–00184	Dexol Hornet & Wasp Killer II	Tetramethrin Phenothrin
000192–00189	Dexol Flying & Crawling Insect Killer II	Tetramethrin Phenothrin
000192–00196	Dexol Flea Free Carpet Spray	Tetramethrin Phenothrin Pyriproxyfen
000228–00636	Imida E-AG 5 F ST Insecticide	Imidacloprid
000228–00656	ETI 105 28 I	Imidacloprid
000228–00668	Imida E-Pro 4F Pre/Post Construction Insecticide	Imidacloprid
000228–00682	ETI 105 12 I	Imidacloprid
000228–00691	Imida E-Pro 0.5 - Turf Insecticide	Imidacloprid
000228–00692	Imida E-Pro 1% G - ORN Insecticide	Imidacloprid
000228–00693	Imida E-AG - 4F Cotton Insecticide	Imidacloprid
000228–00694	Imida E-AG 1.6 F Insecticide	Imidacloprid
000228–00696	ET-025	Imidacloprid
000228–00697	ET-024	Imidacloprid
000228–00701	ETI 105 25 I	Imidacloprid
000239–02512	Ortho Indoor Insect Killer	Bioallethrin Phenothrin
000270–00218	Flys-Off Insect Repellent for Dogs	Butoxypolypropylene glycol Pyrethrins Piperonyl Butoxide
000270–00225	Flys-Off Lotion Insect Repellent for Dogs	Butoxypolypropylene glycol Pyrethrins Piperonyl Butoxide
000270–00257	Farnam Permacap ME-2	Permethrin
000270–00269	Purina Hard Hitter Aqueous Spray	Permethrin
000270–00337	Sulfodene Scratchex Flea & Tick Shampoo-B for Dogs & Cats	Bioallethrin MGK 264 Piperonyl Butoxide
000270–00338	Sulfodene Scratchex Formula 36 Power Dip	Bioallethrin MGK 264 Piperonyl Butoxide
000270–00352	Flea and Tick Mist	Allethrins MGK 326 MGK 264
000270–00353	Fastact 2 Long-Acting Flea & Tick Dip	MGK 264 Permethrin Esbiothrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Product Number	Product Name	Active Ingredients
000270–00365	Mycodex Pet Shampoo with Permethrin	Permethrin
000279–03026	Ammo Technical Insecticide	Cypermethrin
000279–03039	Pounce Mushroom Spray Mist Insecticide	Permethrin
000279–03040	Pounce Mushroom Dust Insecticide	Permethrin
000279–03092	Flea Insecticide	Permethrin
000279–03111	Pounce WP Insecticide	Permethrin
000279–03144	Astro Interior Insecticide	Permethrin
000279–03186	Pounce 25 Std Seed Treatment Insecticide	Permethrin
000279–03187	Pounce 3.2 St Seed Treatment Insecticide	Permethrin
000402–00076	Hill Vapo-Mist “35”	MGK 264 Permethrin Piperonyl butoxide
000499–00239	Whitmire X-clude PT 1600A	MGK 264 Piperonyl butoxide Pyrethrins
000499–00495	TC–233	S-Bioallethrin Phenothrin
000538–00026	Scotts Proturf Weedgrass Preventer	Bensulide
000538–00072	Scotts Super Turf Builder Plus 2 for Grass	Mecoprop-P 2,4-D
000538–00083	Scotts Shrub & Tree Weed Preventer Plus Fertilizer 20–4–8	Trifluralin
000538–00102	Stop Weeds Before They Start	Trifluralin
000538–00155	Halts Plus Turf Builder	Bensulide
000538–00164	Goosegrass/Crabgrass Control	Oxadiazon
000538–00167	Super Plus 2 Weed Control Plus Lawn Fertilizer	Dicamba Mecoprop-P 2,4-D
000538–00183	Proturf Fluid Fungicide	Thiophanate-methyl Iprodione
000538–00196	Proturf Fertilizer Plus Turf Weedgrass Control	Pendimethalin
000538–00205	Scotts Lawn Pro Weed & Feed Weed Control Plus Lawn Fertilizer	Mecoprop-P 2,4-D
000538–00208	Fertilizer Plus Weed Control	Dicamba 2,4-D
000538–00209	Turf Builder w/Plus 2 For Lawns Plus Lawn Fertilizer	Dicamba 2,4-D
000538–00210	Scotts Turf Builder Plus 2 for Lawns Plus Lawn Fertilizer	Dicamba 2,4-D
000538–00213	Proturf Turf Fertilizer Plus Preemergent Weed Control	Pendimethalin
000538–00215	Scotts Lawn Pro Weed and Feed	Mecoprop-P 2,4-D
000538–00227	Fertilizer Plus Weedgrass Control	Pendimethalin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Product Number	Product Name	Active Ingredients
000538–00251	Fertilizer with Weed Control	Mecoprop 2,4-D Pendimethalin
000538–00257	Fertilizer Plus Preemergent Weed Control II	Pendimethalin Oxadiazon
000538–00294	Grubex II	Benzoic acid, 4-chloro-,2-benzoyl-2-(1,1-dimethylethyl) hydrazide
000748–00068	Para-Dichlorobenzene	Paradichlorobenzene
000769–00598	R & M Flea & Tick Shampoo #6	Bioallethrin MGK 264 Phenothrin
000769–00604	R & M Carpet Powder #5	Phenothrin
000769–00609	R & M Aerosol Flying Insect Spray	Phenothrin Tetramethrin
000769–00709	SMCP 53% Neutral Copper	Basic copper sulfate
000769–00840	Miller Tupersan Granular	Siduron
000769–00931	Drop Dead Household Fly & Insect Spray	Tetramethrin Phenothrin
001021–01217	D-Trans Allethrin (technical grade)	Bioallethrin
001021–01242	MGK Esbiol Concentrate 90% (F-1967)	S-Bioallethrin
001021–01291	Esbiol Technical	S-Bioallethrin
001021–01390	Multicide Intermediate 2119	Bioallethrin Phenothrin
001021–01428	Multicide Pynamin Forte 90% Concentrate	d-Allethrin
001021–01638	Multicide Intermediate 2661	d-Allethrin Phenothrin
001021–01653	Evercide Permethrin 80% Concentrate 25/75	Permethrin
001021–01725	Evercide Pressurized Pet Spray 2642	Pyriproxyfen Permethrin Pyrethrins
001021–01835	Permethrin 3.2 T&O	Permethrin
001021–01836	Permethrin 3.2 TC	Permethrin
001021–01837	Permethrin 3.2 PCO	Permethrn
001021–01838	Permethrin 10% EC	Permethrin
001677–00111	Ecolab Pyrethrin Spray	Pyrethrins MGK 264 Piperonyl butoxide
001677–00112	Entrol	Pyrethrins MGK 264 Piperonyl butoxide
002596–00071	Hartz Rid Flea Dog Shampoo with Allethrin	Bioallethrin MGK 264
002596–00075	Hartz Luster Bath for Cats- with Allethrin	Bioallethrin MGK 264 Phenothrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Product Number	Product Name	Active Ingredients
002596–00076	Hartz Luster Bath for Dogs- with Allethrin	Bioallethrin MGK 264 Phenothrin
002596–00124	Hartz Control Pet Care System Flea and Tick Conditioning Shampoo for Dogs	Bioallethrin MGK 264
002596–00133	Hartz Rid Flea Conditioning Dog Shampoo with Aloe and Allethrin	Bioallethrin MGK 264
002596–00149	Hartz Ref. 111	Bioallethrin MGK 264 S-Methoprene
002724–00453	Zoecon 9206 Fogger	Permethrin
002724–00464	Sandoz 9309 Fogger	S-Methoprene Permethrin
002724–00465	Sandoz 9311 Aerosol	S-Methoprene Permethrin
002724–00555	Speer Bee, Wasp, Hornet & Yellow Jacket Jet-Stream Killer	Bioallethrin Phenothrin
002724–00582	Speer Roach Spray I	Permethrin
002724–00584	SPI Total Release Aerosol Fogger II	Bioallethrin Esfenvalerate
002724–00590	Speer Flea & Tick Spray III	Permethrin
002724–00591	SPI Residual Pressurized Spray I	Allethrins MGK 264 Permethrin
002724–00593	Speer Residual Flea and Tick Dip	MGK 264 Permethrin
002724–00608	Permethrin House & Carpet Residual Spray	Permethrin
002724–00654	HHP General Purpose Aqueous Insecticide	Permethrin
002724–00678	Speer Roach Spray 1 with Nylar	Pyriproxyfen Permethrin
002724–00679	Speer 3.5% Permethrin Dry Fogger with Nylar	Pyriproxyfen Permethrin
002724–00680	SPI Deltamethrin Aerosol Insecticide	S-Bioallethrin Deltamethrin
002724–00693	Pramex H&G Ready to Use Insect Control	Permethrin
002724–00694	Pramex 13.3% H&G Insect Control	Permethrin
002724–00714	Elite Permethrin Flea and Tick Dip	Permethrin
002724–00715	Elite Permethrin Flea & Tick Dip II	MGK 264 Permethrin
002724–00722	Elite Permethrin 13.3% EC for Insects	Permethrin
002724–00724	Elite Flea and Tick Shampoo VII	Permethrin
002724–00746	SPHSOP-1 Spot-On	Permethrin
002724–00771	Permalool Home & Carpet Spray	Permethrin Prallethrin Linalool MGK 264

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Product Number	Product Name	Active Ingredients
002724–00782	Permethrin Plus Pet Spray	MGK 264 Permethrin Prallethrin Pyriproxyfen
002724–00783	Permethrin Plus Pet Spray II	MGK 264 Permethrin Prallethrin Pyriproxyfen
004822–00173	Raid Household Flying Insect Killer Formula 4	d-Allethrin Phenothrin
004822–00290	Raid House and Garden Bug Killer Formula 6	Bioallethrin Phenothrin
004822–00300	Raid Mosquito Coils	Bioallethrin
004822–00437	Off! Repellent DH	d-Allethrin
005887–00118	Black Leaf Fog-it 1 Shot Automatic Insecticide Fogger	Phenothrin Tetramethrin
005887–00123	Black Leaf Fly & Mosquito Formula III Spray	Phenothrin Tetramethrin
005887–00126	Black Leaf White Fly & Mealy Bug Spray	Phenothrin
005887–00158	Black Leaf Wasp and Hornet Killer Formula IV	Phenothrin Tetramethrin
005887–00159	Black Leaf Flying & Crawling Insect Killer	Phenothrin Tetramethrin
008660–00023	Vertagreen Crabgrass Preventer with Tupersan	Siduron
008660–00087	Vertagreen Fertilizer for Professional Turf with Tupersan	Siduron
008845–00063	Hot Shot Flying Insect Killer	Phenothrin Tetramethrin
008845–00067	Hot Shot Hit Flying Insect Killer Formula 621	Phenothrin Tetramethrin
008845–00068	Hot Shot House and Garden Insect Killer Formula 721	Phenothrin Tetramethrin
008845–00082	Hot Shot Indoor/Outdoor Ornamental Plant Spray Formula 116	Allethrins Phenothrin
008845–00083	Hot Shot Flea and Tick Spray for Dogs and Cats Formula 117	Phenothrin Tetramethrin
008845–00084	Hot Shot Flea & Tick Spray - Formula 118	Phenothrin Tetramethrin
008848–00052	707 Formula Roach & Insect Bomb	MGK 264 Piperonyl butoxide Pyrethrins
009152–00018	Acidisol	Phosphoric Acid Dodecylbenzenesulfonic acid
009444–00084	CB MothOFF	Permethrin
009444–00136	Time Mist Air Sanitizer	Triethylene glycol Dipropylene glycol Alkyl* dimethyl benzyl ammonium chloride *(61% C12, 23% C14, 11% C16, 5% C18)

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Product Number	Product Name	Active Ingredients
009444–00143	CB-305 Fogger	Esfenvalerate Bioallethrin
009444–00173	CV-40 AG	Piperonyl butoxide Pyrethrins
009444–00174	CB-40-2 WB for Insect Control	Piperonyl butoxide Pyrethrins
009444–00235	Country Vet 38	Piperonyl butoxide Pyrethrins
009688–00038	Total Release Insect Fogger "A"	Bioallethrin Phenothrin
009688–00041	Chemsico Dual Flea Control	Bioallethrin MGK 264 Phenothrin
009688–00051	Chemsico Automatic Insect Fogger "B"	Bioallethrin MGK 264 Phenothrin
009688–00054	Chemsico Total Release Fogger "C"	Phenothrin Tetramethrin
009688–00079	Chemsico Tralomethrin Insecticide A	Bioallethrin Tralomethrin
009688–00086	Chemsico Tralomethrin Insecticide B	Bioallethrin Tralomethrin
009688–00090	Chemsico Spray Insecticide	Phenothrin
009688–00117	Chemsico Wasp & Hornet Killer T	Bioallethrin Tralomethrin
009688–00125	Chemsico Tralomethrin Plus D-Trans Allethrin Insecticide S	Bioallethrin Tralomethrin
009688–00145	Saga MC	Bioallethrin Tralomethrin
009688–00151	Tralex Aerosol	Bioallethrin MGK 264 Tralomethrin
009688–00164	Chemsico Aerosol Insecticide T	Bioallethrin Tralomethrin
009688–00276	Chemsico Insecticide Concentrate 320P	Pyrethrins
010404–00058	Lesco Granular Turf Fungicide	Triadimefon
010404–00065	Lesco Bayleton 0.5% Plus Fertilizer	Triadimefon
010806–00032	Little Pal Spray Mist	MGK 264 Piperonyl Butoxide Pyrethrins
010806–00034	Contact Personal Insect Repellent	MGK 326 MGK 264 Dethyl Toluamide
010806–00065	Contact Flea & Tick Killer III	Pyrethrins Permethrin
019713–00163	Drexel Propachlor Flake Technical	Propachlor
028293–00125	Unicorn Permethrin RTU Spray	Permethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Product Number	Product Name	Active Ingredients
028293–00147	Unicorn 14–day Flea & Tick Spray	Pyrethrins Permethrin
028293–00148	Unicorn Permethrin Pet Dip II	Permethrin
028293–00154	Unicorn Pertran Aerosol	Allethrins Permethrin
028293–00155	Unicorn Crawling & Flying Insect Spray E.C.	Permethrin
028293–00166	Unicorn 14–day Flea & Tick Spray II	Pyrethrins Permethrin
028293–00179	Unicorn General Purpose Aqueous Insecticide II	Permethrin
028293–00181	Unicorn Insecticide E.C.13.3% Crawling Insect Spray	Permethrin
028293–00182	Unicorn Backup Pour-On Insecticide	Permethrin
028293–00185	Unicorn Liquid Plant Spray No. 1	Pyrethrins Permethrin
028293–00218	Unicorn Growers Spray	Pyrethrins
028293–00231	Unicorn Aqueous Pressurized Spray	Bioallethrin Permethrin
028293–00263	Unicorn Permethrin Pour-On Insecticide II	Permethrin
028293–00290	Unicorn Permethrin WB Spray	Permethrin
028293–00294	Unicorn .20% Permethrin WB II	Permethrin
028293–00326	Unicorn Permethrin Dust II	Permethrin
028293–00330	Unicorn 5.7% Permethrin Termite Concentrate	Permethrin
028293–00331	Unicorn Ready-to-Use Permethrin Garden Spray	Permethrin
034704–00110	Clean Crop 6% Malathion Grain Protector	Malathion
035935–00064	ET-016	Imidacloprid
045600–00019	Insecta Spray	Permethrin
046515–00021	Super K-Gro Liquid House Plant Insect Spray	Phenothrin Tetramethrin
046515–00030	Indoor and Outdoor Plant and African Violet Spray	Phenothrin Tetramethrin
046515–00040	K Rid Flying Insect Killer 2	Phenothrin Tetramethrin
046515–00041	K Rid Ant and Roach Killer 3	Phenothrin
046515–00043	House & Garden Bug Killer	Phenothrin Tetramethrin
046515–00044	K Rid Wasp & Hornet Killer 2	Phenothrin Tetramethrin
053883–00057	Martin's Pet Guard Flea and Tick Spray	Pyrethrins Permethrin
055206–00003	BVA Spray 15	Mineral Oil - includes paraffin oil from 063503
060063–00038	TPTH 80 WP	Fentin hydroxide

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Product Number	Product Name	Active Ingredients
066330–00212	Malathion 25 WP	Malathion
066330–00213	Stored Grain Dust M-1	Malathion
066330–00219	Malathion ULV	Malathion
066330–00227	Simazine 4 FL Herbicide	Simazine
067690–00036	Camelot	Copper salts of fatty and rosin acids
068077–00001	Brilliance Flea & Tick Shampoo	Piperonyl butoxide Pyrethrins
070627–00040	Johnson Wax Professional Wasp & Hornet Killer	Bioallethrin Phenothrin
071096–00010	Slug-fest All Weather Formula RTU	Metaldehyde
073049–00362	Esbiothrin Mosquito Repellent Coils	Bioallethrin
073049–00363	Derringer Mosquito Mats	Bioallethrin
082542–00005	Ethofumesate Technical	Ethofumesate
083558–00012	Hexazinone Technical	Hexazinone
084396–00008	Numb Bug Fogging and Contact Spray	Bioallethrin MGK 264 Piperonyl Butoxide
CA770445	Niagara Citrus Sol Oil Light Medium Code 30390 and Gowan Malathion 8 Tank Mix	Mineral Oil - includes paraffin oil from 063503
FL760015	Pyrocide Fogging Formula 7067 for ULV Mosquito Aduticiding	Piperonyl butoxide Pyrethrins
MS060006	Co-Starr	Gyphosate-isopropylammonium Dicamba
PA860009	Prentox Vapon 4E	Dichlorvos

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Co. Number	Company Name and Address
4	Bonide Products, Inc. Agent Registrations By Design, Inc. PO Box 1019 Salem, VA 24153–3805
121	Spectrum, a Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114–0642

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
192	Value Gardens Supply, LLC D/B/A Garden Value Supply PO Box 585 Saint Joseph, MO 64502
228	Nufarm Americas INC 150 Harvester Dr, Suite 200 Burr Ridge, IL 60527
239	The Scotts Company 14111 Scottslawn Road Marysville, OH 43041

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
270	Farnam Companies, Inc. D/B/A Central Life Sciences 301 West Osborn Road Phoenix, AZ 85013
279	FMC Corp. Agricultural Products Group 1735 Market St., RM 1978 Philadelphia, PA 19103
402	Hill Manufacturing Co., Inc. 1500 Jonesboro Rd SE Atlanta, GA 30315

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
499	Whitmire Micro-Gen Research Laboratories, Inc. Agent Name: BASF Corp. 3568 Tree Court Industrial Blvd. St. Louis, MO 63122–6682
538	The Scotts Company 14111 Scottslawn Road Marysville, OH 43041
748	PPG Industries, Inc. 1001 G St, NW, Suite 500 West Washington, DC 20001
769	Value Gardens Supply, LLC PO Box 585 Saint Joseph, MO 64502
1021	McLaughlin Gormley King Co., 8810 Tenth Ave. North, Minneapolis, MN 55427–4319
1677	Ecolab Inc. 370 North Wabasha St. St. Paul, MN 55102
2596	The Hartz Mountain Corp. 400 Plaza Drive Secaucus, NJ 07094
2724	Wellmark International 1501 E. Woodfield Rd, Suite 200 West Schaumburg, IL 60173
4822	S.C. Johnson & Son, Inc. 1525 Howe St. Racine, WI 53403
5887	Value Gardens Supply, LLC D/B/A Garden Value Supply PO Box 585 Saint Joseph, MO 64502

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
8660	United Industries Corp. D/B/A Sylorr Plant Corp PO Box 14642 St. Louis, MO 63114–0642
8845	Spectrum, a div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114–0642
8848	Safeguard Chemical Corp. 411 Wales Ave. Bronx, NY 10454
9152	Morgan-Gallacher Inc. 8707 Millergrove Dr. Santa Fe Springs, CA 90670
9444	Waterbury Companies, Inc. 129 Calhoun St., P.O. Box 640 Independence, LA 70443
9688	Chemsico Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114–0642
10404	Lesco, Inc. 1301 East 9th St., Suite 1300 Cleveland, OH 44114–1849
10806	Contact Industries Div. of Safeguard Chemical Corp. 411 Wales Ave Bronx, NY 10454
19713	Drexel Chemical Company 1700 Channel Ave. PO Box 13327 Memphis, TN 38113–0327
28293	Phaeton Corporation Agent Registrations By Design, Inc. PO Box 1019 Salem, VA 24153

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
34704	Loveland Products, Inc. PO Box 1286 Greeley, CO 80632–1286
35935	Nufarm Limited PO Box 13439 RTP, NC 27709
45600	Insecta Marketing, Inc. 3601 NE 5th Ave. Oakland Park, FL 33334–2214
46515	Celex Div. of United Industries Corp. PO Box 142642 St. Louis, MO 63114–0642
53883	Control Solutions, Inc. 427 Hide Away Circle Cub Run, KY 42729
55206	B V Associates Inc. PO Box 930301 Wixom, MI 48393
60063	Sipcam Agro USA, Inc. 2520 Meridian Pkwy., Suite 525 Durham, NC 27713
66330	Arysta Lifescience North America, LLC 155401 Weston Parkway, Suite 150 Cary, NC 27513
67690	Sepro Corp. 11550 N. Meridian St., Suite 600 Carmel, IN 46032
68077	First Priority Inc. 1590 Todd Farm Drive Elgin, IL 60123–1146
70627	Johnson Diversey, Inc. 8310 16th St., PO Box 902 Sturtevant, WI 53177
71096	OR-CAL Inc. 17220 Westview Rd. Oswego, OR 97034
73049	Valent BioSciences Corporation 870 Technology Way, Suite 100 Libertyville, IL 60048–6316

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Co. Number	Company Name and Address
82542	Source Dynamics, LLC 10039 E. Troon North Drive Scottsdale, AZ 85262
83558	Celsius Property B.V., Amsterdam (NL) 4515 Falls of Neuse Rd, Suite 300 Raleigh, NC 27609
84396	Sungro Products, LLC 810 E. 18th St. Los Angeles, CA 90021
CA770445	California Dept. of Food and Agriculture 560 J Street, Room 220 Sacramento, CA 95814
FL760015	Lee County Mosquito Control District PO Box 60005 Fort Myers, FL 33906
MS060006	Albaugh, Inc. 1525 NE 36th Street Ankeny, IA 50021
PA860009	Prentiss, INC. 3600 Mansell Rd, Suite 350 Alpharetta, GA 30022

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II. have requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 30–day comment period on the proposed requests.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II., EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II., except for export consistent with FIFRA section 17 or for proper disposal. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 3, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–14518 Filed 6–15–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of three information collections: Quarterly Certified Statements Invoice (OMB No. 3064–0057); Student Educational Employment Program (OMB No. 3064–0147); and Complex Structured Finance Transactions (OMB No. 3064–0079).

DATES: Comments must be submitted on or before August 16, 2010.

ADDRESSES: Interested parties are invited to submit written comments by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently approved collections of information:*

1. *Title:* Quarterly Certified Statements Invoice (formerly known as Certified Statement for Deposit Insurance Assessment).

OMB Number: 3064–0057.

Affected Public: Insured financial institutions.

Estimated Number of Respondents: 7966.

Estimated Time per Response: 20 minutes.

Frequency of Response: Quarterly.

Total Annual Burden: 10,621 hours.

General Description of Collection: The FDIC collects deposit insurance assessments quarterly by means of direct debits through the automated Clearing House network.

2. *Title:* Student Educational Employment Program.

OMB Number: 3064–0147.

Affected Public: Students seeking employment with the FDIC.

Estimated Number of Responses: 700.

Estimated Time per Response: 20 minutes.

Frequency of Response: On occasion.

Total Annual Burden: 234 hours.

General Description of Collection: The application form used in this collection ensures that students seeking employment with FDIC as participants in either one of the two components of the Student Educational Employment Program (*i.e.,* the Student Temporary Employment Program (STEP) or the Student Career Experience Program (SCEP)) meet the government-wide eligibility criteria established by the Office of Personnel Management as well as the internal eligibility criteria established by the FDIC. The information collected will include information on the applicant's coursework, grade point averages, and relationship to any FDIC employee.

3. *Title:* Complex Structured Finance Transactions.

OMB Number: 3064–0148.

Affected Public: State nonmember banks actively involved in complex structured finance transactions.

Estimated Number of Responses: 5.

Estimated Time per Response: 25 hours.

Frequency of Response: On occasion.

Total Annual Burden: 125 hours.

General Description of Collection: Institutions verify and update their policies and procedures regarding complex structured finance transactions periodically to ensure that they are adequate and current.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC this 10th day of June, 2010.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2010–14440 Filed 6–15–10; 8:45 am]

BILLING CODE 6714–01–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 applications 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. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 2010.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Specialty Bancor, Inc., Austin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank, Austin, Texas.

Board of Governors of the Federal Reserve System, June 11, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–14485 Filed 6–15–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012098.

Title: Mitsui CSAV/"K" Line Mexico/U.S. Atlantic Space Charter Agreement.

Parties: Compania Sud American de Vapores S.A. and Kawasaki Kisen Kaisha, Ltd.

Filing Parties: John P. Meade, Esq.; Vice-President; K-Line America, Inc.; 6009 Bethlehem Road; Preston, MD 21655.

Synopsis: The agreement authorizes K-Line to charter space to CSAV in the trade from Mexico to the U.S. Atlantic Coast.

Agreement No.: 012099.

Title: Slot Exchange Agreement between YMUK/UASC.

Parties: United Arab Shipping Co. S.A G. and Yang Ming (UK), Ltd.

Filing Parties: Amy Cano, Esq.; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

Synopsis: The agreement authorizes the parties to sell or exchange slots to one another in the trades between U.S. ports and ports in the Mediterranean, Middle East, and Indian subcontinent, as well as between Asia and the Middle East.

Agreement No.: 201103–009.

Title: Memorandum Agreement of the Pacific Maritime Association of December 14, 1983 Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs, As Amended, Through June 3, 2010.

Parties: Pacific Maritime Association and International Longshore and Warehouse Union.

Filing Party: David F. Smith, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 1850; Washington, DC 20036.

Synopsis: The amendment revises how the man-hour base assessment will be calculated.

By Order of the Federal Maritime Commission.

Dated: June 11, 2010.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–14533 Filed 6–15–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

AM Worldwide, Inc. (OFF & NVO) 2928 B Greens Road, #450, Houston, TX 77032, *Officers:* Anthony J. Mello, President (Qualifying Individual), Michele Walsh, Secretary/Vice President, *Application Type:* Add NVO Service.

A.W.L.I. Group, Inc. dba Amber Worldwide Logistics, Inc. (OFF & NVO), 1358 NW 78th Avenue, Miami, FL 33126, *Officers:* Elaine Rosendorf, President (Qualifying Individual), Keith Milliner, Vice President, *Application Type:* Add NVO Service.

Aztec Marine Agencies, Inc. dba Beaumont Logistics Group (OFF), 1485 Wellington Circle, Suite 101, Beaumont, TX 77706, *Officers:* Rosemary Asta, President (Qualifying Individual), Christopher W. Asta, Vice President, *Application Type:* New OFF License.

Chem-Star Global Logistics, LLC (OFF & NVO), 6133 Edith Blvd., NE., Albuquerque, NM 87107, *Officers:* Terry L. Strohl, Operations Manager (Qualifying Individual), William W. Moore, Member, *Application Type:* New OFF & NVO License.

Concept Cargo Freight and Logistics Inc (NVO), 8952 NW 24th Terrace, Miami, FL 33172, *Officers:* Marcos A. Bacan, President (Qualifying Individual), Milton Rocha, Vice President/Secretary, *Application Type:* New NVO License.

Crowley Logistics Inc. (OFF & NVO), 9487 Regency Square Blvd., Jacksonville, FL 32225, *Officers:* Ronald D. Stalvey, Export Compliance Officer (Qualifying Individual), Thomas B. Crowley, Jr., Chairman/President/CEO, *Application Type:* QI Change.

Disham Logistics LLC (OFF), 168–01 Rockaway Blvd., Suite 204, Jamaica, NY 11434, *Officer:* Sadiah Mohammed, Member (Qualifying Individual), *Application Type:* New OFF License.

Foljin International Group, Inc. (OFF), 4344 Meadow Mills Road, Owings Mills, MD 21117, *Officers:* Fola Jinadu, President/CEO (Qualifying Individual), Tim Olu-Ajayi, Vice President, *Application Type:* New OFF License.

Global Marine Transportation Inc. (OFF & NVO), 1601 Third Avenue, Suite 22KW, New York, NY 10128, *Officers:* Gloria P. Avendano, President (Qualifying Individual), Stewart Feuer, Vice President, *Application Type:* Add OFF Service.

Global Port Ship Lines, Inc. (OFF), 103 E 3rd Street, Bevington, IA 50033, *Officers:* Timothy F. Pontier, President/Treasurer/Secretary (Qualifying Individual), Lisa J. Pontier, Vice President, *Application Type:* New OFF License.

IDS Freight Services USA LLC dba AGI Logistics dba AGI Logistics USA dba IDS Freight Services (NVO), 230–59 International Airport Center Blvd., Suite 270, Jamaica, NY 11413, *Officers:* Elaine Rosendorf, President (Qualifying Individual), Keith Milliner, Vice President, *Application Type:* Add NVO Service.

Jacob Fleishman Transportation, Inc. (OFF & NVO), 1177 NW 81st Street, Miami, FL 33150, *Officers:* Karen Azari, Secretary (Qualifying Individual), Roy Fleishman, President, *Application Type:* Add NVO Service.

Jimmy C. Hsueh dba Sonic Express (OFF), 651 N. El Camino Real, #304, San Mateo, CA 94401, *Officer:* Jimmy C. Hsueh, Sole Proprietor (Qualifying Individual), *Application Type:* New OFF License.

Karakorum Services, Inc. (OFF & NVO), 6045 NW 87th Avenue, Miami, FL 33178, *Officer:* Mayela J. Luzardo, President/Director/Secretary (Qualifying Individual), *Application Type:* New OFF & NVO License.

Lighthouse Freight International, Inc. (NVO), 440 Benmar Drive, Suite 2090, Houston, TX 77060, *Officer:* Luis Carranza, President (Qualifying Individual), *Application Type:* License Transfer.

Manila Forwarders USA Corp. (OFF & NVO), 4249 Eagle Rock Blvd., Los Angeles, CA 90065, *Officer:* Manuel O. Paez, President/CFO/Secretary (Qualifying Individual), *Application Type:* Business Structure Change.

Ocean Shipping Corporation (OFF), 9115 S.W. 123 Avenue Ct., Miami, FL 33186, *Officers:* Alberto E. Puentes, President (Qualifying Individual), Denise M. Puentes, Vice President/Secretary, *Application Type:* New OFF License.

Science Logistics Corp. (OFF & NVO), 3705 NW 115 Avenue, #8, Doral, FL 33178, *Officers:* Andrea K. Cavalcante, Secretary (Qualifying Individual), Maria C. Amorin, President/Treasurer, *Application Type:* New OFF & NVO.

Top Shipping Systems Corp. (OFF & NVO), 8570 NW 68th Street, Miami, FL 33166, *Officers:* Issac B. Morales, General Manager/Corporate Secretary (Qualifying Individual), Tony R. Diaz, President, *Application Type:* New OFF & NVO.

Tri-Vi-U.S. Logistics Ltd. (OFF & NVO), 20 W. Lincoln Avenue, Suite 307, Valley Stream, NY 11580, *Officers:* Yehudit Gabbay Turgeman, Vice President/Corporate Secretary (Qualifying Individual), Uri Yaron, President, *Application Type:* New OFF & NVO License.

Universal Freight Forwarders, Ltd. dba LCL North America (OFF), 18290 Andover Park West, Suite A, Tukwila, WA 98188, *Officers:* Rosana B. Brown, Treasurer (Qualifying Individual), Kazuhiko Sotome, Director/COB, *Application Type:* QI Change/Trade Name Change.

Vantec World Transport (USA), Inc. (OFF & NVO), 991 Francisco Street, Torrance, CA 90502, *Officers:* Yoshiaki Nagai, FMC License Qualifying Officer (Qualifying Individual), Junri Oda, Director/President/CEO, *Application Type:* QI Change.

Yang Kee Logistics USA Inc. (NVO), 880 Apollo Street, Suite 101, El Segundo, CA 90245, *Officers:* Peter Porse, President/Director (Qualifying Individual), Ken Koh, Vice President/Director, *Application Type:* New NVO License.

Dated: June 11, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–14532 Filed 6–15–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Order of Revocation

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number: 019374NF.

Name: Agents' House International, Inc.

Address: 2120 Dennis Street, Suite 301, Jacksonville, FL 32204.

Order Published: FR: 5/7/2010 (Volume 75, No. 88 Pg. 25258)

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–14530 Filed 6–15–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
018094NF	Cargo Logistics Network Company, 1825 Cross Beam Drive, Suite C, Charlotte, NC 28217	April 24, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–14529 Filed 6–15–10; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Establishment of the Personal Care Attendants Workforce Advisory Panel

AGENCY: Community Living Assistance Services and Supports (CLASS) Office, Department of Health and Human Services.

ACTION: Notice.

Authority: The Personal Care Attendants Workforce Advisory Panel is authorized under section 8002 of the Affordable Care Act, Pub. L. 111–148. The Committee is governed by provisions of Pub. L. 92–463, as amended, (5 U.S.C. App. 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services announces establishment of the Personal Care Attendants Workforce Advisory Panel, as directed by section 8002 of Public Law 111–148.

FOR FURTHER INFORMATION CONTACT: Margaret Reiser, Department of Health and Human Services; Telephone (202) 690–7858, Fax (202) 690–7383.

SUPPLEMENTARY INFORMATION: Under the Affordable Care Act, Public Law 111–148, the President directed that the Committee shall be established within the Department of Health and Human Services (HHS). To comply with the authorizing directive and guidelines under the Federal Advisory Committee Act (FACA), a charter has been filed with the Committee Management Secretariat in the General Services Administration (GSA), the appropriate committees in the Senate and U.S. House of Representatives, and the Library of Congress to establish the Commission as a non-discretionary Federal advisory committee. The Secretary signed the charter on June 4, 2010. The charter was filed on June 7, 2010.

Objectives and Scope of Activities. The Personal Care Attendants Workforce Advisory Panel is the Department's statutory public advisory body on personal care attendant workforce issues related to the Community Living Assistance Services and Supports (CLASS) Act in the Affordable Care Act. With sensitivity to policy considerations and priorities, the Committee will provide advice and guidance on issues related to the adequacy of the number of personal care attendant workers, the salaries, wages, and benefits, and access to the services provided by personal care attendant workers. The Committee shall assist and advise the Department on personal care attendant workforce policy as it pertains to the Department, States, local governments and the private sector.

Membership and Designation. The Secretary is soliciting nominations for appointment to the 15-member Advisory Panel from among members of the general public who are individuals who have distinguished themselves in the fields of long-term services and supports; aging and disability populations and services; practices that help reduce high personal care attendant workforce vacancy and turnover rates; Medicaid, Medicare, the Older Americans Act and the Workforce Investment System; community residential services; and policy analysis and development related to the financing, access, provision and quality of health care services. Each member of the Advisory Panel shall be appointed for a term of 2 years. Nominations shall be submitted to Margaret Reiser, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 415F, Washington, DC, 20201 no later than June 18, 2010. Any vacancy on the Advisory Panel shall not affect its powers, but shall be filled in the same manner as the original appointment was made. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced. A Chair will be designated from among its members. Members who are selected from the Federal sector to fill positions on the Committee will be classified as regular government employees. The Committee members who are selected from the public and/or private sector will be classified as special government employees.

Administrative Management and Support. HHS will provide funding and administrative support for the Committee to the extent permitted by law within existing appropriations. Staff will be assigned to a program office established to support the activities of the Committee. Management and oversight for support services provided to the Committee will be the responsibility of the CLASS Office. All executive departments and agencies and all entities within the Executive Office of the President shall provide information and assistance to the Committee as the Chair may request for purposes of carrying out the Committee's functions, to the extent permitted by law.

A copy of the Commission charter can be obtained from the designated contacts or by accessing the FACA database that is maintained by the GSA Committee Management Secretariat. The

Web site for the FACA database is *http://fido.gov/facadatabase/.*

Dated: June 10, 2010.

Donald B. Moulds,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2010–14447 Filed 6–15–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Workgroup Meetings; Notice of Meetings

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

Name of Committees: HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Policy, Adoption/Certification, Enrollment, Privacy & Security Tiger Team, and Nationwide Health Information Infrastructure (NHIN) workgroups.

General Function of the Committee: to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Date and Time: The HIT Policy Committee Workgroups will hold the following additional public meetings during June 2010: June 22nd Privacy & Security Tiger Team, 10 a.m. to 1 p.m./ET; June 25th Enrollment Workgroup, 9 a.m. to 10 a.m./ET; June 28th Enrollment Workgroup, 10 a.m. to 1 p.m./ET and Privacy & Security Tiger Team, 2 p.m. to 4 p.m./ET. In addition, the June 28th Privacy & Security Policy Workgroup, 2 p.m. to 4 p.m./ET, has been cancelled.

Location: All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov.* Please check the ONC Web site for additional information as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The workgroups will be discussing issues related to their specific subject matter, *e.g.,* meaningful use, the NHIN, privacy and security, or enrollment. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App. 2).

Dated: June 8, 2010.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2010–14397 Filed 6–15–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Vaccine Advisory Committee Meetings

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meetings.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold two teleconference meetings. The meetings are open to the public. Pre-registration is not required, however, individuals who wish to participate in the public comment sessions should either e-mail *nvpo@hhs.gov* or call 202–690–5566 to register.

DATES: The meeting dates are:

1. July 27, 2010, 1 p.m.–2 p.m. EDT.
2. August 25, 2010, 1 p.m.–2 p.m. EDT.

ADDRESSES: The meetings will occur by teleconference. To attend, please call 1–888–677–1385, passcode "NVAC."

FOR FURTHER INFORMATION CONTACT: Daniel Salmon, National Vaccine Program Office, Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Phone: (202) 690–5566; Fax: (202) 260–1165; e-mail: *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. Section 300aa-1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program, on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

These are special meetings of the NVAC. Discussions will focus on the work of the Vaccine Safety Risk Assessment Working Group (VSRAWG) and the reports that it generates. The reports will summarize the work to-date of the H1N1 VSRAWG reviewing H1N1 safety monitoring data. These NVAC meetings may also include topics beyond the VSRAWG such as the

National Vaccine Plan and updates from other Working Groups. If there is a change in meeting dates this information will be posted on the NVAC Web site (*http://www.hhs.gov/nvpo/nvac/*) as soon as the pertinent information becomes available.

For these special meetings, members of the public are invited to attend by teleconference via a toll-free call-in phone number. The call-in number will be operator assisted to provide members of the public the opportunity to provide comments to the Committee. Public participation and ability to comment will be limited to space and time available. Public comment will be limited to no more than three minutes per speaker. Pre-registration is required for public comment only. Individuals who plan to attend and need special assistance, such as accommodation for hearing impairment or other reasonable accommodations, should notify the designated contact person at least one week prior to the meeting.

Any members of the public who wish to have printed material distributed to NVAC should submit materials to the Executive Secretary, NVAC, through the contact person listed above prior to close of business one week before each meeting (conference call). A draft agenda and any additional materials will be posted on the NVAC Web site (*http://www.hhs.gov/nvpo/nvac/*) prior to the meeting.

Dated: June 1, 2010.

Bruce Gellin,

Deputy Assistant Secretary for Health, Director, National Vaccine Program Office, Executive Secretary, NVAC.

[FR Doc. 2010–14472 Filed 6–15–10; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0266]

Agency Information Collection Activities; Proposed Collection; Comment Request; Study of Clinical Efficacy Information in Professional Labeling and Direct-to-Consumer Print Advertisements for Prescription Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Study of Clinical Efficacy Information in Professional Labeling and Direct-to-Consumer (DTC) Print Advertisements for Prescription Drugs. This study is designed to investigate efficacy and effectiveness information of prescription drugs as conveyed to healthcare providers through approved labeling and to consumers through print advertisements.

DATES: Submit either electronic or written comments on the collection of information by August 16, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Study of Clinical Efficacy Information in Professional Labeling and Direct-to-Consumer (DTC) Print Advertisements for Prescription Drugs—New

FDA regulations require that an advertisement that makes claims about a prescription drug include a "fair balance" of information about the benefits and risks of the advertised product, in terms of both content and presentation (§ 202.1(e)(5(ii) (21 CFR 202.1(e)(5)(ii)). In past research, FDA has focused primarily on the risk component of the risk-benefit ratio. In the interest of thoroughly exploring the issue of fair balance, however, the presentation of effectiveness, or benefit, information is equally important.

The act requires that manufacturers, packers, and distributors (sponsors) who advertise prescription human and animal drugs, including biological products for humans, disclose in advertisements certain information about the advertised product's uses and risks.[1] By its nature, the presentation of this risk information is likely to evoke active tradeoffs by consumers, i.e., comparisons with the perceived risks of not taking treatment, and comparisons with the perceived benefits of taking a treatment.[2] Because FDA has an interest in fostering safe and proper use of prescription drugs, an activity that engages both risks and benefits, an indepth understanding of consumers' processing of this information is central to this regulatory task.

Research and guidance to sponsors on how to present benefit and efficacy information in prescription drug advertisements is limited. For example, "benefit claims," broadly defined, appearing in advertisements are often presented in general language that does not inform patients of the likelihood of efficacy and are often simply variants of

[1] For prescription drugs and biologics, the act requires advertisements to contain "information in brief summary relating to side effects, contraindications, and effectiveness" (21 CFR 202.1(e)(1)).

[2] See Schwartz, L., S. Woloshin, W. Black, et al., "The Role of Numeracy in Understanding the Benefit of Screening Mammography," *Annals of Internal Medicine*, 127(11), 966–72, 1997.

an "intended use" statement. In a content analysis of DTC advertising,[3] the researchers classified the "promotional techniques" used in the advertisements. Emotional appeals were observed in 67 percent of the ads while vague and qualitative benefit terminology was found in 87 percent of the ads. Only 9 percent contained data. For risk information, however, half the advertisements used data to describe side-effects, typically with lists of side-effects that generally occurred infrequently.

FDA regulations require that prescription drug advertisements that make (promotional) claims about a product also include risk information in a "balanced" manner (§ 202.1(e)(5)(ii)), both in terms of the content and presentation of the information. This balance applies to both the front (a.k.a. "display") page of an advertisement, as well as the brief summary page. However, beyond the "balance" requirement limited guidance and research exists to direct or encourage sponsors to present benefit claims that are informative, specific, and reflect clinical effectiveness data.

The purpose of this project is to: (1) Understand how physicians process clinical efficacy information and how they interpret approved product label information,[4] (2) determine physician preferences for alternative presentations of clinical efficacy information in DTC advertising, and (3) examine how different presentations of clinical efficacy information in DTC advertising affect consumers' perceptions of efficacy and safety. Specifically, we are interested in how physicians and consumers make risk/benefit assessments and particularly, how consumers make such judgments in response to variations in the efficacy presentations in the "display" (first) page of a DTC print ad. A particular concern is whether certain presentations cause consumers to form skewed perceptions or unfounded risk/benefit tradeoffs. Therefore, we will investigate to what extent consumers, when provided with efficacy information, form perceptions that correspond with clinically-based physicians' assessments of the benefits, risks, and benefit/risk tradeoffs of the same drugs. These studies will inform FDA's thinking regarding how manufacturers may provide useful and non-misleading efficacy information in DTC print advertisements.

Design Overview

This study will be conducted in two concurrent, independent parts. The first part will involve 2,500 consumers in an experimental examination of variations of the display page of print DTC ads for two fictitious drugs, closely approximating existing drugs for overactive bladder (OAB) and benign prostatic hyperplasia (BPH). In the second part, 600 general practitioners will review and evaluate a fictitious "approved" label for the same conditions. This design will allow us to compare consumers' perceptions of efficacy with a more objective measure of the true efficacy of the drug as measured by physician perceptions of clinical efficacy from labeling.

Consumer Experiment. In this part of the study, women who have been diagnosed with or are at risk for OAB (self-designated based on relevant symptoms) will be recruited and will view one version of a DTC ad for a drug to treat OAB. Men who have been diagnosed with or are at risk for BPH (self-designated based on relevant symptoms) will be recruited and will view one version of a DTC ad for a drug to treat BPH. Although the two conditions are somewhat specific to gender (men can suffer from OAB but it is much more prevalent in women), they share many of the same symptoms and characteristics. These medical conditions afford us the ability to maintain various realistic manipulations of placebo level and type of claim, as explained in the following paragraphs. The graphical elements and construction of the two ads will be comparable yet still realistic.

Consumers will be randomly assigned to see 1 of 12 DTC print ads within their respective medical condition and will answer questions about the effectiveness and safety of the fictitious drug advertised in them. These 12 experimental conditions will be created by examining three independent variables in the following manner: Type of claim (2 levels: treatment, prevention), placebo rate (3 levels: high, low, none), and framing (2 levels: single, mixed). Please note that the numbers describing efficacy seen in the table are for illustration only. Actual numbers used will be determined by pretesting.

		Treatment Claim Study			Prevention Claim Study	
		Frame			Frame	
		Single	Mixed		Single	Mixed
Placebo	High	• 30/100 on Drug X reduced urinary frequency and urgency • 20/100 without Drug X reduced urinary frequency and urgency	• 30/100 on Drug X reduced urinary frequency and urgency; 70/100 saw no improvement • 20/100 without Drug X reduced urinary frequency and urgency; 80/100 saw no improvement		• Diagnosed with bladder cancer on Drug X: 4/100 • Diagnosed with bladder cancer without Drug X: 5/100	• Diagnosed with bladder cancer on Drug X: 4/100; Not diagnosed with bladder cancer on Drug X: 96/100 • Diagnosed with bladder cancer without Drug X: 5/100; Not diagnosed with bladder cancer without Drug X: 95/100

[3] Woloshin, S., L. Schwartz, "Direct to Consumer Advertisements for Prescription Drugs: What Are Americans Being Told," *Lancet*, 358, 1141–46, (2001).

[4] As part of this effort, a qualitative mental models procedure was completed that helped us determine how physicians think about the efficacy of potential pharmaceutical options (OMB control no. 0910–0649).

		Treatment Claim Study			Prevention Claim Study	
		Frame			Frame	
		Single	Mixed		Single	Mixed
	Low	• 30/100 on Drug X reduced urinary frequency and urgency • 3/100 without Drug X reduced urinary frequency and urgency	• 30/100 on Drug X reduced urinary frequency and urgency; 70/100 saw no improvement • 3/100 without Drug X reduced urinary frequency and urgency; 97/100 saw no improvement		• Diagnosed with bladder cancer on Drug X: 4/100 • Diagnosed with bladder cancer without Drug X: 9/100	• Diagnosed with bladder cancer on Drug X: 4/100; Not diagnosed with bladder cancer on Drug X: 96/100 • Diagnosed with bladder cancer without Drug X: 9/100; Not diagnosed with bladder cancer without Drug X: 91/100
	None	• 30/100 on Drug X reduced urinary frequency and urgency	• 3/100 without Drug X reduced urinary frequency and urgency; 70/100 saw no improvement		• Diagnosed with bladder cancer on Drug X: 4/100	• Diagnosed with bladder cancer on Drug X: 4/100; Not diagnosed with bladder cancer on Drug X: 96/100
Extra High Efficacy					• Diagnosed with bladder cancer on Drug X: 4/100 • Diagnosed with bladder cancer without Drug X: 15/100	• Diagnosed with bladder cancer on Drug X: 4/100; Not diagnosed with bladder cancer on Drug X: 96/100 • Diagnosed with bladder cancer without Drug X: 15/100; Not diagnosed with bladder cancer without Drug X: 85/100

We will investigate variations of numerical presentation in two different types of claims: Treatment and prevention. Treatment claims usually involve symptoms that may be alleviated by taking a given prescription drug. This type of claim is directly observable and somewhat testable by patients. If bothersome symptoms do not go away, a patient can return to the healthcare provider with this information and pursue additional options for treatment. In general, drugs that treat symptoms typically show substantial percentages of people who experience relief.

Prevention claims are important but due to their long-term nature, potentially harder to communicate. A drug that prevents a negative future event may not alleviate any symptoms at all. Patients may feel no benefit from the drug and must trust their healthcare provider and the data, as much as they can process it, that the drug is providing a positive benefit for them. The nature of these claims is such that the event being prevented is relatively rare, and thus the numbers used to describe them are often very small. For example, a cholesterol drug that reduces the risk of heart attack from 3 out of 100 to 2 out of 100 may not seem objectively large, but has enormous consequences for millions of people and the healthcare system in general. We chose to test this type of claim to determine whether consumers are sensitive to the magnitude of the benefit in these clinically meaningful but objectively small and usually asymptomatic outcomes. While we will examine the current issues in both treatment and prevention claims, we do not intend to make comparisons between the two.

The second variable of interest is communication of a placebo rate. Three levels will be examined. In addition to testing a control condition with no placebo information, we will utilize a high and low placebo rate to better understand if and how consumers use placebo information. We see three possibilities: (1) People use placebo numbers correctly, such that the low placebo group demonstrates higher perceived efficacy than the high placebo group, (2) people use the placebo numbers as a peripheral cue to mean "science" so there are no differences between high and low placebo groups on perceived efficacy but both are higher than the no placebo group and (3) people do not find the numbers meaningful or cannot process them, so the high and low groups do not differ from one another and they do not differ from the no placebo group. In an attempt to make our claims as realistic as possible, we will maintain fairly low rates of prevention in the prevention conditions. For this reason, in addition to the 12 cells in the table previously illustrated in this document, we will also have an additional control cell in which the effectiveness rates are quite high—higher than could reasonably be expected but high enough to be objectively noticeable (e.g., risk of bladder cancer on Drug X, 4/100; risk of bladder cancer on placebo, 15/100). This additional condition will provide confidence that our research manipulations are operating as we expect.

Finally, we will examine the addition of *mixed* framing to the traditional use of a *single positive* frame in a DTC ad. Mixed framing provides the number of people who benefited and the number of people who did not benefit, whereas positive framing provides only the number of people who benefited. Only a few studies have actually measured

this mixed approach[5] although risk communication guides recommend the use of mixed framing to create more accurate perceptions.[6] Although a completely balanced design would also include a negative framing condition (which would provide only the number of people who did not benefit), we feel it is unrealistic to create an ad that would suggest, for example, that "Drug X did not work for 70% of people in clinical trials," so we have chosen not to include negative framing in our investigation.

In this part of the project, we are most interested in consumers' perceived efficacy and safety, which we can then compare with ratings physicians will provide based on the prescribing information, described in the next section. We will also ask consumers questions to measure their accuracy with regard to claims, their recall of the information in the ad, and demographic questions that may influence their responses, such as knowledge about their medical condition and their level of numeracy.

Physician Study. Six hundred general practitioners[7] will participate in an Internet survey lasting no longer than 20 minutes. They will complete two tasks during this time. In the first task, they will evaluate a prescription drug label (also known as the *prescribing information*, written for healthcare practitioners) for one of the two fictitious drugs described in the consumer study located in the following paragraphs. To provide a match for the variations of information in the DTC ads the consumers will observe, physicians will be randomly assigned to see prescribing information that varies in terms of claim type, placebo rates in clinical trials, and the medical condition the drug treats (OAB or BPH).

As part of this task, we will obtain timing and sequence information on which sections of the label physicians examine. This will enable us to have a deeper understanding of physicians' processing of the prescribing information. We are not aware of existing literature on this topic. Additionally, physicians will answer questions about the efficacy and safety of the drug and quantitative questions about the benefit shown in the clinical studies (as described in the label). These questions have been designed such that they can be reasonably compared with the responses of consumers who will answer the same questions after viewing a corresponding DTC ad.

In the second task, physicians will see four versions of a print DTC ad for a fictitious product for high cholesterol and will rank the ads in order of how representative of the clinical data as the physicians know it the ads are and how useful they believe the ads would be for their patients.[8] The four versions will be selected to mirror the versions of the OAB/BPH drug that consumers will see in the consumer experiment (i.e., low placebo, frame).

Thus, this research will provide us with a rich data set in order to address several questions: (1) How physicians process clinical efficacy information and how they use approved product label information, (2) how physicians' interpretations of clinical efficacy information relate to their preferences for alternative DTC ad presentations, and (3) which variations of information in DTC ads bring consumers closer to or farther away from the conclusions of the physicians regarding the same drugs.

The total respondent sample for this data collection is 3,400. We estimate the response burden to be 20 minutes in the first part and 15 minutes in the second part, for a burden of 906 hours.

The response burden chart is listed below.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Physician survey-pretest	100	1	100	.333	33
Physician survey-main study	600	1	600	.333	200
Consumer experiment-pretest	200	1	200	.25	50
Consumer experiment-main study	2,500	1	2,500	.25	625
Total	3,400				908

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[5] For a literature review, see Moxey, A., D. O'Connell, P. McGettigan, et al., "Describing Treatment Effects to Patients: How They Are Expressed Makes a Difference," *Journal of General Internal Medicine*, 18, 948–959, 2003.

[6] Fagerlin, A., P.A. Ubel, D.M. Smith, et al., "Making Numbers Matter: Present and Future Research in Risk Communication," *American Journal of Health Behavior*, 31, S47–S56, 2007; Schwartz, L.M., S. Woloshin, H.G. Welch, "Risk Communication in Clinical Practice: Putting Cancer in Context", *Monograph of the National Cancer Institute*, 25, 124–133, 1999.

[7] Including internists, general practitioners, and family practitioners.

[8] To reduce burden, the physician sample will be split in this task, so that half of the physicians see the four ad versions with treatment claims and the other half see the four ad versions with prevention claims. Type of claim is described in greater detail in the consumer experiment section.

Dated: June 9, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–14445 Filed 6–15–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request Resource for the Collection and Evaluation of Human Tissues and Cells From Donors With an Epidemiology Profile (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c) (2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Resource for the Collection and Evaluation of Human Tissues and Cells From Donors With an Epidemiology Profile (NCI). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Under the auspices of three NCI IRB-approved protocols and instruments, the Laboratory of Human Carcinogenesis conducts case-control studies to investigate the relations between biomarkers, the environment, and human cancer. Human subjects recruited from the general population are needed as controls (Population Controls) for bio-specimens and personal histories (social, occupational and health) that serve as references for the significance of the frequency and prevalence of bio-markers found in cancer patients and thought to be important in the development, progression, and/or response to treatment of the malignant growths in cancer patients. The questionnaires will be used to obtain the personal histories to compare to the life styles and exposures and the biospecimens will serve as controls for the assay results obtained from cancer patients. The collection of information and specimens from the cancer cases received NIH Clinical Exemption (Request #2009–09–002) on October 28, 2009. *Frequency of Response:* Once. *Affected Public:* Adult and senior members of the licensed driver population in Baltimore, Maryland and eleven nearby counties, including the Eastern Shore. *Type of Respondents:* Responders will be English speaking, male and female, Caucasian, African-American and Asian. The total annual reporting burden is estimated to be 692 (see table below). There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

TABLE 1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Adults (40–79 years old)	Telephone Screener (Attachment 16).	1700	1	10/60 (0.17)	283
	Main Questionnaire (Attachment 6)	225	1	60/60 (1)	225
	Prostate Supplemental Questionnaire (Attachment 7).	125	1	30/60 (0.5)	63
	Liver Supplement (Attachment 8)	225	1	30/60 (0.5)	113
	Refusal Questionnaire Form (Attachment 21).	225	1	2/60 (0.03)	8
Totals		2500			692

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Glenwood E. Trivers or Elise Bowman, Center for Cancer Research, NCI, NIH, 37 Convent Drive, Room 3060–C or 3060–A, Building 37, Bethesda, Maryland 30893–4258 or call non-toll-free number 301–496–2094 or 301–496–2090 or e-mail your request, including your address to *triversg@mail.nih.gov or bowmane@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: June 9, 2010.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–14546 Filed 6–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for the Prevention and Control of Norovirus Gastroenteritis Outbreaks in Healthcare Settings

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the *Draft Guideline for the Prevention and Control of Norovirus Gastroenteritis Outbreaks in Healthcare Settings,* available on the following Web site: *http://www.cdc.gov/publiccomments/.*

This document is for use by infection prevention staff, healthcare epidemiologists, healthcare administrators, nurses, other healthcare

providers, and persons responsible for developing, implementing, and evaluating infection prevention and control programs for healthcare settings across the continuum of care. This guideline provides evidence-based recommendations for prevention and control of norovirus outbreaks in healthcare settings.

DATES: Comments must be received on or before July 16, 2010.

ADDRESSES: Comments on the *Draft Guideline* should be submitted by e-mail to *HCNoro@cdc.gov* or by mail to CDC, Division of Healthcare Quality Promotion, Attn: Michelle King, 1600 Clifton Rd., NE, Mailstop A–07, Atlanta, Georgia, 30333; or by fax 404–639–4049. All comments received will be posted electronically for viewing at: *http://www.cdc.gov/publiccomments/.*

FOR FURTHER INFORMATION CONTACT: Michelle King, HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333, Telephone: (404) 639–2936, E-mail: *HICPAC@cdc.gov.*

Dated: June 10, 2010.

Tanja Popovic,

Deputy Associate Director of Science Centers for Disease Control and Prevention.

[FR Doc. 2010–14492 Filed 6–15–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Biomarkers in Acute Kidney Injury Ancillary Studies.

Date: July 28, 2010.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–14551 Filed 6–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Pathway to Independence/Career Development.

Date: July 19, 2010.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307, *bass@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 9, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy,

[FR Doc. 2010–14548 Filed 6–15–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2010

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2010 for Medicare and Medicaid beneficiaries and beneficiaries of other Federal programs. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements. Section 1880 of the Social Security Act authorizes Medicare Part B payment to hospitals and ambulatory care clinics operated by IHS or by an Indian Tribe or Tribal organization.

	Calendar Year 2010
Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services)	
Lower 48 States	$2,046
Alaska	2,246

	Calendar Year 2010
Outpatient Per Visit Rate (Excluding Medicare)	
Lower 48 States	$289
Alaska	448
Outpatient Per Visit Rate (Medicare)	
Lower 48 States	$246
Alaska	415
Medicare Part B Inpatient Ancillary Per Visit Rate	
Lower 48 States	$429
Alaska	689
Outpatient Surgery Rate (Medicare)	
Established Medicare rates for freestanding Ambulatory Surgery Centers	
Effective Date for Calendar Year 2010 Rates	
Consistent with previous annual rate revisions, the Calendar Year 2010 rates will be effective for services provided on/or after January 1, 2010 to the extent consistent with payment authorities including the applicable Medicaid State plan.	

Dated: April 8, 2010.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2010–14505 Filed 6–15–10; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information; Office of Law Enforcement/Federal Air Marshal Service Mental Health Certification

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved information collection request (ICR), OMB control number 1652–0043, abstracted below, that TSA will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR involves a certification form that applicants for the Office of Law Enforcement/Federal Air Marshal are required to complete regarding their mental health history.

DATES: Send your comments by August 16, 2010.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, Communications Branch, Business Management Office, Office of Information Technology, TSA–11, Transportation Security Administration, 701 South 12th Street, Arlington, VA 20598.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651 or facsimile (571) 227–2907.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

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

Information Collection Requirement

Pursuant to 49 U.S.C. 44917, TSA has authority to provide for deployment of Federal Air Marshals (FAMs) on passenger flights and provide for appropriate training, supervision, and equipment of FAMs. In furtherance of this authority, TSA policy requires that applicants for the Office of Law Enforcement/Federal Air Marshal positions meet certain medical and mental health standards.

In order to evaluate whether applicants meet TSA standards, applicants must undergo a psychological evaluation determining that they do not have an established medical history or clinical diagnosis of psychosis, neurosis, or any other personality or mental disorder that clearly demonstrates a potential hazard to the performance of FAM duties or the safety of self or others. As part of the psychological evaluation, applicants are required to complete a certification form regarding their mental health history and provide an explanation for anything they cannot certify. Applicants will be asked whether they can certify various statements including that they have never been removed from work for medical or psychological reasons.

Upon completion, applicants submit the certification form directly to the FAMS' Medical Programs Division (FAMS MPD) for initial screening via fax, electronic upload via scanning document, mail, or in person. The FAMS MPD screens all certification forms received. Any explanations for uncertified items received will generally require further review and follow-up by a contract psychologist or psychiatrist. This certification is carefully geared to capitalize on other elements of the assessment process, such as personal interviews, physical task assessment, background investigation, as well as the other components of the medical examination and assessment. TSA estimates that there will be 10,000 respondents annually.

It will take each respondent approximately one hour to complete the certification form for a total annual hour burden of 10,000 hours.

Issued in Arlington, Virginia, on June 10, 2010.

Joanna Johnson,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–14559 Filed 6–15–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2008–0017]

Voluntary Private Sector Accreditation and Certification Preparedness Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: The Department of Homeland Security (DHS) announces its adoption of three standards for the Voluntary Private Sector Accreditation and Certification Preparedness Program ("PS–Prep" Program). This Notice identifies the three standards and discusses generally the public comments which were received in

response to the DHS's proposal to adopt these standards.

Instructions: DHS will continue to accept comments on the PS–Prep Program, the three adopted standards, or proposals to adopt any other similar standard that satisfies the Target Criteria presented in the December 24, 2008 **Federal Register** Notice in accordance with the instructions below. DHS will review any comments received or proposals for DHS adoption of additional standards and, when merited, will publish a **Federal Register** Notice providing the results of that review or notifying the public of an intention to adopt additional standards. Those interested may submit comments, identified by Docket ID FEMA–2008–0017, by one of the following methods:

- *Federal Docket Management System: http://www.regulations.gov.* Follow the instructions for submitting comments. (**Note:** This process applies to all government requests for comments—even though as in the case of PS–Prep, they may not be for regulatory purposes.)
- *E-mail: FEMA–POLICY@dhs.gov.* Include Docket ID FEMA–2008–0017 in the subject line of the message.
- *Fax:* 703–483–2999.
- *Mail/Hand Delivery/Courier:* Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472–3100.

All submissions received must refer to FEMA as the recipient agency and Docket ID FEMA–2008–0017. All submissions will be posted, without change, to the Federal Docket Management System at *http://www.regulations.gov,* and will include any personal information you provide. Because comments are made available to the public, submitters should take caution not to include any sensitive, personal information, trade secret, or any commercial or financial information which is obtained from any person and which is deemed privileged or confidential. Submitters may wish to read the Privacy Act Notice available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal Docket Management System at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street, SW., Room 840, Washington, DC 20472.

Availability of the Adopted Standards: The three adopted standards are available in two ways: (1) Through the individual websites of the three respective standards development organizations (SDOs) and (2) through the FEMA public reading room.

FEMA will maintain copies of all DHS adopted standards and make them available upon request for viewing in person at FEMA's reading room, located at 500 C Street SW., Room 835, Washington, DC 20472. Due to licensing and copyright restrictions, however, these documents will be available for review only, not for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Marcus Pollock, National Integration Center, National Preparedness Directorate, Protection and National Preparedness, 500 C Street, SW., Washington, DC 20472. Phone: 202–646–2801 or e-mail: *FEMA–NIMS@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In Title IX of the "Implementing Recommendations of the 9/11 Commission Act of 2007" (Pub. L. 110–53) codified at 6 U.S.C. 321m, Congress mandated DHS to develop and implement a Voluntary Private Sector Preparedness Accreditation and Certification Program. This program, now known as "PS–Prep," provides a mechanism by which a private sector entity may apply to be certified by an accredited third-party that the private sector entity conforms to one or more of the preparedness standards adopted by DHS.

DHS published a Notice in the **Federal Register** on December 24, 2008, describing the DHS implementation of the PS–Prep Program, requesting comment on the Program and the target criteria for voluntary preparedness standards, and requesting recommendations for standards that DHS should consider. *See* 73 FR 79140. After reviewing the responses to the December 2008 Notice, DHS published another Notice in the **Federal Register** which proposed the adoption of three standards for use in the PS–Prep Program and sought public comment. *See* 74 FR 53286 (October 16, 2009).

II. Review of Public Comments on Standards Adoption

DHS has considered the comments gathered in response to the October 2009 **Federal Register** Notice, and found that there were no significant concerns expressed about the adoption of any of the proposed standards. *See* Section III.C of this Notice. Stakeholder comments regarding the development of the PS–Prep Program and answers to the seven questions posed in the Notice have also been reviewed and, in some cases, are continuing to be considered. Those comments will be further addressed in future communications.

III. DHS Adopts Three Initial Standards for the PS–Prep Program

A. Adoption of Three PS–Prep Standards

Based on public comments, the compliance of the proposed standards to the PS–Prep target criteria, and the design of those standards to accomplish the purposes of the PS–Prep Program, DHS has determined to move forward with the standards proposed in the October 2009 **Federal Register** Notice. The FEMA Administrator, as the Designated Officer for PS–Prep, hereby formally adopts the following three standards:

1. *National Fire Protection Association 1600—Standard on Disaster/Emergency Management and Business Continuity Programs, 2007 and 2010 Editions*
2. *British Standards Institution 25999 (2007 Edition)—Business Continuity Managemen*t (BS 25999:2006–1 Code of practice for business continuity management and BS 25999:2007–2 Specification for business continuity management).
3. *ASIS International SPC. 1–2009—Organizational Resilience: Security Preparedness, and Continuity Management Systems—Requirements with Guidance for Use (2009 Edition).*

B. Adoption of Both the 2007 and 2010 Editions of NFPA 1600 Standard

Standards developing organizations routinely review their standards on an established schedule and provide updates as needed. Since publication of the October 2009 Notice proposing to adopt the 2007 edition of NFPA 1600 standard, the National Fire Protection Association (NFPA) has published a 2010 edition, superseding the 2007 edition. DHS reviewed the 2010 edition of NFPA 1600 and has found that it meets the PS–Prep Target Criteria. Given that entities may be in the process of implementing the 2007 edition, DHS has chosen to follow the standard industry conformity assessment practice of allowing a transition period from implementation of a previous edition of a standard to a subsequent edition.

For this reason, DHS is adopting both the 2007 and 2010 editions of NFPA 1600. DHS intends that the transition period will allow businesses that may have already implemented the 2007 edition of NFPA 1600 to be certified to that standard. Certifications based upon the 2007 edition will remain valid

through the end of the period prescribed in individual certifications. After the end of that transition period, entities seeking certification to NFPA 1600 must use the 2010 version.

Subsequent versions of the two remaining standards and other standards DHS may adopt will operate on cycles that may not be uniform. DHS will review subsequent versions of already adopted standards for conformity to the target criteria and suitability for the program.

C. Discussion of Comments Received in Response to the Oct. 2009 Notice of Intent

DHS received a total of 122 comments in response to the October 2009 **Federal Register** Notice. Of that number, 100 comments were made in regard to the intention of DHS to adopt the three identified standards. The remaining comments concerned some other aspect of the PS–Prep Program and will be dealt with in future communications on relevant aspects of the PS–Prep Program.

The vast majority of comments related to three the standards supported DHS adoption of one or more of the standards. The largest number of comments stating any opposition to the adoption of any of the three identified standards related to BS 25999. Those comments were based on the fact that the British Standards Institution, under the auspices of which the standard was developed, was not a United States entity. That is a fact; however, DHS believes that the standard is comprehensive, meets the PS–Prep Target criteria, and satisfies the needs of the PS–Prep Program. Research by DHS indicates that several United States corporations have implemented or are implementing BS 25999. DHS further believes that the national identity of the standard setting organization is not inherently relevant to the viability of any candidate PS–Prep standard and, as indicated, has adopted BS 25999.

IV. Next Steps

A. Initiation of the PS–Prep Certification Process

Once the standards are announced, the American National Standards Institute (ANSI)—American Society for Quality (ASQ) National Accreditation Board (ANAB), the PS–Prep accrediting body, will finalize its process for accrediting third party certifying entities for the PS–Prep Program. Upon that finalization, DHS expects that preparation and accreditation of certifying entities will take an additional two to four months. DHS will announce the initiation of the availability of the PS–Prep Program certification process on the PS–Prep Program Web site.

B. Critical Infrastructure and Key Resources (CIKR) Sector-Specific Issues

DHS has made clear that it does not intend that the PS–Prep Program will create a need for a duplication of requirements for entities that wish to participate. DHS will attempt to identify regulations, guidelines, or sector codes of practice that meet portions of adopted standards and that could form the basis for compliance with PS–Prep adopted standards. To this end, the DHS Office of Infrastructure Protection (IP) will collaborate with the CIKR sectors and their respective Sector Coordinating Councils to identify such existing sector activities. IP will work with the individual CIKR sectors to develop a framework containing the identified sector-specific considerations and activities that may be used in the PS–Prep certification processes.

V. Small Business Consideration

In 6 U.S.C. 321m(b)(2)(D), DHS is required to "establish separate classifications and methods of certification for small business concerns." The definition of "small business concerns" is that of the Small Business Act at 15 U.S.C. 632. Both previous PS–Prep **Federal Register** Notices have contained extensive discussions of the DHS approach to best reflect the interests of small businesses, minimize any burden associated with certification for the PS–Prep Program, and achieve the purposes of the PS–Prep Program. DHS continues to seek comments from the public and, particularly, small businesses on specific tools and means for certification of small business under the PS–Prep Program.

Dated: June 10, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–14429 Filed 6–15–10; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L61400000.ER0000/LLOR936000]

Renewal of Approved Information Collection, OMB Control Number 1004–0168

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-day notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request that the Office of Management and Budget (OMB) renew its approval to collect information from private landowners in western Oregon who are authorized to transport timber over BLM-controlled roads. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned control number 1004–0168.

DATES: Please submit your comments to the BLM at the address below on or before August 16, 2010.

ADDRESSES: You may mail comments to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401–LS, 1849 C St., NW., Washington, DC 20240, Attention: 1004–0168. You may also send comments to Jean Sonneman by fax at 202–912–7102, or by e-mail at: *Jean_Sonneman@blm.gov,* Attention: 1004–0168.

FOR FURTHER INFORMATION CONTACT: You may contact Sarah Bickford, O&C Road Rights-of-Way Realty Specialist, at 541–471–6694. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact Ms. Bickford. You may also contact Ms. Bickford to obtain a copy, at no cost, of the regulations and the form pertaining to this collection of information.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies be provided an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies information collections that are contained in 43 CFR subpart 2812. The BLM will request that the OMB approve this information collection activity for a 3-year term.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the

BLM's submission of the information collection requests to OMB.

The following information is provided for the information collection:

Title: Tramroads and Logging Roads (43 CFR part 2810).

Form: Form OR 2812–6, Report of Road Use.

OMB Control Number: 1004–0168.

Summary: This collection of information pertains to rights-of-way on public lands that were returned to the United States after being conveyed for construction of the Oregon & California Railroad. On these lands in western Oregon, the BLM Oregon State Office has authority under the Act of August 28, 1937 (43 U.S.C. 1181a and 1181b) and Subchapter V of the Federal Land Policy and Management Act (43 U.S.C. 1761–1771) to grant rights-of-way to private landowners to transport their timber over BLM-controlled roads. Each right-of-way permit issued under these two authorities requires the permittee to provide the BLM with a certified statement disclosing the amount of timber removed, the lands from which the timber was removed, and the BLM roads used to transport the timber. Permittees must submit this information on a quarterly basis using Form OR 2812–6, Report of Road Use.

The BLM uses this information to calculate road use fees, as authorized at Section 502 the Federal Land Policy and Management Act (43 U.S.C. 1762). If we did not require the collection of information, it would not be possible to monitor compliance with the terms and conditions of the permits described above, and road costs would not be collected in a timely manner.

Frequency of Collection: Quarterly.

Estimated Number and Description of Respondents: Approximately 68 holders of rights-of-way for use of BLM-controlled roads in western Oregon.

Currently Approved Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden is 272 responses and 2,176 hours.

Currently Approved Reporting and Recordkeeping "Non-Hour Cost" Burden: $0.

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

The BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–14507 Filed 6–15–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2009–N264; 80230–1265–0000–S3]

Availability: Final Comprehensive Conservation Plan and Finding of No Significant Impact; Modoc National Wildlife Refuge, Modoc County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for Modoc National Wildlife Refuge (NWR). The CCP describes how we will manage the Refuge for the next 15 years.

DATES: The CCP and FONSI are available now. The FONSI was signed On December 15, 2009. Implementation of the CCP may begin immediately.

ADDRESSES: You may view or obtain copies of the final CCP and FONSI/EA by any of the following methods. You may request a hard copy or CD–ROM.

Agency Web site: Download a copy of the document(s) at *http://www.fws.gov/modoc.*

E-mail: Jackie_Ferrier@fws.gov.

Mail: U.S. Fish and Wildlife Service, Attn: Jackie Ferrier, Sacramento National Wildlife Refuge Complex, 752 County Road 99W, Willows, CA 95988.

In-Person Viewing or Pickup: Call 530–934–2801 to make an appointment during regular business hours at Modoc National Wildlife Refuge, 5364 County Road 115, Alturas, CA 96101.

Local Library or Libraries: The documents are also available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR MORE INFORMATION CONTACT: Steve Clay, Project Leader at Modoc NWR, (530) 233–3572 (telephone) or Jackie Ferrier, Refuge Planner at Sacramento NWR Complex, 752 County Road 99W, Willows, CA 95988, or at (530) 934–2801 (telephone), or *Jackie_Ferrier@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

The 7,021-acre Modoc National Wildlife Refuge is located southeast of Alturas, California. The Refuge was established in 1960 under the Migratory Bird Conservation Act (16 U.S.C. 715d) and the Refuge Recreation Act (16 U.S.C. 460k–460 K.4). Lands within the Refuge have been set aside for use as an inviolate sanctuary, and other management purposes, for migratory birds, for incidental fish and wildlife-oriented recreational development, for the protection of natural resources, and for the conservation of endangered species or threatened species.

Located near the confluence of the north and south forks of the Pit River, the Refuge conserves, protects, and manages a mosaic of freshwater lakes and ponds, seasonal wetlands, irrigated meadows, grasslands, and sagebrush/juniper upland habitats. These habitats provide important resting, feeding, and nesting areas for ducks, geese, and other migratory birds, including the greater sandhill crane.

We announce our decision and the availability of the FONSI for the final CCP in accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We completed a thorough analysis of impacts on the human environment, which we included in the EA that accompanied the draft CCP.

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and

interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Our Draft CCP and Environmental Assessment (EA) were available for a 45-day public review and comment period, which we announced via several methods, including press releases, updates to constituents, and a **Federal Register** notice (74 FR 28271, June 15, 2009). The Draft CCP/EA identified and evaluated four alternatives for managing the Refuge for the next 15 years. Alternative A was the no-action alternative, which described current Refuge management activities. Alternative B placed greater emphasis on biological resources than on visitor services. Alternative C (the selected alternative) provided an optimal balance of improved biological resource objectives and expanded visitor services opportunities. Alternative D placed greater emphasis on visitor services than on biological resources.

We received 82 comment letters on the Draft CCP and EA during the review period. We incorporated these received comments into the CCP when possible, and we responded to the comments in an appendix to the CCP. In the FONSI, we selected Alternative C, the basis for the CCP, for implementation. The FONSI documents our decision and is based on the information and analysis contained in the EA.

Under the selected alternative, the Refuges will achieve an optimal balance of biological resource objectives and visitor services opportunities. Habitat management and associated biological resource monitoring will be improved. Visitor service opportunities will focus on quality wildlife-dependent recreation distributed throughout the Refuge. Waterskiing on the Refuge-owned portion of Dorris Reservoir will be prohibited. In addition, environmental education, interpretation, wildlife observation, photography, fishing, and hunting programs will be improved and/or expanded.

The selected alternative best meets the Refuge's purposes, vision, and goals; contributes to the Refuge System mission; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Public Availability of Documents

In addition to the methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- Our Web site: *http://www.fws.gov/modoc.*
- Public Libraries: during regular library hours, at the following libraries:

Library	Address
Modoc County Library	212 West Third Street, Alturas, CA 96101.
Cedarville Branch Library	460 Main Street, Cedarville, CA 96104.
USFWS–NCTC Library	698 Conservation Way, Shepherdstown, WV 25443.

Dated: June 8, 2010.

Ren Lohoefener,

Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2010–14439 Filed 6–15–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK9100000–L131000000.PP0000–L.X.SS.052L0000]

Notice of Public Meeting, BLM Alaska Resource Advisory Council

AGENCY: Alaska State Office, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Alaska Resource Advisory Council will meet as indicated below:

DATES: The Alaska Resource Advisory Council will conduct a field trip within the Glennallen, Alaska, area from August 3–5, 2010, which includes a public meeting on Tuesday, August 3, at the BLM Glennallen Field Office at Mile Post 186.5 Glenn Highway, Glennallen, Alaska beginning at 2 p.m. The meeting will include discussions on resource management and planning issues followed by a public comment period beginning at 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ruth McCoard, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–4418 or e-mail *rmccoard@blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Alaska. When making public comment, participants should know that their address, phone number, e-mail address, or other personal identifying information in their comment, along with their entire comment may be made publicly available at any time. Participants can ask that personal identifying information be withheld from their comments but this cannot be guaranteed.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted for hearing public comments. Depending on the number of people wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the BLM.

Dated: June 9, 2010.

Julia Dougan,

Acting State Director.

[FR Doc. 2010–14484 Filed 6–15–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service (MMS)

Record of Decision for the Cape Wind Energy Project; Secretary of the Interior's Response to Comments From the Advisory Council on Historic Preservation on the Cape Wind Energy Project

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability (NOA) of the Record of Decision (ROD) and Notice to the Public of the Secretary of the Interior's Response to Comments From the Advisory Council on Historic Preservation (ACHP).

SUMMARY: In accordance with the regulations implementing the National Environmental Policy Act of 1969 (NEPA), the MMS is announcing the availability of the ROD for the Cape Wind Energy Project (the Project). The ROD for the Project records the decisions that the MMS reached to

select the Preferred Alternative at Horseshoe Shoal in Nantucket Sound described in its Final Environmental Impact Statement (January 2009). After careful consideration of all the concerns expressed during the lengthy review and consultation process and thorough analyses of the many factors involved, the Secretary approved the ROD finding that the public benefits weigh in favor of approving the Cape Wind Project at the Horseshoe Shoal location. The MMS will offer a commercial lease to Cape Wind Associates, LLC (CWA) in response to CWA's application. The CWA's rights to construct and operate the Project pursuant to the lease are subject to construction and operation approvals from the MMS. The Secretary of the Interior (the Secretary) and the Director of the MMS co-signed the ROD for the Project on April 28, 2010.

In accordance with the regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA), the public is also notified that on April 28, 2010, the Secretary responded to the April 2, 2010, comments of the ACHP concerning the Project. The ACHP provided comments to the Secretary following his termination of the Section 106 consultation on March 1, 2010. The Secretary's response explains his decision and indicates how the ACHP's comments were taken into account in his consideration of the effects of the project on historical and cultural resources. The Secretary provides a detailed response for each of the ACHP's comments and recommendations.

Authority: The NOA of the ROD is published pursuant to the regulations at 40 CFR 1506.6, implementing the provisions of NEPA (42 U.S.C. 4321 *et seq.*). The Notice to the Public of the Secretary of the Interior's Response to the ACHP is published pursuant to the regulations at 36 CFR 800.7(c)(4)(iii), implementing the provisions of NHPA (16 U.S.C. 470 *et seq.*).

SUPPLEMENTARY INFORMATION:

Cape Wind Energy Project Description

Following the passage of the Energy Policy Act of 2005 (EPAct) and amendments to the Outer Continental Shelf Lands Act (OCSLA), the Department of the Interior (the Department) was given statutory authority to issue leases, easements, or rights-of-way for renewable energy projects on the Outer Continental Shelf (OCS). The Secretary delegated this authority to the MMS. Subsequent to the enactment of EPAct, the MMS finalized regulations to process and permit offshore renewable energy projects in 2009. The CWA submitted an application to the MMS in 2005, prior to the promulgation of those regulations, to construct, operate, and eventually decommission an offshore wind power facility on Horseshoe Shoal in Nantucket Sound, offshore of Massachusetts.

The Project will be located completely on the OCS, except for transmission cables which will pass through Massachusetts' territory. The project calls for 130 3.6 megawatt wind turbine generators, each with a maximum blade height of 440 feet, to be arranged in a grid pattern in approximately 25 square miles of Nantucket Sound. With a maximum electric output of 468 megawatts and an average anticipated output of 182 megawatts, the facility is projected to generate up to three-quarters of the Cape and nearby islands' electricity needs. Each of the 130 wind turbine generators will generate electricity independently. Solid dielectric submarine inner-array cables from each wind turbine generator will interconnect within the array and terminate on an electrical service platform, which will serve as the common interconnection point for all of the wind turbines. The submarine transmission cable system from the electric service platform to the landfall location in Yarmouth will be approximately 12.5 miles in length (7.6 miles of which will fall within Massachusetts' territory).

Record of Decision

The decision to offer a commercial lease is based on the comprehensive environmental evaluation presented in the *Final Cape Wind Energy Project Environmental Impact Statement* (FEIS). The FEIS assessed the physical, biological, and socioeconomic impacts of the proposed project and 13 alternatives, including a no-action alternative. Since the FEIS was published in January 2009, the MMS prepared an Environmental Assessment (April 2010) to evaluate whether the MMS needed to supplement the FEIS based on new information pertaining to the project. The MMS determined that there was no new information that necessitated a reanalysis of the range of the alternatives or the kinds, levels, or locations of the impacts of the project and that the analyses, potential impacts, and conclusions detailed in the FEIS were still valid. The MMS concluded that a supplemental EIS was not required.

The ROD summarizes the alternatives considered, the decision, the basis for the decision, the environmentally preferable alternative, adopted mitigation measures, and bureau undertakings to involve the public, other Federal and state agencies, and affected Indian tribes. The ROD discusses the Secretary and MMS's careful balancing of the need to diversify the Nation's energy portfolio, advance energy independence, combat climate change, and create jobs with the need to protect and preserve the rich environmental and cultural resources in Nantucket Sound. The ROD identifies and adopts a suite of mitigation measures and monitoring requirements deemed practicable to avoid or minimize the environmental harm that could result from the project.

Prior to construction and commercial operation of facilities, CWA must submit, and obtain the MMS's approval of, its Construction and Operations Plan (COP). The MMS reserves the right to approve, disapprove, or approve with modifications the COP, pursuant to the Renewable Energy Final Rule and other applicable regulations.

Secretary of the Interior's Response to the Advisory Council on Historic Preservation (ACHP)

The ACHP provided comments and recommendations to the Secretary concerning the potential adverse effects of the Project, following the Secretary's decision to terminate Section 106 consultations. In its comments and recommendations, the ACHP indicated that the effects on historic properties and cultural resources from the Project would be direct and indirect, could not be avoided, and could not be satisfactorily mitigated. The ACHP reached this conclusion based on its finding that the project would adversely affect the viewsheds of 34 historic and/or traditional cultural properties in the area and potentially adversely affect other cultural resources located on the seafloor or buried in the Nantucket Sound. Regulations at 36 CFR 800.7(c)(4), implementing Section 106 of the NHPA, require the Secretary to prepare a response to the ACHP and make that response available to the public. The Secretary's response, transmitted on April 28, 2010, describes the Department and the MMS's efforts to identify, assess, avoid, and minimize potential impacts on traditional cultural resources and historic properties. The Department and the MMS participated in numerous Section 106 meetings with consulting and interested parties, as well as Government-to-Government meetings with the Wampanoag Tribe of Gay Head (Aquinnah) and the Mashpee Wampanoag Tribe. The Department complied with the Section 106 process for the Project. The Secretary took into

account the Council's comments and documented the decision.

The Secretary's response provides a detailed description of project design changes and mitigation measures adopted by the MMS, as well as other Federal and state agencies to avoid and minimize potential visual and bottom-disturbing impacts.

Availability of the ROD and Secretary's Response

To obtain a single printed copy of the ROD or the Secretary's Response to the ACHP, you may contact the Minerals Management Service, Office of Offshore Alternative Energy Programs (Mail Stop 4080), 381 Elden Street, Herndon, Virginia 20170. An electronic copy of the ROD and Secretary's Response is available at the MMS's Web site at: *http://www.doi.gov/news/doinews/Secretary-Salazar-Announces-Approval-of-Cape-Wind-Energy-Project-on-Outer-Continental-Shelf-off-Massachusetts.cfm.*

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Ms. Maureen Bornholdt, Office of Offshore Alternative Energy Programs, 381 Elden Street, Herndon, Virginia 20170, (703) 787–1300.

Dated: June 7, 2010.

Robert P. LaBelle,

Acting Associate Director for Offshore Energy and Minerals Management.

[FR Doc. 2010–14528 Filed 6–15–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–R–2010–N001; 1265–0000–10137–S3]

Ridgefield National Wildlife Refuge, Clark County, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our draft comprehensive conservation plan and environmental assessment (DCCP/EA) for the Ridgefield National Wildlife Refuge (refuge), for public review and comment. The DCCP/EA describes our alternatives, including our preferred alternative, for managing the refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we need to receive your written comments by July 16, 2010.

ADDRESSES: You may submit comments, requests for more information, or requests for copies of the DCCP/EA, by any of the following methods.

E-mail: FW1PlanningComments@fws.gov. Include "Ridgefield NWR DCCP/EA" in the subject line.

Fax: Attn: Bob Flores, Project Leader, (360) 887–4109.

U.S. Mail: Bob Flores, Project Leader, Ridgefield National Wildlife Refuge, P.O. Box 457, Ridgefield, WA 98642.

Web site: http://www.fws.gov/ridgefieldrefuges/ridgefield; select "Contact Us."

FOR FURTHER INFORMATION CONTACT: Bob Flores, Project Leader, (360) 887–4106.

SUPPLEMENTARY INFORMATION:

Introduction

The refuge encompasses 5,218 acres along the lower Columbia River in Clark County, WA. Habitat types on the refuge include seasonal, semipermanent, and permanent wetlands; floodplain forests; managed pastures; croplands; and oak woodlands. The refuge was established to provide migration and wintering habitat for dusky Canada geese and other waterfowl. It also provides important habitat for sandhill cranes, waterbirds, migratory landbirds, and raptors.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Public Outreach

We began public outreach by publishing a Notice of Intent in the **Federal Register** (71 FR 43787; August 2, 2006), announcing our intent to complete a CCP/EA and inviting public comments. In August 2006, we distributed Planning Update 1 to our mailing list and public outlets. On September 14 and 20, 2006, we held public scoping meetings in Ridgefield and Vancouver, Washington, respectively, to meet the public and obtain comments. The meetings were announced through local media outlets, on the Refuge's Web site, and in Planning Update 1. In January 2007, we distributed Planning Update 2, which included a summary of the comments we received, a planning schedule, and a description of the CCP's scope. In March 2009, we distributed Planning Update 3; in it we summarized our preliminary draft alternatives, requested public comments, and invited the public to an open house. On March 26, 2009, we held an open house in Ridgefield, Washington, to gather input on the preliminary alternatives.

DCCP/EA Alternatives We Are Considering

We identified and evaluated four alternatives for managing the refuge, including a No Action Alternative (Alternative 1). Brief descriptions of the alternatives follow.

Alternative 1 (No Action)

Under Alternative 1, the refuge would continue to manage and where feasible restore habitat for priority species, including dusky Canada geese, other Canada geese subspecies, cackling geese, other waterfowl, and Federal and State imperiled listed species. Hunting would continue on the River 'S' Unit's 760-acre hunt area. The 4.3-mile auto tour route would remain open year round in its current configuration. The refuge would coordinate with its Friends groups, local educators, and Tribes to conduct environmental and cultural education and interpretation programs. This alternative is considered the base from which to compare the action alternatives.

Alternative 2 (Preferred Alternative)

Under Alternative 2, our preferred alternative, the refuge would continue to protect, maintain, and where feasible, restore habitat for priority species, including dusky Canada geese, other waterfowl, and Federal and State imperiled listed species (e.g. sandhill crane). Under this alternative the refuge would maintain high-quality green forage for geese in improved pastures

and wet meadows, and increase the acreage in cropland and wet meadow. Wetlands would be managed to increase productivity and reduce water pumping costs. Invasive species and State- and county-listed noxious weeds would continue to be a primary management concern. Enhancing and restoring bottomland forest and oak woodland habitats would increase. We would complete habitat assessments to guide restoration of streams and tidally influenced wetlands. We would conduct feasibility studies for reintroducing native species such as Columbian white-tailed deer and western pond turtle, and inventory and monitoring efforts would increase. Current public use areas and closures would remain in effect under Alternative 2. The waterfowl hunt area/location would remain unchanged. Proposed changes in wetland management would improve the hunt program's quality over time. A new access point to the River 'S' Unit, including a 2-lane bridge and 1-mile entrance road, would be developed. The existing auto tour route would be open year round in its current location; however, the route would be shortened slightly to provide habitat for dusky Canada geese and cranes. A new 1.5-mile dike-top walking trail would be constructed. Environmental and cultural resources education and interpretation programs would increase.

Alternative 3

Under Alternative 3, actions to protect, maintain, and restore habitat for priority species are the same as under Alternative 2. Current public use areas and closures would remain in effect. The waterfowl hunt area/location would remain the same; however, core dusky habitat on the south end of the River 'S' Unit (207 acres) would be closed to goose hunting. The existing access point to the River 'S' Unit would be retained; a new 2-lane bridge would be constructed to eliminate the at-grade railroad crossing; and the entrance road would be widened. Implementation of this alternative would require either land acquisition or easement relocation/expansion. The existing auto tour route would remain unchanged. A new 1.5-mile dike-top walking trail would be constructed. Environmental and cultural resources education and interpretation programs would increase.

Alternative 4

Under Alternative 4, actions to protect, maintain, and restore habitat for priority species would be the same as under Alternatives 2 and 3, except slightly more crops would be grown. The total wildlife sanctuary area (closed to public use) would be slightly less than the other alternatives; however, this alternative provides the largest contiguous sanctuary for dusky Canada geese and sandhill cranes on the south end of the refuge. A new access point to the River 'S' Unit, including a 2-lane bridge and 1-mile entrance road north of the current access point, would be developed. Closing the south end of the River 'S' Unit to public use during waterfowl and crane migration season, to benefit dusky Canada geese and sandhill cranes is proposed in this alternative. The south end of the River 'S' Unit (207 acres) would be closed to hunting, and the south end of the auto tour route would be closed during waterfowl season (October 1–March 15), which would reduce its length from 4.3 miles to 2.6 miles during that time. To offset the loss of hunting opportunities on the south end of the River 'S' Unit, 250 acres of Bachelor Island would be opened to waterfowl hunting. The northern portion of this area would be closed early to hunting (January 15) to prevent disturbance to a great blue heron nesting colony. A new 1.5-mile dike-top walking trail would be constructed. Environmental and cultural resources education and interpretation programs would increase.

Public Availability of Documents

In addition to the information in **ADDRESSES**, you can obtain a CD–ROM copy of the DCCP/EA from the refuge at phone number (360) 887–4106. Copies may be reviewed at the refuge and on the Internet at *http://www.fws.gov/ridgefieldrefuges/ridgefield.* Printed copies will be available for review at the following libraries: Ridgefield Community Library, 210 North Main Ave., Ridgefield, WA 98642; Vancouver Community Library, 1007 East Mill Plain Blvd., Vancouver, WA 98663; and Multnomah County Central Library, 801 SW. 10th Ave., Portland, OR 97205.

Next Steps

After this comment period ends, we will analyze the comments and address them in the final CCP and decision document.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your identifying information from the public, we cannot guarantee that we will be able to do so.

Dated: April 20, 2010.

Carolyn A. Bohan,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2010–14085 Filed 6–15–10; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–019]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: June 15, 2010 at 9:30 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. *Telephone:* (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered:

1. *Agenda for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–44 (Third Review) (Sorbitol from France)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 28, 2010.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: June 8, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–14638 Filed 6–14–10; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Proposed Consent Decree

Notice is hereby given that the comment period on the proposed Consent Decree in *United States of America et al.* v. *The Boeing Company,* Civil Action No. 10–758 (W.D. Wa.), will be extended by sixty (60) days. Notice of the proposed Consent Decree was originally published on May 11, 2010. 75 FR 26,275. The original comment period therefore closed on June 10, 2010.

Following publication of the original Notice, the Department of Justice received requests from several

interested parties asking that the comment period be extended for sixty (60) days. The requests noted that the proposed Consent Decree is the first proposed settlement of claims for resource damages caused by hazardous substances released from facilities along the Duwamish Waterway. The letters noted the complexity of the subject matter and stated that the original thirty (30) day comment period was not sufficient to adequately evaluate the proposed Consent Decree.

The natural resource trustees who are parties to the Proposed Consent decree have decided to allow the full 60-day extension of the comment period that was requested. Therefore, the Department of Justice will receive written comments relating to the proposed Consent Decree for an additional sixty (60) days after the original comment period, until and including August 9, 2010. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America et al.* v. *The Boeing Company,* DJ Reference No. 90–11–3–07227/1.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Washington, Office of the United States Attorney for the Western District of Washington, 5200 United States Courthouse, 700 Stewart Street, Seattle, WA 98101–1271. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $26.75 (25 cents per page reproduction cost) payable to the United States Treasury or, if requesting by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 2010–14449 Filed 6–15–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Amcor, Ltd., et al.;* Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Amcor Ltd., et al.,* Civil Action No. 1:10–cv–00973. On June 10, 2010, the United States filed a complaint alleging that the proposed acquisition by Amcor of the Alcan Packaging Medical Flexibles business of Rio Tinto would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Amcor to divest Alcan Packaging's Marshall, North Carolina plant, which produces vented bags for medical use, as well as certain tangible and intangible assets associated with the plant.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (telephone: 202–307–0924).

J. Robert Kramer II,

Director of Operations.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, Plaintiff, v. *Amcor LTD.,* 109 Burwood Road, Hawthorn VIC 3122, Australia, and Rio Tinto PLC, 2 Eastbourne Terrace, London, W2 6LG, United Kingdom, and Alcan Corporation, 8770 West Bryn Mawr Avenue, Chicago, IL 60631, Defendants.

Case No.: 1:10–cv–00973.
Description: Antitrust.
Judge: Kollar-Kotelly, Colleen.
Date Stamp: 6/10/2010.

Complaint

The United States of America ("United States"), acting under the direction of the Attorney General, brings this civil antitrust action against defendants Amcor Ltd. ("Amcor"), Rio Tinto plc ("Rio Tinto"), and Alcan Corporation to enjoin Amcor's proposed acquisition from Rio Tinto of the Alcan Packaging Medical Flexibles business ("Alcan Packaging") and to obtain other equitable relief. The United States complains and alleges as follows:

I. Nature of This Action

1. Defendants Amcor Ltd. and Rio Tinto plc entered into an asset purchase agreement dated December 21, 2009, pursuant to which Amcor agreed to acquire the Alcan Packaging Medical Flexibles business from Rio Tinto for $65 million.

2. Amcor and Alcan Packaging are two of the three leading suppliers of vented bags for medical use in the United States.

3. The proposed acquisition would eliminate competition between Amcor and Alcan Packaging. For significant customers, Amcor and Alcan Packaging are the two best sources of vented bags for medical use. Elimination of the competition between Amcor and Alcan Packaging likely will result in Amcor's ability to raise prices to these customers. In addition, by eliminating Alcan Packaging, the transaction increases the likelihood of coordinated interaction between Amcor and the other leading supplier of vented bags for medical use. As a result, the proposed acquisition likely would substantially lessen competition in the development, production, and sale of vented bags for medical use in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

II. The Defendants

4. Amcor is organized under Australian law and is headquartered in Melbourne, Australia. Amcor is a global packaging manufacturer that had total sales of AUD $9.53 billion for the fiscal year ending in June 2009. That same year, Amcor had approximately $170 million in U.S. sales of flexible packaging for medical use.

5. Rio Tinto is organized under the laws of and headquartered in the United Kingdom. Its 2009 sales totaled approximately $44 billion. Rio Tinto acquired Alcan Corporation in 2007.

6. Alcan Corporation is a wholly owned subsidiary of Rio Tinto. Alcan Corporation is a Texas corporation headquartered in Chicago, Illinois. Alcan Packaging develops, produces, and sells flexible packaging for medical use in the United States. In 2008, Alcan Packaging sold approximately $115 million of flexible packaging for medical use.

III. Jurisdiction and Venue

7. The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

8. Defendants themselves, or through wholly owned subsidiaries, produce and sell vented bags for medical use in the flow of interstate commerce. Defendants' activities in the development, production, and sale of vented bags for medical use substantially affect interstate commerce. This Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a) and 1345.

9. Defendants have consented to venue and personal jurisdiction in the District of Columbia. Venue is therefore proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c). Venue is also proper in the District of Columbia for defendants Amcor and Rio Tinto under 28 U.S.C. 1391(d).

IV. Trade and Commerce

A. Background

1. Overview of Flexible Packaging for Medical Use

10. Flexible packaging is any package the shape of which can be readily changed. Flexible packaging is distinguishable from rigid packaging such as trays, bottles, vials, and other hard plastic or glass containers. Flexible packaging for medical use includes bags, pouches, tubing, forming films, rollstock, and lidding, made in different styles and using different materials. Packaged products include items ranging from scalpels, intravenous tubes, and syringes to large surgery trays and kits.

11. Generally, flexible packaging is produced by a "converter," which makes the flexible packaging according to a common production blueprint. The basic production steps can be described as: (1) The processing of resins into plastic film, either by "casting" or "blowing" (which is the extrusion of resin pellets through a die); (2) the conversion of the film by laminating multiple sheets together, applying coatings, and/or printing on the sheets; and (3) the finishing of the product by slitting and placing it on large rolls, or forming it into bags, pouches or other constructions.

12. If a converter performs all three of the process steps in-house, it is considered to be vertically integrated. Many converters purchase film that is blown or cast by another company and simply convert and finish the film, however. Also, many large medical device manufacturers have the capability to form the packaging product themselves and, instead of purchasing "converted products" (*e.g.,* bags or pouches), purchase "rollstock," which is film supplied as a roll.

13. The seeming simplicity of the production process is misleading. A single piece of film—the starting point for the conversion process—itself may contain as many as eleven or more separate layers that have been formed together during the extrusion process. The combination of layers in the film, with each layer extruded from a specific type of resin, provides the finished structure with the particular characteristics needed to properly contain the product for which that flexible package is intended. Furthermore, manufacturing a converted product from these films is difficult because the manufacturer must balance the package's ability to maintain its seal with its ability to open easily.

14. Producers of flexible packaging sell their packaging to medical device manufacturers that package their products for wholesale distribution or sale to end-users in the medical industry. End-users include hospitals, doctors' offices, and laboratories.

15. Sterilizable flexible packaging for medical use ("medical flexibles") is different from other types of flexible packaging for several reasons. First, medical flexibles must be able to withstand the sterilization process because the medical device is sterilized after it has been placed in the package. The most common sterilization process is the forcing of ethylene-oxide gas into and out of the package (known as "EtO sterilization"), which requires a "vented" or "breathable" package that incorporates some porous material. This porous material must act as a vent for the EtO gas to enter and exit but also must maintain the sterile barrier. The most widely used venting material is Tyvek, a durable, effective, Dupont-patented plastic material.

16. Second, medical flexibles must conform to strict quality and qualification requirements. Before a medical device manufacturer purchases any medical flexible product, it first must "qualify" the particular product. The product qualification process is meant to guard against the risk of the package's failure. A failure of the package could expose the medical device to microbes, bacteria, or particulates, which could cause a patient's injury, sickness, or even death. The risks associated with packaging failure dictate a rigorous product qualification process, whereby the customer performs numerous tests, including quality testing, sterilization testing, seal strength testing, aging simulations, and shipping and handling simulations.

17. Sterilization testing during qualification is especially rigorous. The EtO sterilization process is an aggressive process that forces gas into and out of the flexible packaging through the venting material. During this process, the gas may not be able to escape quickly enough through the venting material, bursting the seams of the packaging. In addition, EtO sterilization can weaken the plastic films of the packaging, weaken seals, cause discoloration of the package, and cause other types of harm to the package. Producing medical flexible packaging that can withstand this process is difficult, and even products from large, established suppliers may fail customers' sterilization tests.

2. Vented Bags for Medical Use

18. Vented bags for medical use are formed by sealing two pieces of film rollstock together on three sides, leaving the fourth side open for filling and sealing. There are two different styles of EtO-sterilizable vented bags for medical use: (1) "Header bags," which are sealed on one end by a long, thin venting strip running the length of the bag, and (2) "patch bags" or "breather bags," which have one or more circular venting patches on the sides of the bag instead of a strip over the end. Both styles of vented bag perform the same functions for the same end uses, and are generally

considered to be interchangeable. As with medical flexibles generally, Tyvek is the leading venting material for vented bags for medical use.

19. Each manufacturer produces vented bags for medical use with a range of features and characteristics. These include, among others: Size, ease of opening, film composition, film gauge, seal strength, venting style, and venting design. Customers decide which vented bag for medical use to purchase by weighing the relative importance of these features.

20. Despite their generic name, vented bags for medical use are specialized, hard-to-make products. Because Tyvek is expensive, vented bags for medical use incorporate as little Tyvek into their design as possible. Minimizing the use of Tyvek, however, makes it more likely that, during sterilization, the EtO gas may not escape quickly enough through the venting material, bursting the seams of the packaging and breaking the sterile barrier. Designing and producing vented bags for medical use that strike the proper balance between using as little Tyvek as possible and providing sufficient venting for the EtO gas to escape is difficult and requires specialized knowledge and processes.

B. Relevant Market

21. The development, production, and sale of vented bags for medical use to U.S. customers is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act.

22. Vented bags for medical use have specific end-uses, for which other types of medical flexibles cannot be used. Vented bags for medical use typically are used to accommodate larger and heavier items, such as surgical gowns and surgical kits and trays. Other types of flexible packaging, such as vented pouches for medical use, cannot handle these larger, heavier items because they are designed differently. Therefore, the relevant product is vented bags for medical use.

23. U.S. customers have unique qualification requirements that allow producers to price discriminate against them without regard to prices of foreign producers. Based on the locations of customers for vented bags for medical use, the relevant geographic market is the United States.

24. A small but significant increase in the price of vented bags for medical use to U.S. customers would not cause those customers to turn to other types of flexible packaging or to engage in arbitrage by purchasing through customers located outside of the United States, or otherwise to reduce purchases of vented bags for medical use, in volumes sufficient to make such a price increase unprofitable.

C. Market Participants

25. Amcor, Alcan Packaging, and one other competitor are the only significant competitors in the U.S. market for vented bags for medical use. Smaller suppliers are not significant competitors in the U.S. market for vented bags for medical use because their products generally serve niche applications, such as low-volume products, non-standard sizes, and small customers, and are not price competitive. Foreign suppliers are not significant competitors in the U.S. market for vented bags for medical use because currently they do not sell into the United States, and they would not do so in the event of a small but significant increase in price because of the qualification barriers they would face. Thus, there are no other providers of vented bags for medical use to which a medical device manufacturer could turn if faced with a small but significant increase in the price of vented bags for medical use.

V. Likely Anticompetitive Effects of the Proposed Acquisition

A. How Competition Occurs in the U.S. Market for Vented Bags for Medical Use

26. Producers of vented bags for medical use must work closely with medical device manufacturers to ensure that their packaging material meets their customers' qualifications, that they meet the promised lead times, and that they continuously find ways to cut the customers' costs. Producers also must engage in research and development to deliver better packaging products in order to compete effectively.

27. Prices for vented bags for medical uses are customer-specific and based on, among other things, an individual customer's unique requirements and specifications. The price charged to one customer likely will be different from the price charged to another customer. Additionally, arbitrage is unlikely because customer-specific printing, branding, and labeling on vented bags for medical use prevents sales among customers.

28. Price competition in the market for vented bags for medical use occurs in two ways. First, customers may issue a request for proposal, through which they invite potential suppliers to bid on supplying packaging that meets the customers' specifications. Customers evaluate the competing bids on the basis of, among other things, compliance with their specifications, price, delivery times, and the services provided by each producer. Second, price competition may also occur less formally if a customer seeks or receives an offer from an alternative supplier and the incumbent is given a chance to respond.

29. Because of the risk-averse nature of medical device manufacturers, the time-consuming and difficult qualification process, and the high quality requirements, switching suppliers can involve significant time and expense. Consequently, competition tends to take the form of competition for a stream of new business, which the winner expects to keep for some years.

B. Likely Anticompetitive Effects in the U.S. Market for Vented Bags for Medical Use

30. The proposed acquisition of Alcan Packaging by Amcor likely would substantially lessen competition in the U.S. market for vented bags for medical use. Amcor, Alcan Packaging, and one other company are the three primary competitors in the U.S. market for vented bags for medical use. Currently, Amcor and Alcan Packaging account for 27 percent and 33 percent, respectively, of U.S. sales in the market for vented bags for medical use. If the transaction is not enjoined, three firms collectively would account for approximately 95 percent of sales of vented bags for medical use in the United States. Using a measure called the Herfindahl-Hirschman Index ("HHI") (explained in Appendix A), the HHI would increase by more than 1,790 points, resulting in a post-acquisition HHI of more than 4,830 points.

31. Due to Amcor and Alcan Packaging's collective overall expertise in meeting the needs of customers and other technical and commercial factors for vented bags for medical use, including, among other things, price, quality, ability to pass the customer's rigorous qualification procedures, delivery times, service, and technical support, Amcor and Alcan Packaging frequently are perceived by each other, by other bidders, and by customers as two of the three most significant competitors in the market.

32. Amcor's and Alcan Packaging's bidding behavior often has been constrained by the possibility of losing business to the other. For significant customers of vented bags for medical use, Amcor and Alcan Packaging are their two best substitutes. By eliminating Alcan Packaging, Amcor likely would gain the incentive and ability to profitably increase its bid prices, reduce quality, offer fewer and less attractive supply-chain options, reduce technical support, and reduce innovation below what it would have been absent the acquisition.

33. Customers have benefited from competition between Amcor and Alcan Packaging through lower prices, higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Amcor and Alcan Packaging would eliminate this competition and future benefits to customers, and likely would result in harmful unilateral price effects.

34. In addition, by reducing the number of significant competitors in the U.S. market for vented bags for medical use from three to two, Amcor and the one other competitor would gain the incentive and likely ability to raise prices through coordinated interaction. The fringe competitors would be unable to render the coordination unprofitable by repositioning or expansion. Coordination would be more likely because, for example, the merger would make customer allocation easier. Each competitor could be reasonably certain as to the identity of the other's customers, making cheating easier to detect and discipline and, because each competitor is at or near capacity, the ability of each profitably to expand sales and steal business from the other would be limited.

35. Customers have benefited from competition between Amcor, Alcan Packaging, and the other significant competitor through lower prices, higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Amcor and Alcan Packaging would eliminate this competition and future benefits to customers, and likely would result in harmful coordinated price effects.

36. The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, production, and sale of vented bags for medical use, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

C. Entry or Expansion Is Unlikely To Prevent Anticompetitive Harm

37. In order to compete effectively in the U.S. market for vented bags for medical use, a competitor must be vertically integrated. Other converters produce vented bags for medical use similar to those produced by Amcor and Alcan Packaging. Unlike Amcor, Alcan Packaging, and the other leading competitor, however, those companies are not vertically integrated (*i.e.,* they do not make their own films) and do not benefit from similar economies of scale or scope, and they therefore operate at a cost disadvantage.

38. Amcor and Alcan Packaging, as a consequence of the efficiencies they possess due to vertical integration, are able to offer vented bags for medical use to customers at lower prices and higher volumes than are the non-vertically integrated competitors. In order to compete effectively with Amcor and Alcan Packaging, other converters must begin producing their own films and expand production to capture similar scale and scope benefits. Expanding to compete with the vertically integrated converters would require a significant capital investment and would take years, as the expanding company still would have to qualify each of its products at each new customer. These suppliers likely would not be able to expand to meet customers' required specifications or quality requirements cost-effectively within a commercially reasonable amount of time, and therefore would be deterred from attempting to expand.

39. Likewise, de novo entry into the market for vented bags for medical use would not be timely, likely, or sufficient to deter anticompetitive post-merger pricing. A new supplier would need to construct production lines capable of producing vented bags for medical use that meet the rigorous standards set forth by major buyers of such films. Construction of manufacturing facilities would require a significant capital investment and the entrant would have to be committed to research and development. In addition, the technical know-how necessary to design and successfully manufacture packaging that is able to pass customers' qualification tests is difficult to obtain and is learned through a time-consuming trial-and-error process.

40. Even after a new entrant has developed the capability to supply vented bags for medical use, the entrant's product must be qualified by potential customers, demonstrating that its products can meet rigorous quality and performance standards. For example, because the qualifying process for vented bags for medical use typically requires a simulated aging test, where sample products are packaged in the vented bag, sterilized, and then stored in an accelerated aging room for extended periods of time, the process can take many months. Further, initial attempts to qualify are not guaranteed to be successful, and even current market participants have had to repeat the process multiple times. In such cases, the qualification process can take several years with no guarantee of success. Moreover, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

41. Even if a new entrant were to develop the capability to supply vented bags for medical use and can pass qualification tests, the new entrant still would face the same barriers to expansion as those faced by converters currently producing vented bags for medical use. In addition, in the medical industry, where the costs of packaging failure are high, medical device manufacturers are reluctant to work with suppliers that have not established reputations for quality, the establishment of which occurs gradually over many years.

42. As a result of these barriers, expansion by non-vertically integrated vented bag converters or entry by new firms into the market for the development, production, and sale of vented bags for medical use would not be timely, likely, or sufficient to prevent a likely exercise of market power by Amcor after the acquisition.

VI. The Proposed Acquisition Violates Section 7 of the Clayton Act

43. Amcor's proposed acquisition of the Alcan Packaging business likely would substantially lessen competition in the development, production, and sale of vented bags for medical use in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

44. Unless enjoined, the proposed acquisition likely would have the following anticompetitive effects, among others:

(a) Actual and potential competition between Amcor and Alcan Packaging in the market for the development, production, and sale of vented bags for medical use in the United States would be eliminated;

(b) Competition in the market for the development, production, and sale of vented bags for medical use in the United States likely would be substantially lessened; and

(c) For vented bags for medical use in the United States, prices likely would increase, quality likely would decrease, supply-chain options likely would be less favorable, technical support likely would be reduced, and innovation likely would decline.

VII. Requested Relief

45. The United States requests that this Court:

(a) Adjudge and decree Amcor's proposed acquisition of the Alcan

Packaging business to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Enjoin defendants and all persons acting on their behalf from consummating the proposed acquisition of the Alcan Packaging business by Amcor, or from entering into or carrying out any other agreement, plan, or understanding, the effect of which would be to combine Amcor with the Alcan Packaging business;

(c) Award the United States its costs for this action; and

(d) Award the United States such other and further relief as the Court deems just and proper.

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ _____

William F. Cavanaugh, Jr.,
Acting Assistant Attorney General.

/s/ _____

Maribeth Petrizzi,
Chief, Litigation II Section,
D.C. Bar # 435204.

/s/ _____

J. Robert Kramer II,
Director of Operations

/s/ _____

Dorothy B. Fountain,
Assistant Chief, Litigation II Section,
D.C. Bar # 439469.

/s/ _____

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United States Department of Justice,
Antitrust Division,
450 Fifth Street, N.W., Suite 8700,
Washington, DC 20530,
(202) 307–0829.

Dated: June 10, 2010

Appendix A

Definition of HHI

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20%, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 1,800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶ 1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Amcor Ltd., and Rio Tinto PLC, and Alcan Corporation,* Defendants.

Case No.:
Description: Antitrust.
Judge:
Date Stamp:

Proposed Final Judgment

Whereas, Plaintiff United States of America filed its Complaint on June 10, 2010, the United States and defendants Amcor Ltd., Rio Tinto plc, and Alcan Corporation, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, defendants have represented to the United States that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged,* and *decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "Acquirer" means the entity to whom Amcor shall divest the Divestiture Assets.

B. "DuPont Tyvek Authorized Converter" means the owner of a license issued by DuPont that permits its owner to purchase directly from DuPont any medical-grade type of DuPont's patented Tyvek material, and to use, promote, and resell Tyvek or products incorporating Tyvek.

C. "Amcor" means defendant Amcor Ltd., organized under the laws of Australia and headquartered in Melbourne, Australia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Rio Tinto" means defendant Rio Tinto plc, organized under the laws of and headquartered in the United Kingdom, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Alcan Packaging" means defendant Alcan Corporation, a Texas corporation that is a wholly owned subsidiary of Rio Tinto headquartered in Chicago, Illinois, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

F. "Divestiture Assets" means:

(1) Alcan Packaging's facility located at 100 Kenpack Lane, Marshall, North Carolina 28753 ("Marshall Facility");

(2) All tangible assets that comprise the Marshall Facility, including, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property and all assets used exclusively in connection with the Marshall Facility; all licenses, permits and authorizations issued by any governmental organization relating to the Marshall Facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the Marshall Facility, including supply agreements;

all customer lists, contracts, accounts, and credit records; all repair and performance records and all other records relating to the Marshall Facility; and

(3) The following intangible assets:

(a) All intangible assets used exclusively or primarily in the design, development, production, marketing, servicing, distribution, and/or sale of any product produced at the Marshall Facility, including, but not limited to, all patents, licenses and sub-licenses, intellectual property, copyrights, trade names or trademarks, including, but not limited to, "Kwikbreathe," "Kwiktear," "Ultimate Header Film," "Ultimate Header Bag," "Ultimate Tyvek® Header Bag," "Ultimate Kwiktear Bag," "KWAdvent," "Direct Seal," or any derivation thereof, service marks, service names, technical information, designs, trade dress, and trade secrets; computer software, databases, and related documentation; know-how, including, but not limited to, recipes, formulas, and machine settings; information relating to plans for, improvements to, or line extensions of, any product produced at the Marshall Facility; drawings, blueprints, designs, design protocols, specifications for materials, and specifications for parts and devices; marketing and sales data; quality assurance and control procedures; design tools and simulation capability; contractual rights; manuals and technical information provided by Alcan Packaging to its own employees, customers, suppliers, agents, or licensees; safety procedures for the handling of materials and substances; research information and data concerning historic and current research and development efforts, including, but not limited to, designs and experiments and the results of successful and unsuccessful designs and experiments; and

(b) With respect to any intangible assets that are not included in paragraph II(F)(3)(a), above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, and/or sale both of products produced at the Marshall Facility and products produced at any other Alcan Packaging facility, a non-exclusive, non-transferable license for such intangible assets to be used for the design, development, production, marketing, servicing, distribution, and/or sale of any product produced at the Marshall Facility, and only products produced at the Marshall Facility, for the period of time that defendants have rights to such assets; provided, however, that any such license is transferable to any future purchaser of all or any relevant portion of the Marshall Facility.

III. Applicability

A. This Final Judgment applies to Amcor, Rio Tinto, and Alcan Packaging, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV or V of this Final Judgment, defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer of the assets divested pursuant to this Final Judgment.

IV. Divestitures

A. Amcor is ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Amcor agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In accomplishing the divestiture ordered by this Final Judgment, Amcor promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Amcor shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Amcor shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process, except such information or documents subject to the attorney-client privilege or work-product doctrine. Amcor shall make available such information to the United States at the same time that such information is made available to any other person.

C. Amcor shall provide the Acquirer and the United States information relating to the personnel involved in the production, operation, development and sale of any product by the Marshall Facility to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation of the Marshall Facility, and the development, production, and sale of vented bags for medical use.

D. Amcor shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Marshall Facility; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Amcor shall warrant to the Acquirer that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, use, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer that there are no material defects in the environmental, zoning or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Marshall Facility.

H. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirer as part of a viable, ongoing business in the development, production, and sale of vented bags for medical use. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Shall be made to an Acquirer with a readily available supply of Tyvek, such as a DuPont Tyvek Authorized Converter or one that has, or will have on the date of divestiture, a supply agreement with a DuPont Tyvek Authorized Converter;

(2) Shall be made to an Acquirer that, in the United States's sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the

development, production, and sale of vented bags for medical use; and

(3) Shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer and defendants give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. Appointment of Trustee

A. If Amcor has not divested the Divestiture Assets within the time period specified in Section IV(A), Amcor shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Amcor any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Amcor, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Amcor and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after the trustee's appointment, the trustee shall promptly file with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestiture; (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished; and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Amcor shall notify the United States of any proposed divestiture required by Section IV of this Final Judgment. Within two (2) business days following execution of a definitive divestiture agreement, the trustee shall notify the United States and defendants of any proposed divestiture required by Section V of this Final Judgment. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Amcor shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Amcor has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Amcor, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Amcor shall deliver to the United States an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Amcor shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice Antitrust Division, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at the option of the United States, to require defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Notification

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. 18a (the "HSR Act"), Amcor, without providing advance notification to the Antitrust Division, shall not directly or indirectly acquire any assets of or any interest—including any financial, security, loan, equity, or management interest—in any entity in the business of developing, producing or selling vented bags for medical use in the United States during the term of this Final Judgment.

Such notification shall be provided to the Antitrust Division in the same format as, and per the instructions relating to the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, except that the information requested in Items 5 through 9 of the instructions must be provided only about vented bags for medical use. Notification shall be provided at least thirty (30) calendar days prior to acquiring any such interest, and shall include, beyond what may be required by the applicable instructions, the names of the principal representatives of the parties to the agreement who negotiated the agreement, and any management or strategic plans discussing the proposed transaction. If within the 30-day period after notification, representatives of the Antitrust Division make a written request for additional information, defendants shall not consummate the proposed transaction or agreement until thirty (30) calendar days after submitting all such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the HSR Act and rules promulgated thereunder. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

XII. No Reacquisition

Amcor may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIV. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

XV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

_____

United States District Judge

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Amcor LTD., and Rio Tinto PLC, and Alcan Corporation,* Defendants.

Case No.: 1:10–cv–00973.
Description: Antitrust.
Judge: Kollar-Kotelly, Colleen.
Date Stamp: 6/10/2010.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants Amcor Ltd. and Rio Tinto plc entered into an asset purchase agreement dated December 21, 2009, pursuant to which Amcor agreed to acquire the Alcan Packaging Medical Flexibles business from Rio Tinto for $65 million.

The United States filed a civil antitrust Complaint against Amcor, Rio Tinto, and Alcan Corporation on June 10, 2010, seeking to enjoin Amcor's acquisition of the Alcan Packaging Medical Flexibles business. The Complaint alleged that the acquisition likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, in the United States for the development, production, and sale of vented bags for medical use. That loss of competition likely would result in higher prices, decreased quality, less favorable supply-chain options, reduced technical support, and lesser innovation in the U.S. market for vented bags for medical use.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of Amcor's acquisition of the Alcan Packaging Medical Flexibles business. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest Alcan Packaging's facility that produces all of its vented bags for medical use, all of the tangible assets necessary to operate the facility, and all of the intangible assets (*i.e.,* intellectual property and know-how) related to the facility.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Industry

1. The Defendants

Amcor is organized under Australian law and is headquartered in Melbourne, Australia. Amcor is a global packaging manufacturer that had total sales of AUD $9.53 billion for the fiscal year ending in June 2009. That same year, Amcor had approximately $170 million in U.S. sales of flexible packaging for medical use.

Rio Tinto is organized under the laws of and headquartered in the United Kingdom. Its 2009 sales totaled approximately $44 billion. Rio Tinto acquired Alcan Corporation in 2007. Alcan Corporation is a wholly owned subsidiary of Rio Tinto. Alcan Corporation is a Texas corporation headquartered in Chicago, Illinois. Alcan Packaging develops, produces, and sells flexible packaging for medical use in the United States. In 2008, Alcan Packaging sold approximately $115 million of flexible packaging for medical use.

2. Overview of Flexible Packaging for Medical Use

Flexible packaging is any package the shape of which can be readily changed. Flexible packaging is distinguishable from rigid packaging such as trays, bottles, vials, and other hard plastic or glass containers. Flexible packaging for medical use includes bags, pouches, tubing, forming films, rollstock, and lidding, made in different styles and using different materials. Packaged products include items ranging from scalpels, intravenous tubes, and syringes to large surgery trays and kits.

Generally, flexible packaging is produced by a "converter," which makes the flexible packaging according to a common production blueprint. The basic production steps can be described as: (1) The processing of resins into plastic film, either by "casting" or "blowing" (which is the extrusion of resin pellets through a die); (2) the conversion of the film by laminating multiple sheets together, applying coatings, and/or printing on the sheets; and (3) the finishing of the product by slitting and placing it on large rolls, or forming it into bags, pouches or other constructions.

If a converter performs all three of the process steps in-house, it is considered to be vertically integrated. Many converters purchase film that is blown or cast by another company and simply convert and finish the film, however. Also, many large medical device manufacturers have the capability to form the packaging product themselves and, instead of purchasing "converted products" (*e.g.,* bags or pouches), purchase "rollstock," which is film supplied as a roll.

The seeming simplicity of the production process is misleading. A single piece of film—the starting point for the conversion process—itself may contain as many as eleven or more separate layers that have been formed together during the extrusion process. The combination of layers in the film, with each layer extruded from a specific type of resin, provides the finished structure with the particular characteristics needed to properly contain the product for which that flexible package is intended. Furthermore, manufacturing a converted product from these films is difficult because the manufacturer must balance

the package's ability to maintain its seal with its ability to open easily.

Producers of flexible packaging sell their packaging to medical device manufacturers that package their products for wholesale distribution or sale to end-users in the medical industry. End-users include hospitals, doctors' offices, and laboratories.

Sterilizable flexible packaging for medical use ("medical flexibles") is different from other types of flexible packaging for several reasons. First, medical flexibles must be able to withstand the sterilization process because the medical device is sterilized after it has been placed in the package. The most common sterilization process is the forcing of ethylene-oxide gas into and out of the package (known as "EtO sterilization"), which requires a "vented" or "breathable" package that incorporates some porous material. This porous material must act as a vent for the EtO gas to enter and exit but also must maintain the sterile barrier. The most widely used venting material is Tyvek, a durable, effective, DuPont-patented plastic material.

Second, medical flexibles must conform to strict quality and qualification requirements. Before a medical device manufacturer purchases any medical flexible product, it first must "qualify" the particular product. The product qualification process is meant to guard against the risk of the package's failure. A failure of the package could expose the medical device to microbes, bacteria, or particulates, which could cause a patient's injury, sickness, or even death. The risks associated with packaging failure dictate a rigorous product qualification process, whereby the customer performs numerous tests, including quality testing, sterilization testing, seal strength testing, aging simulations, and shipping and handling simulations.

Sterilization testing during qualification is especially rigorous. The EtO sterilization process is an aggressive process that forces gas into and out of the flexible packaging through the venting material. During this process, the gas may not be able to escape quickly enough through the venting material, bursting the seams of the packaging. In addition, EtO sterilization can weaken the plastic films of the packaging, weaken seals, cause discoloration of the package, and cause other types of harm to the package. Producing medical flexible packaging that can withstand this process is difficult, and even products from large, established suppliers may fail customers' sterilization tests.

3. Vented Bags for Medical Use

Vented bags for medical use are formed by sealing two pieces of film rollstock together on three sides, leaving the fourth side open for filling and sealing. There are two different styles of EtO-sterilizable vented bags for medical use: (1) "Header bags," which are sealed on one end by a long, thin venting strip running the length of the bag, and (2) "patch bags" or "breather bags," which have one or more circular venting patches on the sides of the bag instead of a strip over the end. Both styles of vented bag perform the same functions for the same end uses, and are generally considered to be interchangeable. As with medical flexibles generally, Tyvek is the leading venting material for vented bags for medical use.

Each manufacturer produces vented bags for medical use with a range of features and characteristics. These include, among others: size, ease of opening, film composition, film gauge, seal strength, venting style, and venting design. Customers decide which vented bag for medical use to purchase by weighing the relative importance of these features.

Despite their generic name, vented bags for medical use are specialized, hard-to-make products. Because Tyvek is expensive, vented bags for medical use incorporate as little Tyvek into their design as possible. Minimizing the use of Tyvek, however, makes it more likely that, during sterilization, the EtO gas may not escape quickly enough through the venting material, bursting the seams of the packaging and breaking the sterile barrier. Designing and producing vented bags for medical use that strike the proper balance between using as little Tyvek as possible and providing sufficient venting for the EtO gas to escape is difficult and requires specialized knowledge and processes.

B. Relevant Market

The development, production, and sale of vented bags for medical use to U.S. customers is a line of commerce and a relevant market within the meaning of Section 7 of the Clayton Act.

Vented bags for medical use have specific end-uses, for which other types of medical flexibles cannot be used. Vented bags for medical use typically are used to accommodate larger and heavier items, such as surgical gowns and surgical kits and trays. Other types of flexible packaging, such as vented pouches for medical use, cannot handle these larger, heavier items because they are designed differently. Therefore, the relevant product is vented bags for medical use.

U.S. customers have unique qualification requirements that allow producers to price discriminate against them without regard to prices of foreign producers. Based on the locations of customers for vented bags for medical use, the relevant geographic market is the United States.

A small but significant increase in the price of vented bags for medical use to U.S. customers would not cause those customers to turn to other types of flexible packaging or to engage in arbitrage by purchasing through customers located outside of the United States, or otherwise to reduce purchases of vented bags for medical use, in volumes sufficient to make such a price increase unprofitable.

C. Market Participants

Amcor, Alcan Packaging, and one other competitor are the only significant competitors in the U.S. market for vented bags for medical use. Smaller suppliers are not significant competitors in the U.S. market for vented bags for medical use because their products generally serve niche applications, such as low-volume products, non-standard sizes, and small customers, and are not price competitive. Foreign suppliers are not significant competitors in the U.S. market for vented bags for medical use because currently they do not sell into the United States, and they would not do so in the event of a small but significant increase in price because of the qualification barriers they would face. Thus, there are no other providers of vented bags for medical use to which a medical device manufacturer could turn if faced with a small but significant increase in the price of vented bags for medical use.

D. Competitive Effects

1. How Competition Occurs in the U.S. Market for Vented Bags for Medical Use

Producers of vented bags for medical use must work closely with medical device manufacturers to ensure that their packaging material meets their customers' qualifications, that they meet the promised lead times, and that they continuously find ways to cut the customers' costs. Producers also must engage in research and development to deliver better packaging products in order to compete effectively.

Prices for vented bags for medical uses are customer-specific and based on, among other things, an individual customer's unique requirements and specifications. The price charged to one customer likely will be different from the price charged to another customer. Additionally, arbitrage is unlikely

because customer-specific printing, branding, and labeling on vented bags for medical use prevents sales among customers.

Price competition in the market for vented bags for medical use occurs in two ways. First, customers may issue a request for proposal, through which they invite potential suppliers to bid on supplying packaging that meets the customers' specifications. Customers evaluate the competing bids on the basis of, among other things, compliance with their specifications, price, delivery times, and the services provided by each producer. Second, price competition may also occur less formally if a customer seeks or receives an offer from an alternative supplier and the incumbent is given a chance to respond.

Because of the risk-averse nature of medical device manufacturers, the time-consuming and difficult qualification process, and the high quality requirements, switching suppliers can involve significant time and expense. Consequently, competition tends to take the form of competition for a stream of new business, which the winner expects to keep for some years.

2. Likely Anticompetitive Effects in the U.S. Market for Vented Bags for Medical Use

The proposed acquisition of Alcan Packaging by Amcor likely would substantially lessen competition in the U.S. market for vented bags for medical use. Amcor, Alcan Packaging, and one other company are the three primary competitors in the U.S. market for vented bags for medical use. Currently, Amcor and Alcan Packaging account for 27 percent and 33 percent, respectively, of U.S. sales in the market for vented bags for medical use. If the transaction is not enjoined, three firms collectively would account for approximately 95 percent of sales of vented bags for medical use in the United States. Using a measure called the Herfindahl-Hirschman Index ("HHI"), the HHI would increase by more than 1,790 points, resulting in a post-acquisition HHI of more than 4,830 points.

Due to Amcor and Alcan Packaging's collective overall expertise in meeting the needs of customers and other technical and commercial factors for vented bags for medical use, including, among other things, price, quality, ability to pass the customer's rigorous qualification procedures, delivery times, service, and technical support, Amcor and Alcan Packaging frequently are perceived by each other, by other bidders, and by customers as two of the three most significant competitors in the market.

Amcor's and Alcan Packaging's bidding behavior often has been constrained by the possibility of losing business to the other. For significant customers of vented bags for medical use, Amcor and Alcan Packaging are their two best substitutes. By eliminating Alcan Packaging, Amcor likely would gain the incentive and ability to profitably increase its bid prices, reduce quality, offer fewer and less attractive supply-chain options, reduce technical support, and reduce innovation below what it would have been absent the acquisition.

Customers have benefited from competition between Amcor and Alcan Packaging through lower prices, higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Amcor and Alcan Packaging would eliminate this competition and future benefits to customers, and likely would result in harmful unilateral price effects.

In addition, by reducing the number of significant competitors in the U.S. market for vented bags for medical use from three to two, Amcor and the one other competitor would gain the incentive and likely ability to raise prices through coordinated interaction. The fringe competitors would be unable to render the coordination unprofitable by repositioning or expansion. Coordination would be more likely because, for example, the merger would make customer allocation easier. Each competitor could be reasonably certain as to the identity of the other's customers, making cheating easier to detect and discipline and, because each competitor is at or near capacity, the ability of each profitably to expand sales and steal business from the other would be limited.

Customers have benefited from competition between Amcor, Alcan Packaging, and the other significant competitor through lower prices, higher quality, better supply-chain options (including delivery times and volume-purchase requirements), technical support, and numerous innovations. The combination of Amcor and Alcan Packaging would eliminate this competition and future benefits to customers, and likely would result in harmful coordinated price effects.

The proposed acquisition, therefore, likely would substantially lessen competition in the United States for the development, production, and sale of vented bags for medical use, which likely would lead to higher prices, lower quality, less favorable supply-chain options, reduced technical support, and less innovation, in violation of Section 7 of the Clayton Act.

E. Entry/Expansion

In order to compete effectively in the U.S. market for vented bags for medical use, a competitor must be vertically integrated. Other converters produce vented bags for medical use similar to those produced by Amcor and Alcan Packaging. Unlike Amcor, Alcan Packaging, and the other leading competitor, however, those companies are not vertically integrated (*i.e.,* they do not make their own films) and do not benefit from similar economies of scale or scope, and they therefore operate at a cost disadvantage.

Amcor and Alcan Packaging, as a consequence of the efficiencies they possess due to vertical integration, are able to offer vented bags for medical use to customers at lower prices and higher volumes than are the non-vertically integrated competitors. In order to compete effectively with Amcor and Alcan Packaging, other converters must begin producing their own films and expand production to capture similar scale and scope benefits. Expanding to compete with the vertically integrated converters would require a significant capital investment and would take years, as the expanding company still would have to qualify each of its products at each new customer. These suppliers likely would not be able to expand to meet customers' required specifications or quality requirements cost-effectively within a commercially reasonable amount of time, and therefore would be deterred from attempting to expand.

Likewise, de novo entry into the market for vented bags for medical use would not be timely, likely, or sufficient to deter anticompetitive post-merger pricing. A new supplier would need to construct production lines capable of producing vented bags for medical use that meet the rigorous standards set forth by major buyers of such films. Construction of manufacturing facilities would require a significant capital investment and the entrant would have to be committed to research and development. In addition, the technical know-how necessary to design and successfully manufacture packaging that is able to pass customers' qualification tests is difficult to obtain and is learned through a time-consuming trial-and-error process.

Even after a new entrant has developed the capability to supply vented bags for medical use, the entrant's product must be qualified by potential customers, demonstrating that its products can meet rigorous quality

and performance standards. For example, because the qualifying process for vented bags for medical use typically requires a simulated aging test, where sample products are packaged in the vented bag, sterilized, and then stored in an accelerated aging room for extended periods of time, the process can take many months. Further, initial attempts to qualify are not guaranteed to be successful, and even current market participants have had to repeat the process multiple times. In such cases, the qualification process can take several years with no guarantee of success. Moreover, because customer specifications are unique, qualification with one customer does not guarantee qualification with another.

Even if a new entrant were to develop the capability to supply vented bags for medical use and can pass qualification tests, the new entrant still would face the same barriers to expansion as those faced by converters currently producing vented bags for medical use. In addition, in the medical industry, where the costs of packaging failure are high, medical device manufacturers are reluctant to work with suppliers that have not established reputations for quality, the establishment of which occurs gradually over many years.

As a result of these barriers, expansion by non-vertically integrated vented bag converters or entry by new firms into the market for the development, production, and sale of vented bags for medical use would not be timely, likely, or sufficient to prevent a likely exercise of market power by Amcor after the acquisition.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will eliminate the anticompetitive effects that otherwise likely would result from Amcor's acquisition of the Alcan Packaging Medical Flexibles business. This divestiture will preserve competition in the U.S. market for vented bags for medical use by establishing a new, independent, and economically viable competitor.

The proposed Final Judgment requires the divestiture of the entire business that currently produces Alcan Packaging's vented bags for medical use, which includes the one plant currently producing vented bags for medical use, as well as all of the tangible and intangible assets associated with the plant. The goal of the proposed Final Judgment is to provide the acquirer of the Divestiture Assets with everything needed to replace the competition that would otherwise be lost as a result of the transaction. In addition, because vertical integration is important to being able to compete effectively in the U.S. market for vented bags for medical use, the Divestiture Assets include sufficient film extrusion assets and capabilities to support current and future demand for vented bags for medical use.

To that end, the Divestiture Assets include the entirety of Alcan Packaging's facility located at 100 Kenpack Lane, Marshall, North Carolina 28753 ("Marshall Facility"). The Marshall Facility produces all of Alcan Packaging's vented bags for medical use. The Marshall Facility is vertically integrated, meaning that it both produces its own films and converts those films into vented bags for medical use. In addition, the Marshall Facility has an established record as a high-quality, efficient production facility with product offerings that have been qualified by its customers and sufficient capacity to meet current and future demand for its products.

The Marshall Facility also produces forming films and plastic liners, which are not products of concern. Nevertheless, rather than removing these product lines from the integrated facility, the entire facility will be divested. Moreover, their inclusion will ensure that the Marshall Facility can be operated as a profitable, stand-alone entity.

The proposed Final Judgment also requires divestiture of tangible and intangible assets associated with the production of vented bags for medical use. These assets will provide the acquirer with the physical tools (*e.g.,* equipment, inventory, business records, etc.), and the bank of knowledge and rights (*e.g.,* manufacturing know-how, contractual rights, etc.) needed to create an independent producer of vented bags for medical use equivalent to Alcan Packaging's current operations. The Divestiture Assets also include: (1) All intangible assets used exclusively or primarily by the Marshall Facility in the design, development, production, marketing, servicing, distribution or sale of any product produced at the Marshall Facility; and (2) with respect to any intangible assets not included in (1) above, and that prior to the filing of the Complaint in this matter were used in connection with the design, development, production, marketing, servicing, distribution, or sale of any product produced at the Marshall Facility, a non-exclusive, non-transferable license for such intangible assets to be used for the design, development, production, marketing, servicing, distribution, or sale of any product produced at the Marshall Facility. These assets are to be divested regardless of whether they are currently used at the Marshall Facility.

Another necessary requirement to compete effectively in the U.S. market for vented bags for medical use is access to DuPont's patented Tyvek venting material in order to manufacture vented bags for medical use incorporating that material. Therefore, the proposed Final Judgment requires that the acquirer of the Divestiture Assets must have a readily available supply of Tyvek; thus, it must be able to purchase Tyvek directly from DuPont or have a Tyvek supply agreement with a company, other than Amcor, that is able to purchase Tyvek directly from DuPont.

The proposed Final Judgment requires that Amcor must give advance notice of future acquisitions in the U.S. market for vented bags for medical use. This requirement is necessary because an acquisition of certain competitors in the U.S. market for vented bags for medical use would likely not be reportable under the requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects that likely would result if Amcor acquired the Alcan Packaging Medical Flexibles business because the acquirer will have the ability to develop, produce, and sell vented bags for medical use in the United States in competition with Amcor.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the

Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Maribeth Petrizzi, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Amcor's acquisition of the Alcan Packaging Medical Flexibles business. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the development, production, and sale of vented bags for medical use in the United States. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C.(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ").

following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; see also *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As this Court recently confirmed in *SBC Communications,* courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[3]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: June 10, 2010.

Respectfully submitted,

Brian E. Rafkin, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 8700, Washington, DC 20530, (202) 616–1583.

[FR Doc. 2010–14563 Filed 6–15–10; 8:45 am]

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[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,127]

Hewlett-Packard Company, Inkjet Consumer Solutions, HP Consumer Hardware Inkjet Lab, Including Leased Workers From Hightower Technology Capital, Inc., Syncro Design, VMC, PDG Oncore, K Force, Supply Source, Sigma Design, Novo Engineering, Act, Stilwell Baker, and Beyondsoft, Vancouver, WA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 23, 2008, applicable to all workers of Hewlett-Packard Company, Inkjet Consumer Solutions, HP Consumer Hardware Inkjet Lab, Vancouver, Washington. The notice was published in the **Federal Register** on November 10, 2008 (73 FR 66676). The notice was amended on January 9, 2009 to include on-site leased workers from Hightower Technology Capital, Inc. The notice was published in the **Federal Register** on January 26, 2009 (74 FR 4460).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers developed research design, engineering specifications, and drawings used in the manufacturing of HP Deskjet and Photosmart printers.

New information shows that workers leased from Syncro Design, VMC, PDG Oncore, K Force, Supply Source, Sigma Design, Novo Engineering, ACT, Stilwell Baker and BeyondSoft were employed on-site at the Vancouver, Washington location of Hewlett Packard Company, Inject Consumer Solutions, HP Consumer Hardware Inject Lab. 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 Syncro Design, VMC, PDG Oncore, K Force, Supply Source, Sigma Design, Novo Engineering, ACT, Stilwell Baker and BeyondSoft working on-site at the

Vancouver, Washington location of the subject firm.

The intent of the Department's certification is to include all workers employed at Hewlett Packard Company, Inkjet Consumer Solutions, HP Consumer Hardware Inkjet Lab, Vancouver, Washington who were adversely affected by a shift in production to Shanghai, China.

The amended notice applicable to TA–W–64,127 is hereby issued as follows:

All workers of Hewlett-Packard Company, Inkjet Consumer Solutions, HP Consumer Hardware Inkjet Lab, Vancouver, Washington, including on-site leased workers of Hightower Technology Capital, Inc., Syncro Design, VMC, PDG Oncore, K Force, Supply Source, Sigma Design, Novo Engineering, ACT, Stilwell Baker and BeyondSoft, who became totally or partially separated from employment on or after September 26, 2007 through October 23, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 3rd day of June 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14459 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,230; TA–W–73,230A]

Plastic Omnium Automotive Exteriors, LLC, Anderson, SC; Plastic Omnium Automotive Exteriors, LLC, Troy, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 2010, applicable to workers of Plastic Omnium Automotive Exteriors, LLC, Anderson, South Carolina. The notice was published in the **Federal Register** April 23, 2010 (75 FR 21356). The workers are engaged in the production of automotive parts.

New information shows that worker separations have occurred involving workers in support of the Anderson, South Carolina location of Plastic Omnium Automotive Exteriors, LLC, working out of Troy, Michigan. The workers provided office, engineering and sales services supporting the Anderson, South Carolina production facility of the subject firm.

Based on these findings, the Department is amending this certification to include workers in support of the Anderson, South Carolina facility working out of Troy, Michigan.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected as suppliers of component parts to be incorporated into automotive vehicles to a firm that employed a worker group who is covered by an active Trade Adjustment Assistance Certification.

The amended notice applicable to TA–W–73,230 is hereby issued as follows:

"All workers of Plastic Omnium Automotive Exteriors, LLC, Anderson, South Carolina (TA–W–73,230), and Troy, Michigan (TA–W–73,230A), who became totally or partially separated from employment on or after January 6, 2009 through March 18, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC this 4th day of June, 2010.

Del Min Amy Chen

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14450 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,437]

Circuit Science, Inc., Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Circuit Test; Plymouth, MN; 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 30, 2009, applicable to workers of Circuit Science, Inc., Plymouth, Minnesota. The notice was published in the **Federal Register** on January 25, 2010 (75 FR 3929).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers produced rigid printed circuit boards.

New information shows that Circuit Science, Inc. purchased Circuit Test and that some workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account under the name Circuit Test.

Accordingly, the Department is amending this certification to property reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of rigid printed circuit boards.

The amended notice applicable to TA–W–70,437 is hereby issued as follows:

All workers of Circuit Science, Inc., including workers whose unemployment insurance (UI) wages are reported through Circuit, Plymouth, Minnesota, who became totally or partially separated from who became totally or partially separated from employment on or after May 20, 2008 through November 30, 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 at Washington, DC, this 27th day of May 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14454 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,784]

Chrysler Group LLC, Formally Known as Chrysler LLC, Kenosha Engine Plant, Including On-Site Leased Workers From Caravan Knight Facilities Management, LLC, Kenosha, WI; 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 2, 2009, applicable to workers of Chrysler Group LLC, formally known as Chrysler, LLC, Kenosha Engine Plant, Kenosha, Wisconsin. The notice was published in

the **Federal Register** on November 5, 2009 (74 FR 57340).

At the request of the State, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities in production of V–6 automobile engines.

The company reports that workers leased from Caravan Knight Facilities Management, LLC, were employed on-site at the Kenosha, Wisconsin location of Chrysler Group LLC, formally known as Chrysler, LLC, Kenosha Engine Plant. 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 Caravan Knight Facilities Management, LLC, working on-site at the Kenosha, Wisconsin location of Chrysler Group LLC, formally known as Chrysler, LLC, Kenosha Engine Plant.

The amended notice applicable to TA–W–70,784 is hereby issued as follows:

All workers Chrysler Group LLC, formally known as Chrysler, LLC, Kenosha Engine Plant, including on-site leased workers from Caravan Knight Facilities Management, LLC, Kenosha, Wisconsin, who became totally or partially separated from employment on or after May 27, 2008, through September 2, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 26th day of May 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14455 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,865]

Valenite, LLC, a Wholly Owned Subsidiary of Sandvik, Inc., Services and the Creative Group, Including On-Site Leased Workers From Snelling Staffing, Madison Heights, 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 April 23, 2010, applicable to workers of Valenite, LLC, a wholly owned subsidiary of Sandvik, Inc., Services and the Creative Group, including on-site leased workers from Snelling Staffing, Madison Heights, Michigan. The notice will soon be published in the **Federal Register**.

At the request of the State, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of tools, inserts and coolant.

New information shows that Valenite, LLC is a wholly owned subsidiary of Sandvik, Inc. Some workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account under the name Sandvik, Inc.

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 an increase in imports of tools, inserts and coolant.

The amended notice applicable to TA–W–72,865 is hereby issued as follows:

All workers of Valenite, Inc., a wholly owned subsidiary of Sandvik, Inc., Services and The Creative Group, including on-site leased workers from Snelling Staffing, Madison Heights, Michigan, who became totally or partially separated from employment on or after November 16, 2008 through April 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 at Washington, DC, this 3rd day of June, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14463 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,555; TA–W–72,555A]

Trueheat, Inc., a Subsidiary of Global Heating Solutions, Inc., Currently Known as Truheat, a Division of Three Heat LLC, Allegan, MI; Electro-Heat, Inc., a Subsidiary of Global Heating Solutions, Inc., Currently Known as Truheat, a Division of Three Heat LLC, Allegan, 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 December 8, 2009, applicable to workers of TrueHeat, Inc., a subsidiary of Global Heating Solutions, Inc., Allegan, Michigan and Electro-Heat, Inc., a subsidiary of Global Heating Solutions, Inc., Allegan, Michigan. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of heating elements.

Information shows that as of April 19, 2010, TrueHeat, Inc., and a sister firm, Electro-Heat, Inc. are currently known as TruHeat, a Division of Three Heat LLC. Some workers separated from employment at the subject firms have their wages reported under a separate unemployment insurance (UI) tax accounts for TruHeat, a Division of Three Heat 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 increased imports of heating elements.

The amended notice applicable to TA–W–72,555 and TA–W–72,555A are hereby issued as follows:

All workers of TrueHeat, Inc., a subsidiary of Global Heating Solutions, Inc., currently known as TruHeat, a Division of Three Heat LLC, Allegan, Michigan (TA–W–72,555) and Electro-Heat, Inc., a subsidiary of Global Heating Solutions, Inc., currently known as Tru-Heat, a Division of Three Heat LLC, Allegan, Michigan (TA–W–72,555A), who became totally or partially separated from employment on or after May 4, 2009 through December 8, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date

of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 3rd day of June 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14462 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,712]

Automodular Assemblies of Ohio, Inc., Including On-Site Leased Workers From ADP Totalsource I, Inc., Lordstown, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To apply for Worker Adjustment Assistance on March 23, 2010, applicable to workers of Automodular Assemblies of Ohio, Inc., Lordstown, Ohio. The notice was published in the **Federal Register** April 23, 2010 (75 FR 21357).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the assembly of components for automobiles.

The company reports that workers leased from ADP TotalSource I, Inc. were employed on-site at the Lordstown, Ohio location of Automodular Assemblies. 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 ADP TotalSource I, Inc. working on-site at the Lordstown, Ohio location of Automodular Assemblies.

The amended notice applicable to TA–W–71,712 is hereby issued as follows:

All workers of Automodular Assemblies of Ohio, Inc., including on-site leased workers from ADP TotalSource I, Inc., Lordstown, Ohio, who became totally or partially separated from employment on or after July 16, 2008, through March 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 3rd day of June, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14461 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,426]

Lordstown Seating Systems, a Subsidiary of Magna Seating, Including Workers Whose Unemployment Insurance (UI) Wages Are Reported Through Intier Automotive Seatings of America, Lordstown, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on April 8, 2010, applicable to workers of Lordstown Seating Systems, a subsidiary of Magna Seating, Lordstown, Ohio. The notice was published in the **Federal Register** on May 5, 2010 (75 FR 24751).

At the request of the state, the Department reviewed the certification for workers of the subject firm. The workers produce seating for automobiles.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separated unemployment insurance (UI) tax account under the name "Intier Automotive Seatings of America, Inc."

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 secondarily affected as a supplier of seating for automobiles to a TAA certified firm.

The amended notice applicable to TA–W–71,426 is hereby issued as follows:

"All workers of Lordstown Seating Systems, a subsidiary of Magna Seating, including workers whose unemployment insurance (UI) wages are reported through Intier Automotive Seatings of America, Inc., Lordstown, Ohio, who became totally or partially separated from who became totally or partially separated from employment on or after June 25, 2008 through April 8, 2012, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed at Washington, DC this 3rd day of June, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14460 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,912]

Rexam Closure Systems, Inc., a Subsidiary of Rexam PLC, Including On-Site Leased Workers From Addeco Employment Services and Olston Staffing, Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Owens Illinois Manufacturing, Hamlet, 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 15, 2010, applicable to the workers of Rexam Closure Systems, Inc., a subsidiary of Rexam PLC, Hamlet, North Carolina. The notice was published in the **Federal Register** on April 23, 2010 (75 FR 21357). The notice was amended on May 11, 2010 to included workers whose Unemployment Insurance (UI) wages are paid through Owens Illinois Manufacturing. The notice was published in the **Federal Register** on May 21, 2010 (75 FR 28655).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of plastic closures.

New findings show that workers leased from Olston Staffing were employed on-site at the Hamlet, North Carolina location of Rexam Closure Systems, Inc., a subsidiary of Rexam PLC. The Department has determined that these workers were sufficiently under the control of Rexam Closure Systems, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Olston Staffing working on-site at the Hamlet, North Carolina location of the subject firm.

The intent of the Department's certification is to include all workers of Rexam Closure Systems, Inc. who were adversely affected as a secondary component supplier of plastic closures to a TAA certified firm.

The amended notice applicable to TA–W–72,912 is hereby issued as follows:

All workers of Rexam Closure Systems, Inc., a subsidiary of Rexam PLC, including on-site leased workers from Addeco Employment Services and Olston Staffing, and including workers whose UI wages are paid through Owens Illinois Manufacturing, Hamlet, North Carolina, who became totally or partially separated from employment on or after November 10, 2008, through March 15, 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 3rd day of June, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14457 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *May 24, 2010 through May 28, 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–73,706: Blumenthal Print Works, Inc., Head Office, New Orleans, LA: March 11, 2009

TA–W–71,871: Watts Regulator, Leased Workers from Employment Staffing, Inc., Spindale, NC: July 30, 2008

TA–W–72,393: Global Safety Textiles, Automotive Safety Division of International Textile Group, Greenville, SC: September 22, 2008

TA–W–73,290: SMI Crankshaft, LLC, Fostoria, OH: January 13, 2009

TA–W–73,448: Blue Heron Paper Company, Oregon City, OR: February 1, 2009

TA–W–73,470: Sykes Enterprises, Incorporated, Milton-Frewater, OR: February 5, 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–72,816: Merkel Freudenberg, Inc., Freudenberg-NOK and Leased Workers from Aventure Staffing, Spencer, IA: November 9, 2008

TA–W–73,292: Huntington Foam LLC, Fort Smith Division, Fort Smith, AR: January 6, 2009

TA–W–73,427: Haldex Hydraulics Corporation, Statesville Location, Leased Workers Onin Staffing and Manpower, Statesville, NC: January 29, 2009

TA–W–73,453: Multi-Fineline Electronix, Incorporation, DBA MFLEX, leased workers from Adecco, Anaheim, CA: January 22, 2009

TA–W–73,525: Halliburton Company, Technology and Engineering Division, Duncan, OK: February 17, 2009

TA–W–73,592: Schneider Electric, Leased Workers from Volt, Columbia, MO: March 1, 2009

TA–W–73,594: Glaston USA, Inc., Glaston America, Inc., Cinnaminson, NJ: March 1, 2009

TA–W–73,726: Pentair Water, Water Pump Manufacturing Plant, Leased Workers of Mancan and Spherion, Ashland, OH: March 4, 2009

TA–W–73,800: Sensata Technologies MA, Incorporated, Power Controls Division, Airpax Corporation, Cambridge, MD: March 25, 2010

TA–W–73,854: MSA, Englewood-Fall Protection, Leased Workers Primesource Staffing & Advantage, Englewood, CO: March 24, 2009

TA–W–73,934: Pass & Seymour/ Legrand, Legrand North America; Leased Workers from Select Staffing and Aerotek, Concord, NC: June 14, 2010

TA–W–73,957: Cessna Aircraft, Columbus Facility, Fabrication and Assembly, Leased Workers Manpower, Columbus, GA: April 15, 2009

TA–W–73,525A: Halliburton Company, Finance and Administration Division, Duncan, OK: February 17, 2009

TA–W–73,092: Sun Microsystems, Inc., Oracle Corporation, Netbeans Engineering Division, Santa Clara, CA: December 1, 2008

TA–W–73,202: Sumtotal Systems, Inc., Bellevue, WA: December 31, 2008

TA–W–73,403: Honeywell Transportation Systems, Turbo Technology Division, Leased Workers Manpower Professional, Torrance, CA: January 25, 2009

TA–W–73,434: Festo Corporation, Customer Resource Center, Earth City, MO: January 28, 2009

TA–W–73,481: Dish Network, LLC, Customer Service Call Center, Leased Workers Clean Care and US Security, Mckeesport, PA: February 8, 2009

TA–W–73,573: LaCie Limited, Technical Support Group, Leased Workers from Aerotek, Hillsboro, OR: February 22, 2009

TA–W–73,704: Qantas Airways Limited, Tucson Reservations Center, Tucson, AZ: March 12, 2009

TA–W–73,710: Sam Malone Enterprises, Inc., City of Industry, CA: March 11, 2009

TA–W–73,833: VF Jeanswear Limited Partnership, VF Corporation, Holly Pond, AL: April 1, 2009

TA–W–74,003: VF Jeanswear Limited Partnership, Procurement Department, Greensboro, NC: April 22, 2009

TA–W–72,454: Columbia St. Mary's, Inc., Ascension Health, Medical Billing, Leased Workers Accretive Health, Glendale, WI: September 29, 2008

TA–W–73,405: Freedom Communications, Inc., Information Technology, Leased Workers Abigail Abbott Corelink, Kforce, Santa Ana, CA: January 29, 2009

TA–W–73,740: Allstate Insurance Company, Allstate Product Technology Division, Northbrook, IL: March 12, 2009

TA–W–73,889: Health Net, Inc., Claims Processing Group, Systems Configuration Org.; Leased Workers Kelly, Shelton, CT: April 7, 2009

TA–W–73,889A: Health Net, Inc., Claims Processing Group, Systems Configuration Org.; Leased Workers Kelly, Matawan, NJ: April 7, 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–72,445: Ven Ply, Inc., High Point, NC: September 29, 2008

TA–W–73,031: Bruckner Supply Company, Inc., Dana Holding Corporation, Longview, TX: November 25, 2008

TA–W–73,429: Masonico, LLC, Leased Workers from Personnel Unlimited, Fraser, MI: January 29, 2009

TA–W–73,690: LSI Marcole, Inc., LSI Industries, Inc., Leased Workers from Ranstad, Manchester, TN: March 5, 2009

TA–W–73,885: IAC Sheyboygan, LLC, Sheyboygan, WI: April 8, 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–73,882: Ford Motor Company, Maumee Stamping Plant, Maumee, OH

TA–W–72,049A: Tennant Company, Maple Grove, MN

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W–73,478: Attachmate Corporation, Localization Group, Seattle, WA

TA–W–73,527: TG Kentucky, LLC, Toyoda Gosei North America Corporation, Lebanon, KY

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–72,049: Tennant Company, Minneapolis, MN

TA–W–72,302: Cargo Solutions LLC, Princeton, Princeton Delivery Systems; Cargotec U.S. Manufacturing; Cargotec Holding, Canal Winchester, OH

TA–W–72,603: The Woodbridge Group, Woodbridge Ventures, Auburn Hills, MI

TA–W–72,621: Agr International, Inc., Butler, PA

TA–W–72,697: Lucite International, Inc., Nederland, TX

TA–W–73,080: ATK Launch Systems, Inc., Alliant Techsystems, Inc., Corinne, UT

TA–W–72,434: Ford Motor Company, World Headquarters Division, Dearborn, MI

TA–W–72,675: Kenco Logistic Services, LLC, Evansville, IN

TA–W–73,467: ASTAR Air Cargo, Inc., Florence, KY

TA–W–73,503: Compass Group USA, Inc., Canteen, Webster City, IA

TA–W–73,512: GlaxoSmithKline, LLC, Sales Division, Springfield, MO

TA–W–73,617: Air Products and Chemicals, Inc., Research Division, Allentown (Trexlertown), PA

TA–W–73,905: McNeil and NRM, Inc., Akron, OH

TA–W–73,525B: Halliburton Energy Services, Duncan Field Camp Division, Duncan, OK

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–72,698: Designs Now, Kettering, OH

TA–W–72,727: Andrews International, Inc., Evansville, IN

TA–W–73,217: Yazaki North America, Fenton, MO

TA–W–73,372: Sylvan Hardwoods, LLC, McRae, GA

TA–W–73,410: Industrial Machining Corporation, Fort Smith, AR

TA–W–73,830: CMC Markets (US) LLC, New York, NY

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W–73,820: Adrenaline Sporting Goods, LLC, Sherwood, OR

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W–72,740: Bruss North America, Russell Springs, KY

I hereby certify that the aforementioned determinations were issued during the period of *May 24, 2010, through May 28, 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 to *foiarequest@dol.gov.* These determinations also are available on the Department's Web site at www.doleta.gov/tradeact under the searchable listing of determinations.

Dated: June 7, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14452 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of June 1, 2010, through June 4, 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–72,574: Ultra Clean Technology, Leased Workers from West Valley Staffing Agency, Austin, TX: October 10, 2008

TA–W–72,662: Monopanel Technologies, Inc., West Allis, WI: October 22, 2008

TA–W–73,774: Sesame Solutions, LLC, T.J. Harkins; Leased Workers from Hiring Partners, Inc., Paris, TX: March 23, 2009

TA–W–73,906: Ocean Beauty Seafoods, LLC, Los Angeles, CA: April 10, 2009

TA–W–72,246: Greenheck Fan Corporation, Leased Workers from Adecco Employment Services, Randstad, etc., Schofield, WI: September 8, 2008

TA–W–72,530: PTC Alliance Corporation, Jane Lew Plant, Jane Lew, WV: October 7, 2008

TA–W–72,586: Sapa Extrusions, Sapa Industrial Extrusions-Cressona Operation, Cressona, PA: September 30, 2008

TA–W–72,760: Georgia-Pacific Wood Products, LLC, Fordyce Plywood, Fordyce, AR: November 3, 2008

TA–W–72,857: Tasler, Incorporated, Leased Workers of Spherion Staffing, Webster City, IA: November 13, 2008

TA–W–73,159: Roscommon Manufacturing Company, Roscommon, MI: December 18, 2008

TA–W–73,187: Cascade Wood Products, Inc., Leased Workers from Selectemp Employment Services, etc., White City, OR: December 18, 2008

TA–W–73,509: The Liggett Corporation, South Fulton, TN: February 11, 2009

TA–W–73,553: Concise Fabricators, Inc., Leased Workers from Aerotek and Progress Services, Tucson, AZ: February 23, 2009

TA–W–73,567: Hirschler Mfg. Inc., Kirkland, WA: February 22, 2009

TA–W–73,586: Norcross Safety Products, Honeywell International, Inc., Leased Workers from Manpower, Nashua, NH: February 22, 2009

TA–W–73,554: Dixie Belle Textiles, Inc., Elkin, NC: February 20, 2009

TA–W–74,014: 763 Fashion, Inc., New York, NY: April 19, 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–72,484: Nachi Machining Technology Company, Nachi America, Inc., Macomb, MI: September 30, 2008

TA–W–72,782A: Amweld International, LLC, Leased Workers of Snelling, Coppell, TX: November 1, 2008

TA–W–72,782B: Amweld International, LLC, Miami, FL: November 1, 2008
TA–W–72,782: Amweld International, LLC, Leased Workers of Account Temps, North Jackson, OH: November 1, 2008
TA–W–73,090: Cambridge Filter Corporation, Gilbert, AZ: December 1, 2008
TA–W–73,214: Richard Fritz, Inc., Leased Workers from Staff Masters, Duncan, SC: December 12, 2008
TA–W–73,283: Martech Medical Product, Inc., Harleysville, PA: January 4, 2009
TA–W–73,331: Integrated Device Technology, Inc., Leased Workers from Aerotek, Inc., Hillsboro, OR: January 19, 2009
TA–W–73,533: Bontex, Inc., Buena Vista, VA: February 17, 2009
TA–W–73,591A: Chrysler Group, LLC, Manufacturing Division, St. Louis North Plant; American Food, G4S Wackehut, Fenton, MO: February 25, 2009
TA–W–73,641: Mitsuba Bardstown, Inc., Mitsuba Corp., Leased Workers JC Malone Associates and Willstaff, Bardstown, KY: February 25, 2009
TA–W–73,687: Somerset Plastics, Inc., Somerset, PA: March 5, 2009
TA–W–73,700: Roche Diagnostics Operations, Inc., Roche Holdings, Inc., Leased Workers Adecco Technical Division, etc., Indianapolis, IN: March 11, 2009
TA–W–73,703: Betts USA, Inc., Florence, KY: January 19, 2009
TA–W–73,719: Franklin Disposables, LP, Columbus, OH: March 16, 2009
TA–W–73,927: Avox Systems, Inc., Zodiac Aerospace, Leased Workers from KRG, Lancaster, NY: March 29, 2009
TA–W–73,788: Cranston Print Works Company, Corporate & Textile Div., Leased Workers Access Employment of Rhode Island, Cranston, RI: March 10, 2009
TA–W–72,526: Hewlett-Packard Company, Storageworks Business Unit, United Storage Div., leased wkrs Manpower, Fort Collins, CO: October 6, 2008
TA–W–72,687: Pratt and Whitney Engine Services, Inc., Plattsburgh, NY: October 26, 2008
TA–W–73,492A: Avaya, Inc., Leadership & OPS TS&D Worldwide Services; Avaya Global Services, etc., Coppell, TX: February 5, 2009
TA–W–73,492B: Avaya, Inc., Leadership & OPS TS&D Worldwide Services; Avaya Global Services, etc., Milpitas, CA: February 5, 2009
TA–W–73,492: Avaya, Inc., Leadership & OPS TS&D Worldwide Services; Avaya Global Services, etc., Westminster, CO: February 5, 2009
TA–W–73,495: Perkinelmer Health Sciences, Inc., Sales Administration Department, Shelton, CT: February 8, 2009
TA–W–73,507: Inventurus Knowledge Solutions, Inc. (IKS), Indiana, PA: February 5, 2009
TA–W–73,613: Dri Mark Products, Inc., Port Washington, NY: March 1, 2009
TA–W–73,628: AF Services, LLC., Torrance, CA: February 26, 2009
TA–W–73,919: Marsh USA, Inc., Information Technology Department, Des Moines, IA: April 12, 2009
TA–W–74,007: SyChip, Inc., Adminstaff Companies II, LP, Berkeley Heights, NJ: April 23, 2009
TA–W–73,832: Intuit Inc., SBG Telesale—Tuscon Division, Tucson, AZ: April 1, 2009
TA–W–74,018: Paramount Multi-Services, LLC, Dallas, TX: April 28, 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–73,070: Oakley Industries Sub Assembly Division, Incorporated, Leased Workers QPS Companies, Belvidere, IL: December 9, 2008
TA–W–73,074: Johnson Controls, Leased Workers from Kelly Services, Sycamore, IL: December 9, 2008
TA–W–73,263: Wingard Quality Supply, LLC, Leased Workers of Benchmark Specialized Production Staffing, Fremont, CA: January 12, 2009
TA–W–73,303: Weyerhaeuser Company, Corporate Headquarters, Leased Workers from Volt Services, Adecco, etc., Federal Way, WA: January 7, 2009
TA–W–73,633: Meridian Automotive Systems, Inc., Allen Park, MI: February 10, 2009
TA–W–73,901: Trega Corporation, Hamburg, PA: April 12, 2009
TA–W–74,074: Cut Right Wood Products, LLC, McKenzie, TN: May 10, 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–72,427: Devon Energy Production Co., L.P., Houston, TX
TA–W–73,286: Georgia Pacific Wood Products, Phillips, WI
TA–W–73,569: Triton Holdings, Inc., Formerly Bayview Edison Industries, Mount Vernon, WA

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–72,557: Johnson Controls, Inc., Automotive Division, Kansas City, MO
TA–W–72,786: Rexnord Gear, Rexnord Industries, LLC. RBS Global, Inc., Milwaukee, WI
TA–W–73,364: Champion Dyeing And Finishing Company, Inc., Paterson, NJ
TA–W–73,449: Tyco Electronics, Consumer Industrial Solutions, Communications Computer Comsumer Electronics, Norwood, MA
TA–W–72,176A: The Boeing Company, Shared Services Group, Wichita, KS
TA–W–72,176: The Boeing Company, Integrated Defense Systems, Wichita, KS
TA–W–72,567: Steve Williams Ford, Lawrenceburg, TN
TA–W–72,641: Chandler Lake, Inc., Ashland, ME
TA–W–72,953: Matthews International Corporation, Bronze Division, Kingwood, WV
TA–W–73,084: Thyssen Krupp Elevator Manufacturing Inc., Walnut, MS
TA–W–73,182: Thomas Fuels, Lubricants & Chemicals, Inc., Odessa, TX
TA–W–73,192: Hewlett-Packard, Enterprise Services Division, Electronic Data Systems, Medi-Cal Account, Rancho Cordova, CA
TA–W–73,386: Robinson Drilling of Texas, Ltd., Big Spring, TX
TA–W–73,464: Landrex Technologies, Inc., Fremont, CA
TA–W–73,591: Chrysler Group, LLC, Manufacturing Division, St. Louis South Plant, Fenton, 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–73,258: Pacific Die Cut Industries, Hayward, CA

TA–W–73,955: Cole Ford Mercury of Winchester, Inc., Winchester, KY

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W–73,279: JP Morgan Chase, Fort Worth, TX

TA–W–73,498: ADC Telecommunications, Shakopee, MN

TA–W–73,930: Dee Van Enterprise USA, Inc., Fremont, CA

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–72,501: PCC Airfoils, LLC, Precision Castparts Corporation, Crooksville, OH

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W–74,059: Freescale Semiconductors, Woburn, MA

I hereby certify that the aforementioned determinations were issued during the period of *June 1, 2010, through June 4, 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 to *foiarequest@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: June 9, 2010.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance .

[FR Doc. 2010–14458 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 28, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 28, 2010.

Copies of these petitions may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail, to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or to *foiarequest@dol.gov.*

Signed at Washington, DC, this 3rd day of June 2010.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

Appendix

TAA PETITIONS INSTITUTED BETWEEN 5/24/10 AND 5/28/10

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
74132	DuPont Performance Polymers Hypalon Unit (Company).	Nederland, TX	05/24/10	05/20/10.
74133	Time Sensitive Circuits, Inc. (Company)	Amesbury, MA	05/24/10	05/20/10.
74134	Reynoldsville Holding Company (Workers)	Reynoldsville, PA	05/24/10	05/10/10.
74135	Wood Products Northwest (Company)	Days Creek, OR	05/24/10	05/19/10.
74136	Parker Paint Company (Workers)	Beaverton, OR	05/25/10	05/24/10.
74137	SPS Technologies (Company)	Cleveland, OH	05/25/10	05/24/10.
74138	Louis Baldinger & Son (Union)	Astoria, NY	05/25/10	05/24/10.
74139	KDH Defense Systems, Inc. (Workers)	Johnstown, PA	05/25/10	05/24/10.
74140	Sweater Project (Workers)	North Bergen, NJ	05/25/10	05/11/10.
74141	ACS Enterprise Solutions, Inc. (State/One-Stop)	Dallas, TX	05/25/10	05/24/10.
74142	World Color (Workers)	Schaumburg, IL	05/25/10	05/21/10.
74143	Providence Watch Hospital (Workers)	Cranston, RI	05/25/10	05/13/10.
74144	Hoffmann La Roche (Workers)	Nutlex, NJ	05/25/10	05/10/10.
74145	Briggs & Strattow (Workers)	Murray, KY	05/25/10	03/16/10.
74146	Furniture Crafters of Virginia (Workers)	Collinsville, VA	05/25/10	05/14/10.
74147	ABB, Inc. (Company)	Mount Pleasant, PA	05/25/10	05/10/10.
74148	PBR Knoxville, LLC (Company)	Knoxville, TN	05/25/10	05/21/10.
74149	Hartford Financial Services Group, Inc. (Company)	Hartford, CT	05/26/10	04/29/10.
74150	VMware, Inc. (Company)	Palo Alto, CA	05/26/10	05/24/10.
74151	Dick Lucier Excavation (Company)	Frenchtown, MT	05/27/10	05/11/10.
74152	Northwest Aluminum Company (Company)	The Dalles, OR	05/27/10	05/25/10.

TAA PETITIONS INSTITUTED BETWEEN 5/24/10 AND 5/28/10—Continued

TA–W	Subject firm (Petitioners)	Location	Date of institution	Date of petition
74153	Freescale Semiconductor (Workers)	Austin, TX	05/28/10	05/27/10.
74154	Staedtler, Inc. (Company)	Chatsworth, CA	05/28/10	05/27/10.
74155	Atlas Copco Secoroc, LLC (Company)	Roanoke, VA	05/28/10	05/24/10.
74156	Mattel, Inc. (Company)	City of Industry, CA	05/28/10	05/17/10.
74157	Home Fashions International (Workers)	Taylorsville, NC	05/28/10	05/22/10.
74158	Cameron Surface Systems (Company)	Oklahoma City, OK	05/28/10	05/24/10.

[FR Doc. 2010–14451 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,201]

Tivoly, Inc., Derby Line, VT; Notice of Negative Determination on Reconsideration

On November 16, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 8, 2009 (74 FR 64,711).

The initial investigation resulted in a negative determination based on the finding that imports of cutting tools did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the International Association of Machinists and Aerospace Workers, Local Lodge 1829, requested that additional customer surveys be done beyond the two that had been completed during the earlier investigation.

In response to that request, the Department of Labor conducted a survey of five more major declining customers of the subject firm regarding their purchases of cutting tools, taps, and reamers during 2007, 2008, and during the months of January through May 2008 and January through May 2009.

Those five surveys, added to the two surveys completed during the investigation, included customers who accounted for 89 percent of the subject firm's total sales during 2007 and 2008, and customers who accounted for 65 percent of the total subject firm's total sales during the period January through May 2009.

The customers surveyed also accounted for 89 percent of the decline in total subject firm sales from 2007 to 2008, and 88 percent of the decline in total subject firm sales during the period January through May 2009 as compared with the same five months in 2008.

Those surveys showed customer imports of cutting tools, taps, and reamers to be insignificant as a percent of total subject firm sales during 2007 and 2008, and showed that there were no customer imports of cutting tools during the period January through May 2009.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Tivoly, Inc., Derby Line, Vermont.

Signed at Washington, DC this 27th day of May 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14453 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions: Morgan Stanley & Co., Inc. and Its Current and Future Affiliates and Subsidiaries and Union Bank, N.A., and Its Affiliates; The Bank of New York Mellon Corp.; Boston Carpenters Apprenticeship and Training Fund; Correction

AGENCY: Employee Benefits Security Administration, Department of Labor (the Department).

ACTION: Notice of technical correction.

In the June 11, 2010 issue of the **Federal Register**, the Department published separate administrative exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 for: (1) Morgan Stanley & Co., Inc., and Its Current and Future Affiliates and Subsidiaries and Union Bank, N.A., and Its Affiliates (hereinafter "the Morgan Stanley Grant"); and (2) The Bank of New York Mellon Corporation (hereinafter "the BNY Mellon Grant"). The Department also published, in the same issue of the **Federal Register**, an administrative exemption from the prohibited transaction provisions of the Act for the Boston Carpenters Apprenticeship and Training Fund (hereinafter "the Boston Carpenters Grant").

The Department notes that the operative language of the Morgan Stanley Grant (which begins at the middle of the third column of page 33333 of the June 11, 2010 issue of the **Federal Register** after the italicized heading "*Exemption*") was not preceded by the customary caption indicating the prohibited transaction grant number and the corresponding exemption application file number. Accordingly, to correct this publication error, the following caption should be inserted immediately before the italicized heading "*Exemption*" on page 33333, third column:

[Prohibited Transaction Exemption 2010–16; Exemption Application Number D–11521]

In addition, the Department notes that the operative language of the BNY Mellon Grant (which begins at the middle of the first column of page 33338 of the June 11, 2010 issue of the **Federal Register** after the italicized heading "*Exemption*") was not preceded by the customary caption indicating the name of the entity seeking the exemption, the prohibited transaction exemption grant number, and the exemption application file number. Accordingly, to correct this publication error, the following caption should be inserted immediately before the italicized heading "*Exemption*" on page 33338, first column:

The Bank of New York Mellon Corporation (BNY Mellon), Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 2010–17; Exemption Application Number D–11584]

In addition, the Department notes that the operative language of the Boston Carpenters Grant (which begins at the

middle of the third column of page 33338 of the June 11, 2010 issue of the **Federal Register** after the italicized heading "*Exemption*") was not preceded by the customary caption indicating the name of the entity seeking the exemption, the prohibited transaction exemption grant number, and the exemption application file number. Accordingly, to correct this publication error, the following caption should be inserted immediately before the italicized heading "*Exemption*" on page 33338, third column:

Boston Carpenters Apprenticeship and Training Fund (the Fund), Located in Boston, Massachusetts

[Prohibited Transaction Exemption 2010–18; Exemption Application Number L–11558]

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC at (202) 693–8550 (this is not a toll-free number).

Signed at Washington, DC, this 11th day of June 2010.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 2010–14566 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,106]

Paris Accessories, Inc., Including On-Site Leased Workers From Job Connections, New Smithsville, PA; Notice of Revised Determination on Reconsideration

By application dated April 1, 2010, a worker requested administrative reconsideration of the negative determination applicable to the subject firm. The denial was based on the finding that neither increased imports nor a shift in production to a foreign country contributed importantly to worker separations at the subject firm. The workers are engaged in employment related to the assembly and packaging of accessories. The Department's notice of negative determination was issued on February 25, 2010 and published in the **Federal Register** on April 23, 2010 (75 FR 21363).

In the request for reconsideration, the petitioner stated that the subject firm had begun performing offshore the kinds of operations that had been carried out by the worker group.

Based on additional information provided by the subject firm during the reconsideration investigation, the Department determines that the subject firm has acquired from a foreign source services like or directly competitive with the assembly and packaging services formerly performed by the subject workers.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of Paris Accessories, Inc., New Smithsville, Pennsylvania, including on-site leased workers from Job Connections, who are engaged in employment related to the assembly and packaging of accessories, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Paris Accessories, Inc., New Smithsville, Pennsylvania, including on-site leased workers from Job Connections, who became totally or partially separated from employment on or after May 27, 2008, through two years from the date of this certification, 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 27th day of May, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–14456 Filed 6–15–10; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0206; Docket No. 50–443]

NextEra Energy Seabrook, LLC; Notice of Receipt and Availability of Application for Renewal of Seabrook Station, Unit 1 Facility Operating License No. NPF–86 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated May 25, 2010, from NextEra Energy Seabrook, LLC (NES), filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Title 10 of the Code of Federal Regulations Part 54 (10 CFR part 54), to renew the operating license for Seabrook Station, Unit 1 (Seabrook Station). Renewal of the license would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the current operating license. The current operating license for Seabrook Station (NPF–86) expires on March 15, 2030. Seabrook Station is a pressurized-water reactor designed by Westinghouse. Seabrook Station is located 13 miles south of Portsmouth, NH. The acceptability of the tendered application for docketing and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available to the public at the Commission's public document room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or through the internet from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML101590094. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html.* Persons who do not have access to the internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff at 1–800–397–4209, extension 4737, or by e-mail to *pdr.resource@nrc.gov.*

A copy of the license renewal application for Seabrook Station is also available to local residents near the site at the Seabrook Library, 25 Liberty Street, Seabrook, NH 03874 and at the Amesbury Public Library, 149 Main Street, Amesbury, MA 01913.

Dated at Rockville, Maryland, this 10th day of June, 2010.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–14497 Filed 6–15–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets 50–213, 72–39; NRC–2010–0205]

Connecticut Yankee Atomic Power Company, Haddam Neck Plant, Independent Spent Fuel Storage Installation, Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption in Accordance With 10 CFR 72.7

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3325; Fax number: (301) 492–3342; E-mail: *john.goshen@nrc.gov.*

Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to Connecticut Yankee Atomic Power Company (CYAPCO), pursuant to 10 CFR 72.7, from the specific provisions of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214.

CYAPCO is using a dry cask storage system, the NAC–MPC, Certificate of Compliance (CoC) No. 1025, to store spent nuclear fuel under a general license in an independent spent fuel storage installation (ISFSI) associated with the decommissioned Haddam Neck Plant, located in Middlesex County, Connecticut. CYAPCO stores spent fuel in forty NAC–MPC casks at the CYAPCO ISFSI, all loaded under Amendment No. 4 to CoC No. 1025. Under the current 10 CFR Part 72 regulations, the general licensee is bound by the terms and conditions of the CoC under which it loaded a given cask. Amendment No. 4 will remain in effect for the casks at the CYAPCO ISFSI until the NRC expressly approves the application of changes authorized by a later CoC amendment. Such an approval is typically accomplished through a 10 CFR 72.7 exemption.

In its letter dated September 1, 2009, CYAPCO stated that it intended to adopt Amendment No. 5 to CoC No. 1025 for all forty NAC–MPC casks at the site and specifically requested an exemption from the requirements of Amendment No. 5, Appendix A, Technical Specifications (TS), Section A 5.1, Training Program. The requested exemption would relieve CYAPCO from the requirement to develop training modules under its Systems Approach to Training (SAT) that includes comprehensive instructions for the operation and maintenance of the ISFSI, except for the NAC–MPC System. The NRC has previously granted a similar exemption to CYAPCO from the requirements of CoC No. 1025, Amendment No. 4, in its letter to CYAPC dated September 22, 2005 (Agencywide Document Access and Management System (ADAMS) Accession No. ML052660399)).

Implementation of Amendment No. 5 of CoC No. 1025 to all forty NAC–MPC casks will allow a visual alternative to Technical Specification (TS) Surveillance Requirement 3.1.6.1 to verify the operability of the concrete cask heat removal system to maintain safe storage conditions and will also remove a specification in the CoC for tamper indicating devices. The NRC published the direct final rule for Amendment No. 5 of CoC No. 1025 on May 10, 2007 (72 FR 26535), with the effective date of Amendment No. 5 being July 24, 2007 (72 FR 38468, July 13, 2007).

CYAPCO, in its September 1, 2009 letter, did not request that NRC expressly approve implementation of Amendment No. 5 to all forty NAC–MPC casks at the site. CYAPCO did state, however, that it had performed an evaluation to verify that the Haddam Neck Plant ISFSI will fully conform to the terms of CoC No. 1025, Amendment No. 5. Under the current 10 CFR Part 72 regulations, a general licensee, such as CYAPCO, is not authorized to apply changes allowed by a later CoC amendment (in this case, Amendment No. 5) to a cask loaded under an earlier CoC amendment (in this case, Amendment No. 4) without express prior approval of the NRC.[1] Thus, in order to effectuate the requested exemption, the NRC will have to expand the scope of the requested exemption to include the application of the changes authorized by Amendment No. 5 to the subject casks. The applicable regulation, 10 CFR 72.7, allows the NRC to grant exemptions upon its own initiative.

In accordance with the requirements in 10 CFR part 51, the NRC has prepared an environmental assessment for the NRC action of approving or disapproving an exemption from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214, which if approved, will allow CYAPCO to apply the changes authorized by Amendment No. 5 to CoC No. 1025 to all forty NAC–MPC casks at the site. Based on this environmental assessment, the NRC has concluded that a Finding of No Significant Impact is appropriate. The NRC's action to either approve or disapprove of the CYAPCO request for an exemption from the requirements of Appendix A, Section A 5.1, Training Program is categorically excluded from further environmental review in accordance with 10 CFR 51.22(c)(25)(vi)(E).

Environmental Assessment

Identification of Proposed Action: The NRC proposes to issue an exemption to CYAPCO from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i)(A), 72.212(b)(7), and 72.214, thereby allowing CYAPCO to apply the changes authorized by Amendment No. 5 to CoC No. 1025 to all forty NAC–MPC casks at the Haddam Neck ISFSI, which were loaded under Amendment No. 4 to CoC No. 1025. Section 72.212(a)(2) provides that the general license is limited to storage of spent fuel in casks approved under the provisions of part 72; section 72.212(b)(2)(i)(A) requires the general licensee to perform written evaluations, prior to use of a cask, that establish that the conditions set forth in the CoC have been met; section 72.212(b)(7) requires that the general licensee comply with the terms and conditions of the CoC; and section 72.214 lists the cask designs that have been approved by the NRC and are available for use by general licensees under the 10 CFR part 72 general license. The NRC's regulatory authority to grant these exemptions is 10 CFR 72.7.

Need for the Proposed Action: Implementation of the changes authorized by Amendment No. 5 of CoC No. 1025 to all forty NAC–MPC casks will allow a visual alternative to Technical Specification (TS) Surveillance Requirement 3.1.6.1 to verify the operability of the concrete cask heat removal system to maintain safe storage conditions and will also remove a specification in the CoC for tamper indicating devices. These changes will provide the applicant with significant cost savings and flexibility without any decrease in safety.

Environmental Impacts of the Proposed Action: The NRC has reviewed the exemption request submitted by CYAPCO and has determined that allowing CYAPCO to apply the changes authorized by Amendment No. 5 of CoC No. 1025 to the casks at the Haddam Neck ISFSI, if approved, would have no significant impact to the environment.

[1] *See* Enforcement Guidance Memorandum 09–006, dated September 15, 2009 (ADAMS Accession No. ML091970035).

In connection with the approval of Amendment No. 5 of CoC 1025, the NRC prepared and published in the **Federal Register** a Finding of No Significant Impact, based upon an environmental assessment, for the generic use of the changes authorized by Amendment No. 5 (72 FR 26535, 26537, May 10, 2007).

Further, NRC has evaluated the impact to public safety that would result from granting the proposed action. The approval of the proposed action would not increase the probability or consequences of accidents, no changes would be made to the types of effluents released offsite, and there would be no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Additionally the proposed action would not involve any construction or other ground disturbing activities, would not change the footprint of the existing ISFSI, and would have no other significant non-radiological impacts. In this regard, and as the ISFSI is located on previously disturbed land, it is extremely unlikely that approval of the proposed action would create any significant impact on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or to essential fish habitat covered by the Magnuson-Stevens Act. Similarly, approval of the proposed action is not the type of activity that has the potential to cause effects on historic or cultural properties, assuming such properties are present at the site of the Haddam Neck ISFSI.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption. This alternative would have the same environmental impact.

Given that there are no significant differences in environmental impact between the proposed action and the alternative considered and that CYAPCO has a legitimate need, the Commission concludes that the preferred alternative is to grant the requested exemption.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an exemption from the specific requirements of 10 CFR 72.212(a)(2), 72.212(b)(2)(i), 72.212(b)(7), and 72.214, will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

Further Information

In accordance with 10 CFR 2.390 of NRC's "Rules of Practice," NRC records and documents related to this action, including the application for exemption and supporting documentation are available electronically at the NRC's Electronic Reading Room, at: *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access NRC's ADAMS, which provides text and image files of NRC's public documents. The ADAMS Accession Number for the application, dated September 1, 2009, is ML092520319.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland, this 7th day of June 2010.

For the Nuclear Regulatory Commission.

B. Jennifer Davis,

Acting Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–14498 Filed 6–15–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Upcoming Meeting

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Federal Prevailing Rate Advisory Committee is issuing this notice to cancel the June 17, 2010, public meeting scheduled to be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street, NW., Washington, DC. The original **Federal Register** notice announcing this meeting was published Monday, April 12, 2010, at 75 FR 18552.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2838; e-mail *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

Sheldon Friedman,

Chairman, Federal Prevailing Rate Advisory Committee, U.S. Office of Personnel Management.

[FR Doc. 2010–14489 Filed 6–15–10; 8:45 am]

BILLING CODE 6325–49–P

POSTAL SERVICE

Notice of Intent To Prepare a Programmatic Environmental Assessment for Proposed Mobile Fueling Operations, Nationwide

AGENCY: Postal Service.

ACTION: Notice of intent to prepare a Programmatic Environmental Assessment.

SUMMARY: To comply with the requirements of the National Environmental Policy Act (NEPA), the Postal Service intends to prepare a Programmatic Environmental Assessment (PEA) for the use of mobile fueling contractors to fuel postal vehicles on-site at selected Postal Service facilities located throughout the United States. This PEA will evaluate the environmental impacts of the proposed action versus taking no action.

DATES: It is estimated that the Programmatic Environmental Assessment will be completed by August 1, 2010.

ADDRESSES: Interested parties may direct questions or requests for additional information to: Melinda Hulsey Edwards, Manager, Environmental Compliance and Risk Mitigation, Environmental Policy and Programs, U.S. Postal Service, 225 N. Humphries Blvd., Memphis, TN 38166–0865; (901) 747–7424.

SUPPLEMENTARY INFORMATION:

Purpose. This notice concerns a proposed operational change for fueling postal delivery vehicles and the intent of the Postal Service, pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, its implementing procedures at 39 CFR part 775, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), to prepare a Programmatic Environmental Assessment to evaluate the environmental impacts of the proposed action versus taking "no action."

Proposed Action. The Postal Service proposes to utilize mobile fueling contractors to fuel vehicles on site at selected postal facilities located throughout the United States. The program would focus on, but not be limited to, city and rural delivery units with 30 or more routes using vehicles owned by the Postal Service. Based on these criteria, it is anticipated that up to 1,100 sites may be eligible to convert to mobile fueling. Mobile fueling, also known as fleet fueling, wet fueling, or wet hosing, is the practice of filling fuel tanks of vehicles directly from tank trucks. In this scenario, mobile refueling contractors drive tank trucks onto Postal Service property to fuel parked delivery vehicles and drive the tank trucks off site when fueling is completed. At this time, the only alternative identified is the "no action" alternative of continuing to fuel delivery vehicles off-site at commercial gas stations.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–14491 Filed 6–11–10; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on June 18, 2010 at 10 a.m. in the Auditorium, Room L–002, to hear oral argument in an appeal by Guy S. Amico and Scott H. Goldstein from the decision of an administrative law judge. The law judge found that Amico and Goldstein, the president and chief executive officer, respectively, of registered broker-dealer Newbridge Securities Corporation, failed reasonably to supervise Daniel M. Kantrowitz, a former trader at Newbridge, within the meaning of Sections 15(b)(4)(E) and 15(b)(6) of the Securities Exchange Act of 1934, with a view to detecting and preventing Kantrowitz's violations of the registration and antifraud provisions of the federal securities laws. For these failures, the law judge barred Amico and Goldstein from associating with a broker-dealer in a supervisory capacity with a right to apply for reinstatement after two years and imposed on each a civil money penalty of $79,000.

Among the issues likely to be argued are whether Kantrowitz's conduct violated the registration and antifraud provisions of the securities laws, whether Amico and Goldstein failed reasonably to supervise Kantrowitz, and, if so, whether and to what extent sanctions should be imposed on Amico and Goldstein.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 11, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14576 Filed 6–14–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Micro Laboratories, Inc.; Order of Suspension of Trading

June 11, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Micro Laboratories, Inc. ("Micro Laboratories") because it has not filed any periodic reports since the period ended June 30, 2005. Micro Laboratories is quoted on the Pink Sheets operated by Pink OTC Markets, Inc. under the ticker symbol MLAR.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company, and any equity securities of any entity purporting to succeed to this issuer.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company, and any equity securities of any entity purporting to succeed to this issuer, is suspended for the period from 9:30 a.m. EDT on June 11, 2010, through 11:59 p.m. EDT on June 24, 2010.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14574 Filed 6–14–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62251; File No. SR–FINRA–2010–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Accelerated Approval to Proposed Rule Change To Amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) To Permit FINRA To Halt Trading by FINRA Members Otherwise Than on an Exchange Where a Primary Listing Market Has Issued a Trading Pause Due to Extraordinary Market Conditions

June 10, 2010.

I. Introduction

On May 18, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to permit FINRA to halt trading by FINRA members otherwise than on an exchange where a primary listing market has issued a trading pause due to extraordinary market conditions.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Also on May 18, 2010, each of BATS Exchange, Inc. ("BATS"), EDGX Exchange, Inc. ("EDGX"), NASDAQ OMX BX, Inc. ("BX"), International Securities Exchange LLC ("ISE"), New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSEAmex"), NYSE Arca, Inc. ("NYSEArca"), The NASDAQ Stock Market LLC ("NASDAQ"), National Stock Exchange, Inc. ("NSX") and Chicago Board Options Exchange, Incorporated ("CBOE") filed proposed rule changes. On May 19, 2010, EDGA Exchange, Inc ("EDGA") and Chicago Stock Exchange, Inc. ("CHX") filed proposed rule changes to provide for similar trading pauses. *See* Securities Exchange Act Release Nos. 62121 (May 19, 2010), 75 FR 28834 (May 24, 2010); 62123 (May 19, 2010), 75 FR 28844 (May 24, 2010); 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010); 62125 (May 19, 2010), 75 FR 28836 (May 24, 2010); 62126 (May 19, 2010), 75 FR 28831 (May 24, 2010); 62127 (May 19, 2010), 75 FR 28837 (May 24, 2010); 62128 (May 19, 2010), 75 FR 28830 (May 24, 2010); 62129 (May 19, 2010), 75 FR 28839 (May 24, 2010); 62131 (May 19, 2010), 75 FR 28845 (May 24, 2010); 62132 (May 19, 2010), 75 FR 28847 (May 24, 2010); 62122 (May 19, 2010), 75 FR 28833 (May 24, 2010); and 62130 (May 19, 2010), 75 FR 28842 (May 24, 2010). These filings are being approved today by the Commission. *See* Securities Exchange Act Release No. 62252 (June 10, 2010). In this order, the term "Exchanges" refers collectively to all of the exchanges. The term "Listing Markets" refers collectively to NYSE, NYSEAmex and NASDAQ. The term "Nonlisting Markets" refers collectively to the remaining nine national securities exchanges. The term "SROs"

Continued

The proposed rule change was published for comment in the **Federal Register** on May 24, 2010.[5] The Commission received 26 comments on the proposals and on the broader concept of circuit breakers on individual securities.[6] This order grants accelerated approval to the proposed rule change.

II. Description of the Proposals

On May 6, 2010, the U.S. equity markets experienced a severe disruption.[7] Among other things, the prices of a large number of individual securities suddenly declined by significant amounts in a very short time period, before suddenly reversing to prices consistent with their pre-decline levels. This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices and were broken by the SROs. The Commission is concerned that events such as those that occurred on May 6 can seriously undermine the integrity of the U.S. securities markets. Accordingly, it is working on a variety of fronts to assess the causes and contributing factors of the May 6 market disruption and to fashion policy responses that will help prevent a recurrence.

The Commission also recognizes the importance of moving quickly to implement appropriate steps that could help limit potential harm from extreme price volatility. In this regard, it is pleased that FINRA began consulting with the Exchanges soon after May 6 in an effort to develop consistent circuit breaker rules that could be implemented on an expedited basis. FINRA and the Exchanges were able to reach agreement on a consensus approach, and, on May 18 and 19, 2010, all of the SROs filed proposed rule changes with the Commission.

These rules would require the Listing Markets to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets would notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape.[8] Under the rules, once a Listing Market issues a trading pause, the other Exchanges would be required to pause trading in that security on their markets. FINRA's rule provides that it will similarly pause trading in the over-the-counter market by FINRA members, including alternative trading systems and market makers, when a Listing Market has issued a trading pause. In order to avoid interfering with existing procedures designed to facilitate orderly openings and closings, the trading pause requirements would apply only from 9:45 a.m. until 3:35 p.m.

At the end of the five-minute pause, the primary Listing Market would reopen trading in the security in accordance with its procedures for doing so. Trading would resume on the other Exchanges and in the over-the-counter market once trading has resumed on the primary Listing Market. In the event of a significant imbalance on the primary Listing Market at the end of a trading pause, the primary Listing Market may delay reopening. If the primary Listing Market has not reopened within ten minutes from the initiation of the trading pause, however, the other Exchanges may resume trading.[9] In addition, FINRA's proposed rule permits over-the-counter market participants to resume trading only if trading has resumed on at least one Exchange.

FINRA has proposed that this rule change be implemented as a pilot that would end on December 10, 2010. The pilot period would enable the SROs and the Commission to assess the effect of the new rules on the marketplace. To initiate this pilot promptly, the proposed rules would be in effect only with respect to securities included in the S&P 500 Index. The Commission understands that FINRA expects to file an additional rule proposal in the near future to expand the scope of the pilot (for example, to include ETFs) within the pilot period.[10]

FINRA has requested that the Commission approve the proposed rule change on an accelerated basis, so that it may become operative as soon as practicable.

III. Discussion of Comments and Commission Findings

As of June 7, the Commission received 26 comment letters regarding the proposed rule changes, a substantial number of which were generally supportive. For example, an

refers to the Exchanges and the Financial Industry Regulatory Authority ("FINRA").

[5] *See* Securities Exchange Act Release No. 62133 (May 19, 2010), 75 FR 28841 (May 24, 2010).

[6] The Commission considered letters received prior to May 18 discussing the concept of individual stock circuit breakers as well as formal letters citing the rule filings. *See* Letter from Senator Charles E. Schumer to Chairman Schapiro, Commission, *et. al.,* dated May 10, 2010; Letter from Congressman Edward J. Markey to Chairman Schapiro, Commission, dated May 11, 2010; Letter from Cliff Pereira to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010; Letter from Thomas Hofler to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010 ("Hofler Letter"); Letter from James K. Rutledge to Rule-Comments, Commission, dated May 13, 2010; Letter from John Meredith to Elizabeth M. Murphy, Secretary, dated May 19, 2010; Letter from Peter Skopp, Molinete Trading Inc. to Elizabeth M. Murphy, Secretary, Commission, dated May 20, 2010 ("Molinete Letter"); letter from Paul Rogers to Rule-Comments, Commission, dated May 20, 2010; Letter from Congressman Eric Cantor to Chairman Schapiro, Commission, dated May 21, 2010; Letter from T.P. Tursick to Elizabeth M. Murphy, Secretary, Commission, dated May 25, 2010; Letter from James J. Angel to the Commission, dated May 25, 2010 ("Angel Letter"); Letter from Larry Harris, USC Marshall School of Business, to Elizabeth M. Murphy, Secretary, Commission, dated May 26, 2010 ("Harris Letter"); Letter from Judith Kittinger to WebMaster, Commission, dated May 27, 2010; Letter from Congresswoman Melissa L. Bean to Chairman Schapiro, Commission, dated May 28, 2010 ("Bean Letter"); Letter from Patrick J. Healy, Issuer Advisory Group, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated May 31, 2010 ("IAG Letter"); Letter from Hal McIntyre, The Summit Group, to Elizabeth M. Murphy, Commission, undated "Summit Group Letter"); Letter from Ira Shapiro, BlackRock Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 2, 2010 ("BlackRock Letter"); Letter from Christopher Nagy, TD Ameritrade to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("TD Ameritrade Letter"); Letter from Alexander M. Cutler, Business Roundtable to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("Business Roundtable Letter"); Letter from George U. Sauter, The Vanguard Group, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("Vanguard Letter"); Letter from Julie Sweet, Accenture plc to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("Accenture Letter"); Letter from Tom Quaadman, Center for Capital Markets Competitiveness to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (CCMC Letter"); Letter from Jeffrey W. Rubin, American Bar Association Business Law Section to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("ABA Letter"); Letter from Karrie McMillan, Investment Company Institute to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("ICI Letter"); Letter from Daniel Mathisson, Credit Suisse Securities (USA) LLC to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("Credit Suisse Letter"); Letter from Leonard J. Amoruso, Knight Capital Group, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 4, 2010 ("Knight Letter").

[7] The events of May 6 are described more fully in the report of the staffs of the Commodity Futures Trading Commission ("CFTC") and the Commission, titled *Report of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues,* "Preliminary Findings Regarding the Market Events of May 6, 2010," dated May 18, 2010.

[8] When a trading pause is issued, the Listing Market will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Exchange Act. The single plan processor for all listed securities other than Nasdaq-listed securities is the Securities Industry Automation Corporation ("SIAC"). The single plan processor for Nasdaq-listed securities is Nasdaq.

[9] Some of the Nonlisting Markets, such as ISE, may not begin trading under their proposed rules until the Listing Market begins.

[10] Any such rule proposals would be published for public comment in accordance with Section 19(b) of the Act.

institutional investor stated that "on very rare occasions like May 6 a pause in trading is necessary to give market participants a chance to 'reset' and react appropriately to periods of dislocation. A reasonable trading halt will provide investors time to rationally assess the market events and commit liquidity at appropriate price levels." [11] Another institutional investor strongly supported single stock circuit breakers, noting that "trading pauses may reduce market volatility resulting from temporary supply-demand imbalances without unduly interrupting price discovery." [12]

The commenters also raised a variety of significant issues regarding the scope and operation of the circuit breakers. These include: (1) Whether the circuit breakers should be expanded beyond S&P 500 stocks, particularly to exchange traded funds ("ETFs") and the securities of other companies that were most severely affected on May 6; [13] (2) the need for revised market-wide circuit breakers; [14] and (3) operational issues regarding the circuit breakers, including the times when they should apply,[15] the threshold events that should trigger them and the length of the pause,[16] the procedures for resuming trading after a pause,[17] and alternatives to the circuit breaker mechanism.[18]

The Commission believes that most if not all of these suggestions regarding potential ways to improve or perfect the scope and operation of the circuit breaker, or variations on them, were generally considered by FINRA and the Exchanges in developing consistent proposals that could be implemented in a reasonably short period of time and yet provide important benefits to the markets. The Commission recognizes that all of these issues warrant continued close consideration in the coming days and months, and it expects that FINRA will continue to consult with the Exchanges, the Commission and market participants on both the scope and operation of the circuit breakers.

With respect to the specific proposals under consideration here, however, the Commission has evaluated them based on whether they are consistent with the Act and whether they represent a useful first step that should improve the existing procedures for protecting investors and maintaining fair and orderly markets. It finds that the proposal meets these standards and therefore is approving it on an expedited basis.

The Commission agrees that consideration should be given by FINRA to whether the circuit breakers should be expanded to additional securities, but does not believe that there is a reason to delay the implementation of circuit breakers for S&P 500 stocks as a reasonable first step.[19] Similarly, it agrees that the existing market-wide circuit breakers should be re-examined in light of current market conditions, but again does not believe that the initial stage of the circuit breaker pilot for individual stocks should be delayed pending that re-examination. With respect to operational issues regarding the circuit breakers, the Commission anticipates that FINRA will continue to evaluate these issues during the pilot period, and will propose any modifications to the circuit breakers that may be necessary or appropriate before that period has ended, but does not believe that the first stage of the circuit breaker pilot should be delayed pending such consideration.[20]

A few commenters expressed concern that the proposed circuit breakers could cause more harm than good. One, for example, suggested that the timeframe for implementation of the proposed rule change could be overly aggressive and lead to systems problems.[21] The Commission understands that FINRA has been working closely with market participants to address implementation issues and facilitate a prompt yet workable roll-out of the circuit breaker pilot. No other comments were received indicating that exchanges, other trading venues or broker-dealers would not be able to fully implement the proposed circuit breakers within the timeframes established in the FINRA filing.

Other commenters questioned whether trading halts may exacerbate price volatility, and one stated that a trading halt on May 6 might have increased the order imbalance, preventing an intraday recovery.[22]

[11] *See* Vanguard Letter, *supra* note 6.

[12] *See, e.g.,* BlackRock Letter, *supra* note 6.

[13] *See, e.g.,* ABA Letter, Accenture Letter, Angel Letter, Bean Letter, CCMP Letter, Credit Suisse Letter, IAG Letter, ICI Letter (expressing particular concern that if circuit breakers exist for individual securities contained in ETFs' baskets, but not for the ETFs themselves, ETFs could again suffer disproportionately during a market event such as that of May 6), Summit Group Letter, TD Ameritrade Letter, and Vanguard Letter, *supra* note 6. One commenter also raised concerns about the potential consequences of circuit breakers being triggered simultaneously in many securities. *See* Angel Letter.

[14] *See, e.g.,* Angel Letter, *supra* note 6.

[15] Suggestions included applying the circuit breakers for the entire trading day (i.e., including during the opening and closing periods). *See, e.g.,* Angel Letter (noting the considerable trading activity and volatility that occurs during the first and last minutes of the trading day), Credit Suisse Letter (noting that in S&P 500 stocks 6% of the daily volume typically occurs from 9:30 a.m. to 9:45 a.m., and 18% occurs from 3:35 p.m. to 4 p.m., and that intra-day volatility tends to be highest during these time periods), IAG Letter, and TD Ameritrade Letter (arguing that the many retail investor orders executed at market open should not be deprived of the protections of the circuit breaker rules), *supra* note 6.

[16] Suggestions included using a trigger threshold other than 10% or a pause period other than five minutes. *See, e.g.,* Angel Letter (suggesting securities outside the S&P 500 may need a trigger threshold greater than 10%, and that the pause period may need to be longer than five or ten minutes), BlackRock Letter (arguing that the 10% circuit breaker level is too narrow, with their data showing it would have halted trading on only 58 of S&P 500 stocks on May 6, 2010, as opposed to 309 S&P 500 stocks on that day with a 5% circuit breaker), Credit Suisse Letter (suggesting a ten-minute halt period), Hofler Letter (suggesting that trigger thresholds vary commensurate with the stock's volatility, perhaps 5% for low beta stocks, 10% for medium beta stocks, and 30% for high beta stocks), Knight Letter (recommending a minimum trigger threshold of 15%, and the use of more sophisticated variables such as dollar price, average daily volume, and market capitalization), and Summit Group Letter (suggesting a longer pause period may be required to allow small investors to respond), *supra* note 6. Other commenters suggested using a trigger based on the national best bid or offer rather than a trade price. *See, e.g.,* Molinete Letter, *supra* note 6.

[17] Suggestions included precluding resumption of trading until the primary listing market has resolved any imbalances. *See, e.g.,* BlackRock Letter, Credit Suisse Letter, Knight Letter and TD Ameritrade Letter, *supra* note 6. *But see* Harris Letter, *supra* note 6 (arguing that trade halt rules are anti-competitive because they encourage traders to submit their orders to the dominant exchanges so that they can participate in the call auctions that restart trading).

[18] Suggestions included using a futures-style "limit down" mechanism rather than a full trading pause. *See, e.g.,* Accenture Letter, Credit Suisse Letter, and Harris Letter (arguing that trading at prices that reverse the triggering price change should be permitted), *supra* note 6.

[19] In particular, the Commission acknowledges the concerns raised by the ICI, BlackRock, and others regarding the potential adverse consequences for ETFs if the circuit breakers cover individual securities that are held by an ETF but not the ETF itself. Those comment letters do not explicitly recommend delaying the launch of the pilot program with respect to the S&P 500, but they do urge that ETFs be added to the pilot as soon as possible. As noted below, the Commission anticipates that FINRA will be proposing amendments to the pilot to include ETFs.

[20] Commenters also raised a number of issues not directly related to the scope or operation of the trading pauses. One, for example, was the operation of the SROs' erroneous trade rules. *See* TD Ameritrade Letter, *supra* note 6. The Commission expects that FINRA and the Exchanges will continue to consult on these rules and anticipates they will submit proposals to clarify their operation in the near future.

[21] *See* Molinete Letter, *supra* note 6.

[22] *See* Harris Letter, *supra* note 6 (arguing that trading halts will attenuate volatility if liquidity or rationality arrives before markets return to normal operation, and positing that on May 6 many traders would have thought the price drop was due to fundamental valuation issues, in which case the order imbalance could have grown larger during the halt as traders drew incorrect inferences from the event). *See also* Molinete Letter, *supra* note 6 (suggesting the proposed rules may exacerbate market volatility rather than reduce it due to the interplay of stock circuit breaker rules, erroneous

Continued

Many other commenters, however, believed that the events of May 6 demonstrate the need for trading pauses in individual stocks as a means to reduce excessive market volatility.[23] The Commission agrees that the proposed trading pauses are prudent measures that are appropriately being introduced on a pilot basis to address extraordinarily severe and harmful price volatility of the kind that occurred on May 6.

In sum, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA. In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[24] which among other things requires that the rules of FINRA be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[25]

The Commission believes the proposed rule change, among other things, will establish consistent, market-wide trading pauses as a means to prevent potentially destabilizing price volatility and will thereby help promote the goals of investor protection and fair and orderly markets.

The Commission also finds good cause for approving the proposal before the 30th day after the publication of notice thereof in the **Federal Register.** FINRA has worked quickly and cooperatively with the Exchanges to devise a response to the events of May 6, 2010. The Commission received a number of comments on the proposal, the great majority of which were supportive of the proposed trading pause. The proposed rule change is being implemented on a pilot basis so that the Commission and FINRA can monitor the effects of the pilot on the marketplace and consider adjustments, as necessary. The Commission believes that accelerating approval of this proposal is appropriate as it will enable FINRA nearly immediately to begin coordinating trading pauses with the Exchanges in the event of sudden changes in the value of the S&P 500 Index stocks. In particular, the Commission believes that this proposed rule change should further the goals of investor protection and fair and orderly markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–FINRA–2010–025) be, and hereby is, approved on an accelerated basis.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–14434 Filed 6–15–10; 8:45 am]

BILLING CODE 8010–01–P

trade rules, and market participants' reactions to securities nearing the threshold). Another commenter urged the Commission to proceed cautiously in this area, expressing the view that "unencumbered market forces are preferable to the implementation of artificial trade frictions wherever possible." *See* Knight Letter, *supra* note 6. The Commission will continue to consider these comments in evaluating the impact of the pilot.

[23] *See, e.g.,* Accenture Letter, BlackRock Letter, Business Roundtable Letter, CCMP Letter, Credit Suisse Letter, ICI Letter, TD Ameritrade Letter, Vanguard Letter, *supra* note 6.

[24] 15 U.S.C. 78f(b)(5), 15 U.S.C. 78*o*–3(b)(6).

[25] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62252; File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; SR–CBOE–2010–047]

Self-Regulatory Organizations; BATS Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; NASDAQ OMX BX, Inc.; International Securities Exchange LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; The NASDAQ Stock Market LLC; Chicago Stock Exchange, Inc.; National Stock Exchange, Inc.; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval to Proposed Rule Changes Relating to Trading Pauses Due to Extraordinary Market Volatility

June 10, 2010.

I. Introduction

On May 18, 2010, each of BATS Exchange, Inc. ("BATS"), EDGX Exchange, Inc. ("EDGX"), NASDAQ OMX BX, Inc. ("BX"), International Securities Exchange LLC ("ISE"),[1] New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("NYSEAmex"), NYSE Arca, Inc. ("NYSEArca"), The NASDAQ Stock Market LLC ("NASDAQ"), National Stock Exchange, Inc. ("NSX") and Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)[2] of the Securities Exchange Act of 1934 ("Act"),[3] and Rule 19b-4 thereunder,[4] proposed rule changes to amend certain of their respective rules, or adopt new rules, to provide for trading pauses in individual stocks when the price moves ten percent or more in the preceding five minute period. On May 19, 2010, EDGA Exchange, Inc. ("EDGA") and Chicago Stock Exchange, Inc. ("CHX") filed proposed rule changes to provide for similar trading pauses.[5] The proposed rule changes were published for comment in the **Federal Register** on May 24, 2010.[6] The Commission received 26 comments on the proposals and on the broader concept of circuit breakers on individual securities.[7] The

[1] ISE filed a technical amendment to the proposed rule change on June 4, 2010.

[2] 15 U.S.C. 78s(b)(1).

[3] 15 U.S.C. 78a.

[4] 17 CFR 240.19b-4.

[5] The term "Exchanges" shall refer collectively to all of the exchanges in this order. The term "Listing Markets" refers collectively to NYSE, NYSEAmex and NASDAQ. The term "Nonlisting Markets" refers collectively to the remaining nine national securities exchanges. The term SROs refers collectively to the Exchanges and the Financial Industry Regulatory Aythority ("FINRA").

[6] *See* Securities Exchange Act Release Nos. 62121 (May 19, 2010), 75 FR 28834 (May 24, 2010); 62123 (May 19, 2010), 75 FR 28844 (May 24, 2010); 62124 (May 19, 2010), 75 FR 28828 (May 24, 2010); 62125 (May 19, 2010), 75 FR 28836 (May 24, 2010); 62126 (May 19, 2010), 75 FR 28831 (May 24, 2010); 62127 (May 19, 2010), 75 FR 28837 (May 24, 2010); 62128 (May 19, 2010), 75 FR 28830 (May 24, 2010); 62129 (May 19, 2010), 75 FR 28839 (May 24, 2010); 62131 (May 19, 2010), 75 FR 28845 (May 24, 2010); 62132 (May 19, 2010), 75 FR 28847 (May 24, 2010); 62122 (May 19, 2010), 75 FR 28833 (May 24, 2010); and 62130 (May 19, 2010), 75 FR 28842 (May 24, 2010).

On May 18, 2010, FINRA filed a proposed rule change, which was approved today. *See* Securities Exchange Act Release No. 62133 (May 19, 2010), 75 FR 28841 (May 24, 2010); Securities Exchange Act Release No. 62251 (June 10, 2010)(SR-FINRA-2010-025).

[7] The Commission considered letters received prior to May 18 discussing the concept of individual stock circuit breakers as well as formal letters citing the rule filings. *See* Letter from Senator Charles E. Schumer to Chairman Schapiro, Commission, *et. al.,* dated May 10, 2010; Letter from Congressman Edward J. Markey to Chairman Schapiro, Commission, dated May 11, 2010; Letter from Cliff Pereira to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010; Letter from Thomas Hofler to Elizabeth M. Murphy, Secretary, Commission, dated May 13, 2010 ("Hofler Letter"); Letter from James K. Rutledge to Rule-Comments, Commission, dated May 13, 2010; Letter from John Meredith to Elizabeth M. Murphy, Secretary, dated May 19, 2010; Letter from Peter Skopp, Molinete Trading Inc. to Elizabeth M. Murphy, Secretary, Commission, dated May 20, 2010 ("Molinete Letter"); letter from Paul Rogers to Rule-Comments, Commission, dated May 20, 2010; Letter from Congressman Eric Cantor to Chairman Schapiro, Commission, dated May 21, 2010; Letter from T.P. Tursick to Elizabeth M. Murphy, Secretary, Commission, dated May 25, 2010; Letter from James J. Angel to the Commission, dated May

NYSE responded to the comments in a letter dated June 8, 2010.[8] This order grants accelerated approval to the proposed rule changes.

II. Description of the Proposals

On May 6, 2010, the U.S. equity markets experienced a severe disruption.[9] Among other things, the prices of a large number of individual securities suddenly declined by significant amounts in a very short time period, before suddenly reversing to prices consistent with their pre-decline levels. This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices and were broken by the Exchanges. The Commission is concerned that events such as those that occurred on May 6 can seriously undermine the integrity of the U.S. securities markets. Accordingly, it is working on a variety of fronts to assess the causes and contributing factors of the May 6 market disruption and to fashion policy responses that will help prevent a recurrence.

The Commission also recognizes the importance of moving quickly to implement appropriate steps that could help limit potential harm from extreme price volatility. In this regard, it is pleased that the SROs began consulting soon after May 6 in an effort to develop consistent circuit breaker rules that could be implemented on an expedited basis. The SROs were able to reach agreement on a consistent approach, and, on May 18 and 19, 2010, all of the SROs filed proposed rule changes with the Commission.

These rules would require the Listing Markets to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets would notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape.[10] Under the rules, once a Listing Market issues a trading pause, the other Exchanges would be required to pause trading in that security on their markets.[11] In order to avoid interfering with existing procedures designed to facilitate orderly openings and closings, the trading pause requirements would apply only from 9:45 a.m. until 3:35 p.m.

At the end of the five-minute pause, the primary Listing Market would reopen trading in the security in accordance with its procedures for doing so. Trading would resume on the other Exchanges and in the over-the-counter market once trading has resumed on the primary Listing Market. In the event of a significant imbalance on the primary Listing Market at the end of a trading pause, the primary Listing Market may delay reopening. If the primary Listing Market has not reopened within ten minutes from the initiation of the trading pause, however, the other Exchanges may resume trading.[12]

The Exchanges have proposed that these rule changes be implemented as a pilot that would end on December 10, 2010. The pilot period would enable the Exchanges and the Commission to assess the effect of the new rules on the marketplace. To initiate this pilot promptly, the proposed rules would be in effect only with respect to securities included in the S&P 500 Index. The Commission understands that the Exchanges expect to file additional rule proposals in the near future to expand the scope of the pilot (for example, to include ETFs) within the pilot period.[13]

The Exchanges have requested that the Commission approve the proposed rule changes on an accelerated basis, so that they may become operative as soon as practicable.

III. Discussion of Comments and Commission Findings

As of June 7, the Commission received 26 comment letters regarding the proposed rule changes, a substantial number of which were generally supportive. For example, an institutional investor stated that "on very rare occasions like May 6 a pause in trading is necessary to give market participants a chance to 'reset' and react appropriately to periods of dislocation. A reasonable trading halt will provide investors time to rationally assess the market events and commit liquidity at appropriate price levels."[14] Another institutional investor strongly supported single stock circuit breakers, noting that "trading pauses may reduce market volatility resulting from temporary supply-demand imbalances without unduly interrupting price discovery."[15]

The commenters also raised a variety of significant issues regarding the scope and operation of the circuit breakers. These include: (1) Whether the circuit breakers should be expanded beyond S&P 500 stocks, particularly to exchange traded funds ("ETFs") and the securities of other companies that were most severely affected on May 6;[16] (2) the

25, 2010 ("Angel Letter"); Letter from Larry Harris, USC Marshall School of Business, to Elizabeth M. Murphy, Secretary, Commission, dated May 26, 2010 ("Harris Letter"); Letter from Judith Kittinger to WebMaster, Commission, dated May 27, 2010; Letter from Congresswoman Melissa L. Bean to Chairman Schapiro, Commission, dated May 28, 2010 ("Bean Letter"); Letter from Patrick J. Healy, Issuer Advisory Group, LLC, to Elizabeth M. Murphy, Secretary, Commission, dated May 31, 2010 ("IAG Letter"); Letter from Hal McIntyre, The Summit Group, to Elizabeth M. Murphy, Commission, undated "Summit Group Letter"); Letter from Ira Shapiro, BlackRock Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 2, 2010 ("BlackRock Letter"); Letter from Christopher Nagy, TD Ameritrade to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("TD Ameritrade Letter"); Letter from Alexander M. Cutler, Business Roundtable to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("Business Roundtable Letter"); Letter from George U. Sauter, The Vanguard Group, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("Vanguard Letter"); Letter from Julie Sweet, Accenture plc to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("Accenture Letter"); Letter from Tom Quaadman, Center for Capital Markets Competitiveness to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 (CCMC Letter"); Letter from Jeffrey W. Rubin, American Bar Association Business Law Section to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("ABA Letter"); Letter from Karrie McMillan, Investment Company Institute to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("ICI Letter"); Letter from Daniel Mathisson, Credit Suisse Securities (USA) LLC to Elizabeth M. Murphy, Secretary, Commission, dated June 3, 2010 ("Credit Suisse Letter"); Letter from Leonard J. Amoruso, Knight Capital Group, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated June 4, 2010 ("Knight Letter").

[8] *See* Letter from Janet Kissane, Senior Vice President—Legal & Corporate Secretary, NYSE Euronext to Elizabeth M. Murphy, Secretary, Commission, dated June 8, 2010 ("Response Letter"), including data and analysis. *See also* Memo from the Division of Risk, Strategy and Financial Innovation to File, dated June 4, 2010.

[9] The events of May 6 are described more fully in the report of the staffs of the Commodity Futures Trading Commission ("CFTC") and the Commission, titled *Report of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues,* "Preliminary Findings Regarding the Market Events of May 6, 2010," dated May 18, 2010.

[10] When a trading pause is issued, the Listing Market will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Exchange Act. The single plan processor for all listed securities other than Nasdaq-listed securities is the Securities Industry Automation Corporation ("SIAC"). The single plan processor for Nasdaq-listed securities is Nasdaq.

[11] FINRA's rule provides that it will similarly pause trading in the over-the-counter market by FINRA members, including alternative trading systems and market makers, when a Listing Market has issued a trading pause.

[12] Some of the Nonlisting Markets, such as ISE, may not begin trading under their proposed rules until the Listing Market begins.

[13] Any such rule proposals would be published for public comment in accordance with Section 19(b) of the Act.

[14] *See* Vanguard Letter, *supra* note 7.

[15] *See, e.g.,* BlackRock Letter, *supra* note 7.

[16] *See, e.g.,* ABA Letter, Accenture Letter, Angel Letter, Bean Letter, CCMP Letter, Credit Suisse

Continued

need for revised market-wide circuit breakers; [17] and (3) operational issues regarding the circuit breakers, including the times when they should apply,[18] the threshold events that should trigger them and the length of the pause,[19] the procedures for resuming trading after a pause,[20] and alternatives to the circuit breaker mechanism.[21]

The Commission believes that most if not all of these suggestions regarding potential ways to improve or perfect the scope and operation of the circuit breaker, or variations on them, were generally considered by the Exchanges in developing a uniform proposal that could be implemented in a reasonably short period of time and yet provide important benefits to the markets.[22] The Commission recognizes that all of these issues warrant continued close consideration in the coming days and months, and it expects that the SROs will continue to consult with each other, the Commission and market participants on both the scope and operation of the circuit breakers.

With respect to the specific proposals under consideration here, however, the Commission has evaluated them based on whether they are consistent with the Act and whether they represent a useful first step that should improve the existing procedures for protecting investors and maintaining fair and orderly markets. It finds that the proposals meet these standards and therefore is approving them on an expedited basis.

The Commission agrees that consideration should be given by the Exchanges to whether the circuit breakers should be expanded to additional securities, but does not believe that there is a reason to delay the implementation of circuit breakers for S&P 500 stocks as a reasonable first step.[23] Similarly, it agrees that the existing market-wide circuit breakers should be re-examined in light of current market conditions, but again does not believe that the initial stage of the circuit breaker pilot for individual stocks should be delayed pending that re-examination. With respect to operational issues regarding the circuit breakers, the Commission anticipates that the Exchanges will continue to evaluate these issues during the pilot period, and will propose any modifications to the circuit breakers that may be necessary or appropriate before that period has ended, but does not believe that the first stage of the circuit breaker pilot should be delayed pending such consideration.[24]

A few commenters expressed concern that the proposed circuit breakers could cause more harm than good. One, for example, suggested that the Exchanges' timeframe for implementation of the proposed rule changes could be overly aggressive and lead to systems problems.[25] The Commission understands that the Exchanges have been working closely with market participants to address implementation issues and facilitate a prompt yet workable roll-out of the circuit breaker pilot.[26] No other comments were received indicating that exchanges, other trading venues or broker-dealers would not be able to fully implement the proposed circuit breakers within the timeframes established in the Exchange filings.

Other commenters questioned whether trading halts may exacerbate price volatility, and one stated that a trading halt on May 6 might have increased the order imbalance preventing an intraday recovery.[27] Many other commenters, however, believed that the events of May 6 demonstrate the need for trading pauses in individual stocks as a means to reduce excessive market volatility.[28] The Commission agrees that the proposed trading pauses are prudent measures that are appropriately being introduced on a pilot basis to address extraordinarily severe and harmful price volatility of the kind that occurred on May 6.

In sum, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder

Letter, IAG Letter, ICI Letter (expressing particular concern that if circuit breakers exist for individual securities contained in ETFs' baskets, but not for the ETFs themselves, ETFs could again suffer disproportionately during a market event such as that of May 6), Summit Group Letter, TD Ameritrade Letter, and Vanguard Letter, *supra* note 7. One commenter also raised concerns about the potential consequences of circuit breakers being triggered simultaneously in many securities. *See* Angel Letter.

[17] *See, e.g.,* Angel Letter, *supra* note 7.

[18] Suggestions included applying the circuit breakers for the entire trading day (i.e., including during the opening and closing periods). *See, e.g.,* Angel Letter (noting the considerable trading activity and volatility that occurs during the first and last minutes of the trading day), Credit Suisse Letter (noting that in S&P 500 stocks 6% of the daily volume typically occurs from 9:30 a.m. to 9:45 a.m., and 18% occurs from 3:35 p.m. to 4 p.m., and that intra-day volatility tends to be highest during these time periods), IAG Letter, and TD Ameritrade Letter (arguing that the many retail investor orders executed at market open should not be deprived the protections of the circuit breaker rules), *supra* note 7.

[19] Suggestions included using a trigger threshold other than 10% or a pause period other than five minutes. *See, e.g.,* Angel Letter (suggesting securities outside the S&P 500 may need a trigger threshold greater than 10%, and that the pause period may need to be longer than five or ten minutes), BlackRock Letter (arguing that the 10% circuit breaker level is too narrow, with their data showing it would have halted trading on only 58 of S&P 500 stocks on May 6, 2010, as opposed to 309 S&P 500 stocks on that day with a 5% circuit breaker), Credit Suisse Letter (suggesting a ten-minute halt period), Hofler Letter (suggesting that trigger thresholds vary commensurate with the stock's volatility, perhaps 5% for low beta stocks, 10% for medium beta stocks, and 30% for high beta stocks), Knight Letter (recommending a minimum trigger threshold of 15%, and the use of more sophisticated variables such as dollar price, average daily volume, and market capitalization), and Summit Group Letter (suggesting a longer pause period may be required to allow small investors to respond), *supra* note 7. Other commenters suggested using a trigger based on the national best bid or offer rather than a trade price. *See, e.g.,* Molinete Letter, *supra* note 7.

[20] Suggestions included precluding resumption of trading until the primary listing market has resolved any imbalances. *See, e.g.,* BlackRock Letter, Credit Suisse Letter, Knight Letter and TD Ameritrade Letter, *supra* note 7. *But see* Harris Letter, *supra* note 7 (arguing that trade halt rules are anti-competitive because they encourage traders to submit their orders to the dominant exchanges so that they can participate in the call auctions that restart trading).

[21] Suggestions included using a futures-style "limit down" mechanism rather than a full trading pause. *See, e.g.,* Accenture Letter, Credit Suisse Letter, and Harris Letter (arguing that trading at prices that reverse the triggering price change should be permitted), *supra* note 7.

[22] *See, e.g.,* Response Letter, supra note 8.

[23] In particular, the Commission acknowledges the concerns raised by the ICI, Blackrock, and others regarding the potential adverse consequences for ETFs if the circuit breakers cover individual securities that are held by an ETF but not the ETF itself. Those comment letters do not explicitly recommend delaying the launch of the pilot program with respect to the S&P 500, but they do urge that ETFs be added to the pilot as soon as possible. As noted below, the Commission anticipates that the Exchanges will be proposing amendments to the pilot to include ETFs.

[24] Commenters also raised a number of issues not directly related to the scope or operation of the trading pauses. One, for example, was the operation of the Exchanges' erroneous trade rules. *See* TD Ameritrade Letter, *supra* note 7. The Commission expects that the Exchanges will continue to consult on these rules and anticipates they will submit proposals to clarify their operation in the near future.

[25] *See* Molinete Letter, *supra* note 7.

[26] *See* Response Letter, *supra* note 9.

[27] *See* Harris Letter, *supra* note 7 (arguing that trading halts will attenuate volatility if liquidity or rationality arrives before markets return to normal operation, and positing that on May 6 many traders would have thought the price drop was due to fundamental valuation issues, in which case the order imbalance could have grown larger during the halt as traders drew incorrect inferences from the event). *See also* Molinete Letter, *supra* note 7 (suggesting the proposed rules may exacerbate market volatility rather than reduce it due to the interplay of stock circuit breaker rules, erroneous trade rules, and market participants' reactions to securities nearing the threshold). Another commenter urged the Commission to proceed cautiously in this area, expressing the view that "unencumbered market forces are preferable to the implementation of artificial trade frictions wherever possible." *See* Knight Letter, *supra* note 7. The Commission will continue to consider these comments in evaluating the impact of the pilot.

[28] *See, e.g.,* Accenture Letter, BlackRock Letter, Business Roundtable Letter, CCMP Letter, Credit Suisse Letter, ICI Letter, TD Ameritrade Letter, Vanguard Letter, *supra* note 7.

applicable to national securities exchanges. In particular, the Commission finds that the proposals are consistent with Section 6(b)(5) of the Act,[29] which among other things requires that the rules of national securities exchanges be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[30]

The Commission believes the proposed rule changes, among other things, will establish consistent, market-wide trading pauses as a means to prevent potentially destabilizing price volatility and will thereby help promote the goals of investor protection and fair and orderly markets.

The Commission also finds good cause for approving the proposals before the 30th day after the publication of notice thereof in the **Federal Register**. The Exchanges have worked quickly and cooperatively to devise a response to the events of May 6, 2010. The Commission received a number of comments on the proposals, the great majority of which were supportive of the proposed trading pause. The proposed changes are being implemented on a pilot basis so that the Commission and the Exchanges can monitor the effects of the pilot on the marketplace and consider adjustments, as necessary. The Commission believes that accelerating approval of these proposals is appropriate as it will enable the Exchanges nearly immediately to begin coordinating trading pauses across markets in the event of sudden changes in the value of the S&P 500 Index stocks. In particular, the Commission believes that these proposed rule changes should further the goals of investor protection and fair and orderly markets.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule changes (SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca-2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; SR–CBOE–2010–047) be, and hereby are, approved on an accelerated basis.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–14435 Filed 6–15–10; 8:45 am]

BILLING CODE 8010–01–P

[29] 15 U.S.C. 78f(b)(5).

[30] In approving the proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62255; File No. SR–EDGA–2010–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by EDGA Exchange, Inc. Relating to Direct Edge, Inc.

June 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2010, EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EDGA proposes to make changes to its corporate structure to provide that it will be a wholly-owned subsidiary of Direct Edge, Inc. ("DEI") instead of Direct Edge Holdings, LLC ("DE Holdings").

The proposed Certificate of Incorporation of DEI ("DEI Certificate") is attached as Exhibit 5A, the proposed Bylaws of DEI ("DEI Bylaws") are attached as Exhibit 5B, and the Amended and Restated Bylaws of EDGA ("EDGA Bylaws") are attached as Exhibit 5C.

The text of the proposed rule change is available on the Exchange's Web site *http://www.directedge.com*, on the Commission's Internet Web site at *http://www.sec.gov,* 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On March 12, 2010, the Commission granted the Form 1 exchange registration applications of EDGA and its affiliate exchange, EDGX Exchange, Inc. ("EDGX").[3]

As provided in the Form 1 application, EDGA and Direct Edge ECN, LLC d/b/a DE Route ("DE Route"), the Exchange's routing broker/dealer, are wholly-owned subsidiaries of DE Holdings.[4] EDGA Bylaws identify this ownership structure.[5] Any changes to the EDGA Bylaws, including any change in the provision that identifies DE Holdings as the initial owner of EDGA, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[6] As part of a general corporate reorganization, EDGA is now proposing to create a new corporation, DEI, which will be owned by DE Holdings. DEI will, in turn, own the Exchange and be both an operating and holding company. All of the equity of EDGA is proposed to be transferred to DEI. In turn, DE Holdings will be the sole stockholder of DEI and thus, DEI will be a wholly-owned subsidiary of DE Holdings. The self-regulatory functions of EDGA will, however, continue to remain with EDGA. As stated above, DE Route will continue to be owned directly by DE Holdings.

In connection with this corporate reorganization, the Exchange is filing these documents with the Commission as part of Exhibit 5: (i) The proposed DEI Certificate is attached as Exhibit 5A; (ii) the proposed DEI Bylaws are attached as Exhibit 5B; and (iii) the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File Nos. 10–194 and 10–196) (the "Order").

[4] DE Holdings is a limited liability company overseen by a board of managers. Ownership in DE Holdings is represented by limited liability membership interests. EDGX is also a wholly-owned subsidiary of DE Holdings.

[5] EDGA Bylaws, Article I., Section kk.

[6] *See* 15 U.S.C. 78s. *See also* Order at note 77 and accompanying text.

EDGA Bylaws are attached as Exhibit 5C.

As the primary focus of this rule filing is to focus on those provisions that are directly related to the Exchange's ability to perform its regulatory responsibilities following the transaction described above, the Exchange's discussion will focus on the relevant provisions of the documents mentioned above.

Preservation of Self-Regulatory Function of EDGA

Section 7.7 of the DE Holdings' Fourth Amended and Restated Limited Liability Company Operating Agreement (the "DE Holdings LLC Agreement") identifies certain corporate actions that require the approval of DE Holdings' Board of Managers and the members of DE Holdings. The Sixth Article of the DEI Certificate provides that any action requiring the approval of the DE Holdings Board of Managers and/or members of DE Holdings pursuant to Section 7.7 of the DE Holdings LLC Agreement shall require the approval of the stockholders of DEI (DE Holdings is the sole stockholder of DEI). The Sixth Article of the DEI Certificate further provides that, notwithstanding such approval, nothing contained in Section 7.7 of the DE Holdings LLC Agreement shall be applicable where the application of such provision or provisions would interfere with the effectuation of any decisions by the Board of Directors of DEI ("Board") relating to regulatory functions of the Exchange (including disciplinary matters) or the structure of the market that the Exchange regulates, or would interfere with the ability of the Exchange to carry out its responsibilities under the Act or to oversee the structure of the market that the Exchange regulates.[7] This Sixth Article of the DEI Certificate further provides that these responsibilities shall include the ability of the Exchange as an SRO:

- To prevent fraudulent and manipulative acts and practices;
- To promote just and equitable principles of trade;
- To foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities;
- To remove impediments to and perfect the mechanisms of a free and open market and a national market system; and
- To protect investors and the public interest.[8]

In addition, the DEI Bylaws provide that, for so long as DEI controls the Exchange, the Board, officers, employees and agents of DEI must give due regard to the preservation of independence of the self-regulatory function of the Exchange and must not interfere with its regulatory functions (including disciplinary matters) or the ability of the Exchange to carry out its responsibilities under the Act.[9]

These provisions, as well as the associated notice and rule filing requirements with respect to any person or entity that may acquire an interest in DEI (as described below), will serve to protect the integrity of the Exchange's self-regulatory responsibilities and the SEC's oversight responsibilities. These provisions will also ensure that, although DEI will not itself carry out any regulatory functions, its activities with respect to the Exchange will be consistent with, and not interfere with the self-regulatory obligations of the Exchange.

Ownership Limitations and Changes in Ownership

The DE Holdings LLC Agreement includes restrictions on the ability to own and vote shares of the capital stock of DE Holdings.[10] The DE Holdings LLC Agreement states that no person may own, directly or indirectly, of record or beneficially, units of interest in the ownership of DE Holdings ("Units") representing more than a 40% interest in DE Holdings.[11] In addition, the DE Holdings LLC Agreement prohibits members of EDGX or EDGA ("Exchange Members"), either alone or together with their related persons, from owning, directly or indirectly, of record or beneficially, Units representing a percentage interest in DE Holdings of more than 20%.[12] Furthermore, no person, other than International Securities Exchange Holdings, Inc., either alone or together with its related persons, may vote or cause the voting of Units representing more than a 20% interest in DE Holdings.[13] If any member of DE Holdings purports to transfer Units in violation of the ownership limits, or to vote or cause the voting of Units in violation of the voting limits, then DE Holdings has the right to redeem such Units for the lesser of the fair market value or the book value of the Units.[14] In addition, DE Holdings will not honor any vote that would violate the voting limitations, and any Units that would violate the voting limitation will not be entitled to vote to the extent of the violation.[15]

These voting and ownership restrictions in the DE Holdings LLC Agreement are unaffected by the proposed change in corporate structure whereby DEI will become an operating and holding company for the Exchange. Further, such restrictions will effectively be carried over into the new corporate structure because the DEI Certificate provides that the sole stockholder of DEI will be DE Holdings[16] and as discussed below, the EDGA Bylaws indicate that DEI will be the sole owner of EDGA.[17] In addition, for so long as DEI indirectly or directly controls EDGA, any amendment to the ownership requirements in the DEI Certificate, including the provision identifying DE Holdings as the sole stockholder of DEI, shall be submitted to the Board of Directors of EDGA for a determination as to whether such amendment must be filed with, or filed with and approved by, the SEC before such amendment can become effective and in such event, such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.[18]

The Exchange proposes to amend its bylaws to require that the sole stockholder of the Exchange will be DEI.[19] Any changes to the EDGA Bylaws, including any change in the provision that identifies DEI as the sole owner of EDGA, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[20] This ownership requirement, together with the DE Holdings' and DEI's voting and ownership restrictions described above, is designed to prevent any Exchange Member or other person from exercising undue control over the operation of the Exchange through DEI and further assures that the Exchange and the Commission will be able to carry out their respective regulatory obligations under the Act. The Exchange believes that these requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or

[7] *See* DEI Certificate, Article VI., Section 2.

[8] *Id.*

[9] *See* DEI Bylaws, Article VII., Section 7.1.

[10] *See* the Order at 13156.

[11] *See* DE Holdings LLC Agreement, Article XII., Section 12.1(a)(1).

[12] *See* DE Holdings LLC Agreement, Article XII., Section 12.1(a)(2).

[13] *See* DE Holdings LLC Agreement, Article XII., Section 12.1(a)(3).

[14] *See* DE Holdings LLC Agreement, Article XII., Section 12.3.

[15] *See* DE Holdings LLC Agreement, Article XII., Section 12.4.

[16] *See* DEI Certificate, Article VIII., Section 4.

[17] *See* EDGA Bylaws, Article I., Section kk.

[18] *See* DEI Certificate, Article VIII., Section 3.

[19] *See* EDGA Bylaws, Article I., Section kk.

[20] *See* 15 U.S.C. 78s. *See also* Order at note 77 and accompanying text.

the Exchange to effectively carry out their respective regulatory oversight responsibilities under the Act.

Jurisdiction and Regulatory Oversight

The DEI Certificate and DEI Bylaws will contain several provisions designed to protect the independence of the self-regulatory function of the Exchange.

DEI's officers and directors are deemed to be the officers and directors of the Exchange.[21] Article VII of the DEI Bylaws further states that DEI's Board and its officers, employees, and agents shall give due regard to the preservation of independence of the self-regulatory function of the Exchange and shall not interfere with the effectuation of any decisions by the Exchange's Board of Directors relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act.[22] In addition, the DEI Bylaws further provide that DEI shall comply with the U.S. federal securities laws and rules and regulations thereunder and shall cooperate with the SEC and the Exchange.[23] The DEI Bylaws also provide that DEI's officers, directors, employees and agents shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) to cooperate with the SEC and the Exchange in respect of the SEC's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange. In addition, DEI shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.[24]

Furthermore, DEI and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and the Exchange for purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder relating to or arising out of the activities of the Exchange.[25] In addition, those same parties shall be deemed to waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding any claims that they are not personally subject to the jurisdiction of the United States federal courts, the SEC, and the Exchange that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.[26]

These provisions ensure that, should an occasion arise that requires regulatory cooperation or jurisdictional submission from DEI, such cooperation will be forthcoming and uncontested.

Books and Records

The Bylaws of DEI contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DEI. According to the DEI Bylaws, the books and records of DEI are deemed to be the books and records of the Exchange to the extent they are related to the operation or administration of the Exchange.[27] In addition, for as long as DEI controls the Exchange, DEI's books and records shall be subject at all times to inspection and copying by the SEC and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.[28]

The DEI Bylaws also provide that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange that shall come into the possession of DEI shall:

- Be retained in confidence by DEI, its stockholders, officers, directors, employees and agents; and
- Not be used for any non-regulatory purposes.[29]

The foregoing, however, shall not limit or impede the rights of the SEC or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any DEI stockholders, officers, directors, employees or agents to disclose such confidential information to the SEC or the Exchange.[30] DEI's books and records shall be subject at all times to inspection and copying by (a) the SEC and (b) any Exchange, provided that such books and records are related to the operation or administration of the Exchange.[31] In addition, DEI's books and records shall be maintained within the United States.[32]

Voting the Equity of EDGA

Currently, the DE Holdings LLC Agreement provides that DE Holdings shall, in its capacity as the sole stockholder of EDGA, cause all outstanding equity of EDGA owned by DE Holdings and entitled to vote with respect to an election to be voted in accordance with the EDGA Bylaws.[33] Inasmuch as DE Holdings will no longer be a stockholder of EDGA upon the consummation of this transaction, such requirements will no longer be applicable to DE Holdings.

As DEI will now be the sole stockholder of EDGA, DEI shall cause all outstanding equity of EDGA owned by DEI and entitled to vote with respect to an election to be voted in accordance with the EDGA Bylaws.[34] Under Section 2.15(b) of the DEI Bylaws, with respect to any election of directors, other than "Owner Directors,"[35] or members of the Nominating Committee or Exchange Member Nominating Committee of the Exchange, DEI shall cause all outstanding equity of the Exchange owned by DEI and entitled to vote to elect: (i) only those nominees for the Nominating Committee and for the Exchange Member Nominating Committee that are nominated in accordance with the EDGA Bylaws; and (ii) only those directors nominated by the Nominating Committee of the Exchange. Under Section 2.15(c) of the DEI Bylaws, with respect to "Owner Directors," DEI shall take all actions in its capacity as a stockholder of the Exchange to vote or consent with respect to matters concerning an Owner Director according to the written instructions of the relevant member of DE Holdings that is entitled to nominate such Owner Director.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[36] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[37] in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the

[21] *See* DEI Bylaws, Article V., Section 5.8(b).

[22] *See* DEI Bylaws, Article VII., Section 7.1.

[23] *See* DEI Bylaws, Article VII., Section 7.2.

[24] *Id.*

[25] *See* DEI Bylaws, Article VII., Section 7.3.

[26] *Id.*

[27] *See* DEI Bylaws, Article V., Section 5.8(b).

[28] *Id.*

[29] *See* DEI Bylaws, Article V., Section 5.8(a).

[30] *Id.*

[31] *See* DEI Bylaws, Article V., Section 5.8(b).

[32] *See* DEI Bylaws, Article VII., Section 7.5.

[33] *See* DE Holdings LLC Agreement, Article VII., Section 7.3(b).

[34] *See* DEI Bylaws, Article II., Section 2.15(b).

[35] "Owner Director" is defined in Article I., Section (z) of the EDGA Bylaws as a Director nominated by a member of DE Holdings that holds at least a 15% percentage interest in DE Holdings and that is elected by the stockholders of the Exchange.

[36] 15 U.S.C. 78f.

[37] 15 U.S.C. 78f(b)(3), [sic] (5).

Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–EDGA–2010–02 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–EDGA–2010–02. 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 EDGA. 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–EDGA–2010–02 and should be submitted on or before July 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14443 Filed 6–15–10; 8:45 am]

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[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62259; File No. SR–NYSEArca–2010–47]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish New Rule 6.89

June 10, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 2, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish new procedures to account for erroneous trades occurring from disruptions and/or malfunctions of Exchange systems. The changes described in this proposal would establish new NYSE Arca Rule 6.89. The text of the proposed rule change is available at the Commission's Web site at *http://www.sec.gov.* A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 is proposing to establish NYSE Arca Rule 6.89, in order to adopt new procedures regarding system disruptions and malfunctions. Specifically, the Exchange proposes to include "verifiable systems disruptions and malfunctions which the nullification or modification of transactions may be necessary" as a condition in which a designated Trading Official [4] may act, on its own motion, to review erroneous transactions. The Exchange believes that it is appropriate to provide this flexibility and authority so as not to limit the Exchange's ability to plan for and respond to unforeseen system's problems. Proposed Rule 6.89 is similar to rules in effect at other options exchanges that allow for the nullification or modification of transactions that resulted from verifiable disruptions and/or malfunctions of Exchanges systems.[5]

According to the proposal, in the event of any verifiable disruption or malfunction in the use or operation of any electronic communications and trading facilities of the Exchange, in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, a Trading Official, on his or her own motion, may review such transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void or modify the terms of these transactions, in accordance with the guidelines contained in sections (a)(3)(C)(i)(aa)–(bb) of Rule 6.87. Pursuant to the proposal, the Trading Official, absent extraordinary circumstances, must initiate action under this authority within sixty (60) minutes of the occurrence of the erroneous transaction that was a result of the verifiable disruption or malfunction. Each OTP Holder involved in the transaction shall be notified as soon as practicable, and any OTP Holder aggrieved by the action may appeal such action in accordance with the provisions of subsection (b) of Rule 6.89.

Appeal Process

If a Trading Official determines that a transaction(s) is erroneous pursuant to Rule 6.89(a) as described above, any OTP Holder aggrieved by the action may appeal such action in accordance with the provisions provided in Rule 6.89(b).

The Exchange plans to utilize a Review Panel ("Panel") to review decisions made by the Exchange Officer, under this Rule.

Once an OTP Holder has properly notified the Exchange that it wishes to appeal the decision of the Exchange Officer, a three person Panel will review and make a determination as to the appeal. The Panel as described in proposed Rule 6.89(b)(1)(A) will be comprised of the NYSE Arca Chief Regulatory Officer ("CRO"), or a designee of the CRO, and a representative from two (2) different OTP Firms. One representative on the Panel will always be from an OTP Firm directly engaged in market making activities and one representative on the Panel will always be from an OTP Firm directly engaged in the handling of options orders for public customers.[6] The Exchange feels that by having a three person panel, of which the majority is made up of individuals from member firms, will help to ensure that determinations regarding erroneous transactions resulting from system malfunctions or extraordinary market conditions are made by a diverse representative group in a manner that will help to ensure fairness and impartiality.

The Exchange shall designate at least ten (10) OTP Firm representatives to be called upon to serve on the Panel as needed. In no case shall a Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate in a Panel on an equally frequent basis.

2. Statutory Basis

The Exchange believes that the proposed rule change will allow the Exchange, in extraordinary market conditions, to maintain a fair and orderly market. The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Allowing for the nullification or modification of transactions that result from verifiable disruptions and/or malfunctions of Exchanges systems will offer market participants on NYSE Arca a level of relief presently not available. The rule changes proposed in this filing are consistent with the rules governing verifiable systems disruptions malfunctions at other options exchanges and are designed to protect investors and the public interest.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

[4] *See* NYSE Arca Rule 6.1(b)(34). Trading Officials are employees or officers of the Exchange and are not affiliated with OTP Holders or OTP Firms.

[5] Proposed Rule 6.89 is based in part on NASDAQ OMX PHLX Rule 1092(c)(ii)(A), and in addition is substantially similar to Chicago Board Options Exchange Rule 6.25(a)(3).

[6] The composition of the Review Panel, is similar to that of the NYSE Arca Obvious Error Panel, as defined in Rule 6.87(a)(4)(A)(i). [sic]

[7] 15 U.S.C. 78(f)(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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

Continued

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2010–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2010–47. 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 NYSE Arca. 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–NYSEArca–2010–47 and should be submitted on or before July 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14444 Filed 6–15–10; 8:45 am]

BILLING CODE 8010–01–P

to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62248; File No. SR–NYSEAmex–2010–51]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Bid-Ask Parameters During Auctions

June 9, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on May 28, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 925NY and Rule 952NY. The text of the proposed rule change is available on NYSE Amex's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of NYSE Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (i) Amend Rule 925NY to differentiate the bid-ask differentials for Market Maker open outcry quotations from the requirements for electronically submitted quotations, and (ii) amend Rule 952NY by establishing guidelines for the use of bid-ask parameters in the NYSE Amex System to be used during the opening auction process ("Auction").[3]

Currently, Rule 925NY specifies the bid-ask differential requirements applicable to Market Maker quotations when electronically bidding and offering on the NYSE Amex System during an Auction and in open outcry. With respect to bidding and offering during an Auction, the bid-ask differentials [4] vary depending on the price of the bid. Rule 925NY(b)(4)(A)–(E) states that the quote widths shall not be more than: $0.25 if the bid is less than $2; $0.40 where the bid is at least $2 but does not exceed $5; $0.50 where the bid is more than $5 but does not exceed $10; $0.80 where the bid is more than $10 but does not exceed $20; and $1 where the bid is more than $20. With respect to electronic quoting on the NYSE Amex System, after an Auction, the bid-ask differential requirement is $5. The Exchange now proposes to replace the applicable bid-ask differentials for Market Maker quoting obligations during an Auction, with the $5 quote differential that is in place at all other times.

At the time Rule 925NY was adopted, the obligation for Specialists and Market Makers to provide opening quotes at the described widths was both a longstanding NYSE Amex requirement, and also based on the model of NYSE Arca, Inc., which uses the same underlying technology as the NYSE Amex System.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An Auction is the process by which trading is initiated in a specified options class on NYSE Amex. Auctions are conducted automatically by the NYSE Amex system, NYSE Amex's electronic system for order handling, execution, and reporting.

[4] The Auction bid-ask differentials are known in common parlance as "legal-width quotes."

The original intent of maintaining the obligation for Market Makers to submit narrow, traditional bid-ask requirements for NYSE Amex was to encourage a narrower aggregated Exchange market during the opening auction. Both NYSE Amex and NYSE Arca are often the first market to open a series, and, depending on which one opens a series first there is not necessarily an accurate National Best Bid/Offer ("NBBO") available, and NYSE Amex does not require a "legal width" NBBO quote to open a series. The Exchange also had concern about the quality of markets with the NYSE Amex permit holders adapting to a new system that was substantially different from their previous platform, and placed significantly greater emphasis on Market Maker electronic quoting.

Now, with more than a year's experience operating the NYSE Amex system, ATP Holder Market Makers have adapted well to the enhanced quoting obligations. Additionally, NYSE Amex has instituted increased functionality to define price parameters during the auction process. The system will not conduct an auction in a series until one of two conditions is met: (i) A market maker submits a legal width quote, or (ii) a legal width NBBO is received from OPRA. This is a systemic solution which renders the rules based quoting obligation moot.

With the adoption of the Section 900NY Rules and the migration to the NYSE Amex system, the quoting obligation for all Market Makers other than Specialists was set at 60%, and the Specialist quoting obligation was set at 90%. With these levels, there is no requirement for a Market Maker to submit a quotation for an opening auction. The auction quote width requirement thus imposes limits on a non-existent obligation.

In this regard, the Exchange notes that the market structure on NYSE Amex creates strong incentives for Specialists and competing Market Makers to disseminate competitive prices for the opening. To ensure that orders executed during an Auction are not subject to disadvantageous pricing, NYSE Amex proposes to establish parameters for the opening auction as described in Rule 952NY. Pursuant to this proposed rule change, the NYSE Amex System will not conduct an Auction in a given series unless; [sic] (i) the composite NYSE Amex bid-ask ("BBO") [5] or the composite NBBO, as disseminated by the Options Price Reporting Agency, is in an acceptable range. For the purposes of the Auction, an acceptable range will be the bid-ask parameters pursuant to Rule 925NY(b)(4)(A)–(E). The Exchange notes that these bid-ask differentials are identical to the existing legal width differentials for Market Maker Auction quotations which this filing proposes to delete. The Exchange feels that by establishing price protection parameters within the Auction process of the NYSE Amex System, rather than just as a requirement for submitted quotes, Customers and other market participants will be afforded a higher level of price protection than they presently have on NYSE Amex. The Exchange notes that this proposed change is for trading on the Exchange's electronic trading platform, and does not in any way affect the bid-ask differentials applicable to open-outcry trading.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5) [7] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system by setting price parameters for the opening Auction rather than rely on a restriction that does not have obligatory performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal is based on a similar rule approved by the Commission for NYSE Arca,[10] and raises no novel issues. Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[5] The composite BBO may be made up of an individual market maker quote, a combination of different market maker quotes where one quote represents the bid and another represents the offer, or a combination of market maker quotes and limited orders in the Consolidated Book.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] *See* Securities Exchange Act Release No. 62019 (April 30, 2010), 75 FR 25889 (May 10, 2010) (SR–NYSEArca–2010–16).

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–51. 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–NYSEAmex–2010–51 and should be submitted on or before July 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14442 Filed 6–15–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62256; File No. SR–EDGX–2010–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by EDGX Exchange, Inc. Relating to Direct Edge, Inc.

June 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2010, EDGX Exchange, Inc. (the "Exchange" or "EDGX") 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

EDGX proposes to make changes to its corporate structure to provide that it will be a wholly-owned subsidiary of Direct Edge, Inc. ("DEI") instead of Direct Edge Holdings, LLC ("DE Holdings").

The proposed Certificate of Incorporation of DEI ("DEI Certificate") is attached as Exhibit 5A, the proposed Bylaws of DEI ("DEI Bylaws") are attached as Exhibit 5B, and the Amended and Restated Bylaws of EDGX ("EDGX Bylaws") are attached as Exhibit 5C.

The text of the proposed rule change is available on the Exchange's Web site *http://www.directedge.com,* on the Commission's Internet Web site at *http://www.sec.gov,* 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On March 12, 2010, the Commission granted the Form 1 exchange registration applications of EDGX and its affiliate exchange, EDGA Exchange, Inc. ("EDGA").[3]

As provided in the Form 1 application, EDGX and Direct Edge ECN, LLC d/b/a DE Route ("DE Route"), the Exchange's routing broker/dealer, are wholly-owned subsidiaries of DE Holdings.[4] EDGX Bylaws identify this ownership structure.[5] Any changes to the EDGX Bylaws, including any change in the provision that identifies DE Holdings as the initial owner of EDGX, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[6] As part of a general corporate reorganization, EDGX is now proposing to create a new corporation, DEI, which will be owned by DE Holdings. DEI will, in turn, own the Exchange and be both an operating and holding company. All of the equity of EDGX is proposed to be transferred to DEI. In turn, DE Holdings will be the sole stockholder of DEI and thus, DEI will be a wholly-owned subsidiary of DE Holdings. The self-regulatory functions of EDGX will, however, continue to remain with EDGX. As stated above, DE Route will continue to be owned directly by DE Holdings.

In connection with this corporate reorganization, the Exchange is filing these documents with the Commission as part of Exhibit 5: (i) The proposed DEI Certificate is attached as Exhibit 5A; (ii) the proposed DEI Bylaws are attached as Exhibit 5B; and (iii) the EDGX Bylaws are attached as Exhibit 5C.

As the primary focus of this rule filing is to focus on those provisions that are directly related to the Exchange's ability to perform its regulatory responsibilities following the transaction described above, the Exchange's discussion will focus on the relevant provisions of the documents mentioned above.

Preservation of Self-Regulatory Function of EDGX

Section 7.7 of the DE Holdings' Fourth Amended and Restated Limited Liability Company Operating Agreement (the "DE Holdings LLC Agreement") identifies certain corporate actions that require the approval of DE Holdings' Board of Managers and the members of DE Holdings. The Sixth Article of the DEI Certificate provides that any action requiring the approval of the DE Holdings Board of Managers and/or

[3] *See* Securities and Exchange Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (approving File Nos. 10–194 and 10–196) (the "Order").

[4] DE Holdings is a limited liability company overseen by a board of managers. Ownership in DE Holdings is represented by limited liability membership interests. EDGA is also a wholly-owned subsidiary of DE Holdings.

[5] EDGA Bylaws, Article I., Section kk.

[6] *See* 15 U.S.C. 78s. *See also* Order at note 77 and accompanying text.

members of DE Holdings pursuant to Section 7.7 of the DE Holdings LLC Agreement shall require the approval of the stockholders of DEI (DE Holdings is the sole stockholder of DEI). The Sixth Article of the DEI Certificate further provides that, notwithstanding such approval, nothing contained in Section 7.7 of the DE Holdings LLC Agreement shall be applicable where the application of such provision or provisions would interfere with the effectuation of any decisions by the Board of Directors of DEI ("Board") relating to regulatory functions of the Exchange (including disciplinary matters) or the structure of the market that the Exchange regulates, or would interfere with the ability of the Exchange to carry out its responsibilities under the Act or to oversee the structure of the market that the Exchange regulates.[7] This Sixth Article of the DEI Certificate further provides that these responsibilities shall include the ability of the Exchange as an SRO:

- To prevent fraudulent and manipulative acts and practices;
- To promote just and equitable principles of trade;
- To foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities;
- To remove impediments to and perfect the mechanisms of a free and open market and a national market system; and
- To protect investors and the public interest.[8]

In addition, the DEI Bylaws provide that, for so long as DEI controls the Exchange, the Board, officers, employees and agents of DEI must give due regard to the preservation of independence of the self-regulatory function of the Exchange and must not interfere with its regulatory functions (including disciplinary matters) or the ability of the Exchange to carry out its responsibilities under the Act.[9]

These provisions, as well as the associated notice and rule filing requirements with respect to any person or entity that may acquire an interest in DEI (as described below), will serve to protect the integrity of the Exchange's self-regulatory responsibilities and the SEC's oversight responsibilities. These provisions will also ensure that, although DEI will not itself carry out any regulatory functions, its activities with respect to the Exchange will be consistent with, and not interfere with the self-regulatory obligations of the Exchange.

Ownership Limitations and Changes in Ownership

The DE Holdings LLC Agreement includes restrictions on the ability to own and vote shares of the capital stock of DE Holdings.[10] The DE Holdings LLC Agreement states that no person may own, directly or indirectly, of record or beneficially, units of interest in the ownership of DE Holdings ("Units") representing more than a 40% interest in DE Holdings.[11] In addition, the DE Holdings LLC Agreement prohibits members of EDGX or EDGA ("Exchange Members"), either alone or together with their related persons, from owning, directly or indirectly, of record or beneficially, Units representing a percentage interest in DE Holdings of more than 20%.[12] Furthermore, no person, other than International Securities Exchange Holdings, Inc., either alone or together with its related persons, may vote or cause the voting of Units representing more than a 20% interest in DE Holdings.[13] If any member of DE Holdings purports to transfer Units in violation of the ownership limits, or to vote or cause the voting of Units in violation of the voting limits, then DE Holdings has the right to redeem such Units for the lesser of the fair market value or the book value of the Units.[14] In addition, DE Holdings will not honor any vote that would violate the voting limitations, and any Units that would violate the voting limitation will not be entitled to vote to the extent of the violation.[15]

These voting and ownership restrictions in the DE Holdings LLC Agreement are unaffected by the proposed change in corporate structure whereby DEI will become an operating and holding company for the Exchange. Further, such restrictions will effectively be carried over into the new corporate structure because the DEI Certificate provides that the sole stockholder of DEI will be DE Holdings [16] and as discussed below, the EDGX Bylaws indicate that DEI will be the sole owner of EDGA.[17] In addition, for so long as DEI indirectly or directly controls EDGA, any amendment to the ownership requirements in the DEI Certificate, including the provision identifying DE Holdings as the sole stockholder of DEI, shall be submitted to the Board of Directors of EDGX for a determination as to whether such amendment must be filed with, or filed with and approved by, the SEC before such amendment can become effective and in such event, such amendment shall not be effective until filed with, or filed with and approved by, the SEC, as the case may be.[18]

The Exchange proposes to amend its bylaws to require that the sole stockholder of the Exchange will be DEI.[19] Any changes to the EDGX Bylaws, including any change in the provision that identifies DEI as the sole owner of EDGX, must be filed with and approved by the Commission pursuant to Section 19 of the Act.[20] This ownership requirement, together with the DE Holdings' and DEI's voting and ownership restrictions described above, is designed to prevent any Exchange Member or other person from exercising undue control over the operation of the Exchange through DEI and further assures that the Exchange and the Commission will be able to carry out their respective regulatory obligations under the Act. The Exchange believes that these requirements should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their respective regulatory oversight responsibilities under the Act.

Jurisdiction and Regulatory Oversight

The DEI Certificate and DEI Bylaws will contain several provisions designed to protect the independence of the self-regulatory function of the Exchange.

DEI's officers and directors are deemed to be the officers and directors of the Exchange.[21] Article VII of the DEI Bylaws further states that DEI's Board and its officers, employees, and agents shall give due regard to the preservation of independence of the self-regulatory function of the Exchange and shall not interfere with the effectuation of any decisions by the Exchange's Board of Directors relating to its regulatory functions (including disciplinary matters) or which would interfere with the ability of the Exchange to carry out its responsibilities under the Act.[22] In

[7] *See* DEI Certificate, Article VI., Section 2.

[8] *Id.*

[9] *See* DEI Bylaws, Article VII, Section 7.1.

[10] *See* the Order at 13156.

[11] *See* DE Holdings LLC Agreement, Article XII., Section 12.1(a)(1).

[12] *See* DE Holdings LLC Agreement, Article XII., Section 12.1(a)(2).

[13] *See* DE Holdings LLC Agreement, Article XII., Section 12.1(a)(3).

[14] *See* DE Holdings LLC Agreement, Article XII., Section 12.3.

[15] *See* DE Holdings LLC Agreement, Article XII., Section 12.4.

[16] *See* DEI Certificate, Article VIII., Section 4.

[17] *See* EDGX Bylaws, Article I., Section kk.

[18] *See* DEI Certificate, Article VIII, Section 3.

[19] *See* EDGX Bylaws, Article I., Section kk.

[20] *See* 15 U.S.C. 78s. *See also* Order at note 77 and accompanying text.

[21] *See* DEI Bylaws, Article V., Section 5.8(b).

[22] *See* DEI Bylaws, Article VII., Section 7.1.

addition, the DEI Bylaws further provide that DEI shall comply with the U.S. federal securities laws and rules and regulations thereunder and shall cooperate with the SEC and the Exchange.[23] The DEI Bylaws also provide that DEI's officers, directors, employees and agents shall be deemed to agree to (i) comply with the U.S. federal securities laws and the rules and regulations thereunder; and (ii) to cooperate with the SEC and the Exchange in respect of the SEC's oversight responsibilities regarding the Exchange and the self-regulatory functions and responsibilities of the Exchange. In addition, DEI shall take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate.[24]

Furthermore, DEI and its officers, directors, employees and agents will be deemed to irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and the Exchange for purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder relating to or arising out of the activities of the Exchange.[25] In addition, those same parties shall be deemed to waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding any claims that they are not personally subject to the jurisdiction of the United States federal courts, the SEC, and the Exchange that the suit, action, or proceeding is an inconvenient forum or that the venue of the suit, action, or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency.[26]

These provisions ensure that, should an occasion arise that requires regulatory cooperation or jurisdictional submission from DEI, such cooperation will be forthcoming and uncontested.

Books and Records

The Bylaws of DEI contain a number of provisions designed to ensure that the Exchange has sufficient access to the books and records of DEI. According to the DEI Bylaws, the books and records of DEI are deemed to be the books and records of the Exchange to the extent they are related to the operation or administration of the Exchange.[27] In addition, for as long as DEI controls the Exchange, DEI's books and records shall be subject at all times to inspection and copying by the SEC and the Exchange, provided that such books and records are related to the operation or administration of the Exchange.[28]

The DEI Bylaws also provide that, to the fullest extent permitted by applicable law, all confidential information pertaining to the self-regulatory function of the Exchange (including but not limited to disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange that shall come into the possession of DEI shall:

- Be retained in confidence by DEI, its stockholders, officers, directors, employees and agents; and
- Not be used for any non-regulatory purposes.[29]

The foregoing, however, shall not limit or impede the rights of the SEC or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations thereunder, or to limit or impede the ability of any DEI stockholders, officers, directors, employees or agents to disclose such confidential information to the SEC or the Exchange.[30] DEI's books and records shall be subject at all times to inspection and copying by (a) the SEC and (b) any Exchange, provided that such books and records are related to the operation or administration of the Exchange.[31] In addition, DEI's books and records shall be maintained within the United States.[32]

Voting the Equity of EDGX

Currently, the DE Holdings LLC Agreement provides that DE Holdings shall, in its capacity as the sole stockholder of EDGX, cause all outstanding equity of EDGX owned by DE Holdings and entitled to vote with respect to an election to be voted in accordance with the EDGA Bylaws.[33] Inasmuch as DE Holdings will no longer be a stockholder of EDGX upon the consummation of this transaction, such requirements will no longer be applicable to DE Holdings.

As DEI will now be the sole stockholder of EDGX, DEI shall cause all outstanding equity of EDGX owned by DEI and entitled to vote with respect to an election to be voted in accordance with the EDGX Bylaws.[34] Under Section 2.15(b) of the DEI Bylaws, with respect to any election of directors, other than "Owner Directors,"[35] or members of the Nominating Committee or Exchange Member Nominating Committee of the Exchange, DEI shall cause all outstanding equity of the Exchange owned by DEI and entitled to vote to elect: (i) only those nominees for the Nominating Committee and for the Exchange Member Nominating Committee that are nominated in accordance with the EDGX Bylaws; and (ii) only those directors nominated by the Nominating Committee of the Exchange. Under Section 2.15(c) of the DEI Bylaws, with respect to "Owner Directors," DEI shall take all actions in its capacity as a stockholder of the Exchange to vote or consent with respect to matters concerning an Owner Director according to the written instructions of the relevant member of DE Holdings that is entitled to nominate such Owner Director.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[36] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[37] in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and SRO rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[23] *See* DEI Bylaws, Article VII., Section 7.2.

[24] *Id.*

[25] *See* DEI Bylaws, Article VII., Section 7.3.

[26] *Id.*

[27] *See* DEI Bylaws, Article V., Section 5.8(b).

[28] *Id.*

[29] *See* DEI Bylaws, Article V., Section 5.8(a).

[30] *Id.*

[31] *See* DEI Bylaws, Article V., Section 5.8(b).

[32] *See* DEI Bylaws, Article VII., Section 7.5.

[33] *See* DE Holdings LLC Agreement, Article VII., Section 7.3(b).

[34] *See* DEI Bylaws, Article II., Section 2.15(b).

[35] "Owner Director" is defined in Article I., Section (z) of the EDGA Bylaws as a Director nominated by a member of DE Holdings that holds at least a 15% percentage interest in DE Holdings and that is elected by the stockholders of the Exchange.

[36] 15 U.S.C. 78f.

[37] 15 U.S.C. 78f(b)(3), [sic] (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–EDGX–2010–02 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–EDGX–2010–02. 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 EDGA. 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–EDGX–2010–02 and should be submitted on or before July 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–14441 Filed 6–16–10; 8:45 am]

BILLING CODE 8010–01–P

[38] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7048]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (the Act) there will be a meeting of the Cultural Property Advisory Committee on Wednesday, July 14, 2010, from 9 a.m. to approximately 5 p.m., and on Thursday, July 15, 2010, from 9 a.m. to approximately 3 p.m., at the Department of State, Annex 5, 2200 C Street, NW., Washington, DC. During its meeting the Committee will review a proposal to extend the "Agreement Between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Hispanic Cultures of the Republic of Nicaragua," and possible additional restrictions on certain ethnological material. The Agreement was entered into on October 26, 2000, and amended and extended in 2005 through an exchange of diplomatic notes. The purpose of this review is for the Committee to make findings and a recommendation regarding the proposal to extend (and possibly amend) this Agreement.

The Committee's responsibilities are carried out in accordance with provisions of the Act. The U.S.—Nicaragua Agreement, as amended and extended, the Designated List of restricted categories, the text of the Act and related information may be found at *http://exchanges.state.gov/heritage/culprop.*

Exercising delegated authority from the President and the Secretary of State, I have determined that portions of the meeting on July 14, and all of the meeting on July 15 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), because the disclosure of matters involved in the Committee's proceedings would compromise the Government's negotiating objectives or bargaining positions on the negotiations of this Agreement. However, on July 14, the Committee will hold an open session, 9:30 a.m. to approximately 11 a.m., to receive oral public comment on the proposal to extend the Agreement. Persons wishing to attend this open session should notify the Cultural Heritage Center of the Department of State at (202) 632–6301 by Wednesday, June 30, 2010, 5 p.m. (EDT) to arrange for admission, as seating is limited.

Those who wish to make oral presentations should request to be scheduled and submit a written text of the oral comments by Wednesday, June 30, 2010, to allow time for distribution of these comments to Committee members for their review prior to the meeting. Oral comments will be limited to five minutes each or less to allow time for questions from members of the Committee and must specifically address the determinations under section 303(a)(1) of the Act, 19 U.S.C. 2602(a)(1), pursuant to which the Committee must make findings. This citation for the determinations can be found at the Web site noted above. The Committee also invites written comments and asks that they be submitted no later than June 30, 2010. All written materials, including the written texts of oral statements, should be faxed to (202) 632–6300, if five pages or less. Written comments greater than five pages in length must be duplicated (20 copies) and mailed to Cultural Heritage Center, SA–5, Fifth Floor, Department of State, Washington, DC 20522–0505. Express mail is recommended for timely delivery.

On July 15, 2010, the Committee will conduct an interim review of the Memorandum of Understanding Between the Government of the United States of America and the Government

of the Republic of Bolivia concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Columbian Cultures and Certain Ethnological Materials from the Colonial and Republican Periods of Bolivia.

Judith A. McHale,

Under Secretary, Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 2010–14531 Filed 6–15–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7050]

Notice of Proposal To Extend the Agreement Between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material From the Pre-Hispanic Cultures of the Republic of Nicaragua

The Government of the Republic of Nicaragua has informed the Government of the United States of its interest in an extension of the Agreement Between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Hispanic Cultures of the Republic of Nicaragua, and possible additional restrictions on certain ethnological material.

Pursuant to the authority vested in the Under Secretary for Public Diplomacy and Public Affairs, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this Agreement is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of the Agreement, the Designated List of restricted categories of material, and related information can be found at the following Web site: *http://exchanges.state.gov/heritage/culprop.*

Judith A. McHale,

Under Secretary, Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 2010–14502 Filed 6–15–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0084]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal, as detailed below.

Docket Number: FRA–2010–0084.

Applicant: Pan Am Railways, Mr. Timothy R. Kunzler, Chief Engineer, C&S, Iron Horse Park, North Billerica, MA 01862.

Approval is requested for the discontinuance of an interlocking on the Freight Main Line (FML) of Pan Am Southern, LLC. (PAS). The applicant's corporate name is Springfield Terminal Railway Company (ST). ST is the operator of the railroad line for PAS, owner. PAS is a joint venture between the Boston and Maine Corporation (B&M) and the Norfolk Southern Railway Company. Both ST and B&M are wholly owned subsidiaries of Pan Am Railways, Inc. ST seeks approval of the discontinuance and removal of CPF–428 at mileage 427.71. CPF–428 is located within the Town of Williamstown, Massachusetts, on FML of PAS. The closest station on the line is at Powal, Vermont, at mileage 431.43. The territory is the responsibility of PAS General Manager, and is under the direct control of the Dispatching District Four Train Operations Manager located at ST's North Billerica, Massachusetts, Operations Center. The modification consist of the discontinuance and removal of CPF–428, all associated appliances, and the installation of an automatic block signal at mile 428.27.

The reason given for the proposed change is that the second main track was removed from service in the early 1990's. The power switch and connection to this second main track were physically removed.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0084) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 10, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14480 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number: FRA–2010–0083]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval

for the discontinuance or modification of the signal system, as detailed below.

Docket Number: FRA–2010–0083.

Applicant: Pan Am Railways, Mr. Timothy R. Kunzler, Chief Engineer, C&S, Iron Horse Park, North Billerica, MA 01862.

Approval is requested for the discontinuance of an interlocking on the Freight Main Line (FML) of Pan Am Southern, LLC. (PAS). The applicant's corporate name is Springfield Terminal Railway Company (ST). ST is the operator of the railroad line for PAS, owner. PAS is a joint venture between the Boston and Maine Corporation (B&M) and the Norfolk Southern Railway Company. ST and B&M are wholly owned subsidiaries of Pan Am Railways, Inc. (PAR).

ST seeks approval of the discontinuance and removal of CPF–389 at mileage 388.82. CPF–389 is located within the city of Deerfield, Massachusetts, on FML of PAS. The closest station on the line is at Greenfield, Massachusetts, mileage 385.36. The territory is the responsibility of PAS General Manager and is under the direct control of the Dispatching District Four Train Operations Manager located at ST's North Billerica, Massachusetts, Operations Center. The modification consist of the discontinuance and removal of CPF–389, all associated appliances, and the installation of an automatic block signal at mile 391.20.

The reason given for the proposed change is that the second main track was removed from service in the early 1990's. The power switch and connection to this second main track were physically removed.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0083) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on June 10, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14481 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2010–0084]

Meeting Notice—Federal Interagency Committee on Emergency Medical Services

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Notice—Federal Interagency Committee on Emergency Medical Services.

SUMMARY: NHTSA announces a meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS) to be held in Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public.

DATES: The meeting will be held on June 24, 2010, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the White House Conference Center, 726 Jackson Place, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, Telephone number (202) 366–9966; E-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 10202 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU), Public Law 109–59, provided that the FICEMS consist of several officials from Federal agencies as well as a State emergency medical services director appointed by the Secretary of Transportation. SAFETEA–LU directed the Administrator of NHTSA, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, to provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

This meeting of the FICEMS will focus on addressing the requirements of SAFETEA–LU and the opportunities for collaboration among the key Federal agencies involved in emergency medical services. The agenda will include:

- Discussion of Response to Recommendations from National Transportation Safety Board (NTSB).
  - Report on Helicopter Emergency Medical Services.
  - Mexican Hat, UT Crash and Recommendations to FICEMS.
- Reports and updates from Technical Working Group committees.
- Reports, updates, recommendations from FICEMS members.
- Discussion on the impact of Health Care Reform on EMS.

This meeting will be open to the public. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *Drew.Dawson@dot.gov* or by telephone at (202) 366–9966 no later than June 21, 2010. Pre-registration is necessary.

Minutes of the FICEMS Meeting will be available to the public online through the DOT Document Management System (DMS) at: *http://www.regulations.gov* under the docket number listed at the beginning of this notice.

Issued on: June 11, 2010.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. 2010–14482 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Competitiveness and Viability; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary of Transportation, announces a meeting of the FAAC Subcommittee on Competitiveness and Viability, which will be held in Washington, DC on June 30, 2010. This notice provides details on the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Subcommittee on Competitiveness and Viability is charged with examining changes in the operating and competitive structures of the U.S. airline industry; considering innovative strategies to open up new international markets and expand commercial opportunities in existing markets; investigating strategies to encourage the development of cost-effective, cutting-edge technologies and equipment that are critical for a competitive industry coping with increasing economic and environmental challenges; and examining the adequacy of current Federal programs to address the availability of intermodal transportation options and alternatives, small and rural community access to the aviation transportation system, the role of State and local governments in contributing to such access, and how the changing competitive structure of the U.S. airline industry is likely to transform travel habits of small and rural communities.

DATES: The meeting will be held on June 30, 2010 from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held on the 12th floor of the Covington and Burling LLC Conference Center, 1201 Pennsylvania Ave., NW., Washington, DC 20004.

Public Access: The meeting is open to the public. (*See below* for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or competition subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.Regulations.Gov*) or alternatively through e-mail at *FAAC@dot.gov.* If comments and suggestions are intended specifically for the Competition and Viability Subcommittee, the term "Competition" should be listed in the subject line of the message. In order to ensure that such comments can be considered by the Subcommittee before its June 30, 2010 meeting, public comments must be filed by 5 p.m. EDT on Monday, June 21, 2010.

SUPPLEMENTARY INFORMATION:

Agenda

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the Subcommittee on Competitiveness and Viability of the Future of Aviation Advisory Committee taking place on June 30, 2010 at 1 p.m., at 1201 Pennsylvania Ave., NW., Washington, DC 20004. The agenda includes—

1. Discussion of topics offered by subcommittee members for referral to the full Committee on the subject of competitiveness and viability of the aviation industry,
2. Establishment of a plan and timeline for further work, and
3. Identification of priority issues for the second subcommittee meeting.

Registration

The meeting room can accommodate up to 25 members of the public. Persons desiring to attend must pre-register through e-mail to *FAAC@dot.gov.* The term "Registration: Competition" should be listed in the subject line of the message and admission will be limited to the first 25 persons to pre-register and receive a confirmation of their pre-registration. No arrangements are being made for audio or video transmission or for oral statements or questions from the public at the meeting. Minutes of the meeting will be taken and will be made available to the public.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on June 21, 2010.

FOR FURTHER INFORMATION CONTACT: Todd Homan, Director, Office of Aviation Analysis, U.S. Department of Transportation; Room 86W–312, 1200 New Jersey Ave., SE., Washington, DC 20590; (202) 366–5903.

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

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–14514 Filed 6–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

[DOT Docket No. DOT–OST–2010–0074]

The Future of Aviation Advisory Committee (FAAC) Subcommittee on Financing; Notice of Meeting

AGENCY: U.S. Department of Transportation, Office of the Secretary of Transportation.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation, Office of the Secretary of Transportation, announces a meeting of the FAAC Financing Subcommittee, which will be held at the offices of the Cessna Aircraft Company, in Wichita, Kansas. This notice announces the date, time, and location of the meeting, which will be open to the public. The purpose of the FAAC is to provide advice and recommendations to the Secretary of Transportation to ensure the competitiveness of the U.S. aviation industry and its capability to manage effectively the evolving transportation needs, challenges, and opportunities of the global economy. The Financing Subcommittee will address the need for a stable, secure, and sufficient level of funding for our aviation system and make recommendations to the Secretary for action. This is the first meeting of the subcommittee.

DATES: The meeting will be held on June 29, 2010, from 1 p.m. to 4 p.m. Central Daylight time.

ADDRESSES: The meeting will be held at the Cessna Aircraft Company Employment Building, Training Conference Room C, Two Cessna Boulevard, Wichita, Kansas 67277.

Public Access: The meeting is open to the public. (*See below* for registration instructions.)

Public Comments: Persons wishing to offer written comments and suggestions concerning the activities of the advisory committee or financing subcommittee should file comments in the Public Docket (Docket Number DOT–OST–2010–0074 at *http://www.Regulations.Gov*) or alternatively through the *FAAC@dot.gov* e-mail. If comments and suggestions are intended specifically for the Financing Subcommittee, the term "Finance" should be listed in the subject line of the message. In order to ensure that such comments can be considered by the Subcommittee before its June 29, 2010, meeting, public comments must be filed by 5 p.m. Eastern Daylight time on Monday, June 21, 2010.

SUPPLEMENTARY INFORMATION:

Background

Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of an FAAC Financing Subcommittee meeting taking place on June 29, 2010, from 1 p.m. to 4 p.m. Central Daylight time, at the Cessna Aircraft Company, Two Cessna Boulevard, Wichita, Kansas. The agenda includes—

1. Introduction and purpose of Subcommittee,
2. Discussion and selection of topics for study and on which to make recommendations to the full Advisory Committee, and
3. Next Steps and next meeting coordination.

Registration

Due to space constraints at the Cessna Aircraft Company and planning considerations, persons desiring to attend must pre-register by sending an e-mail to *FAAC@dot.gov* before June 21, 2010. The term "Registration: Financing" must be listed in the subject line of the message. Minutes of the meeting will be taken and made available to the public.

Request for Special Accommodation

The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, please send a request to *FAAC@dot.gov* with the term "Special Accommodations" listed in the subject line of the message by close of business on June 21, 2010.

FOR FURTHER INFORMATION CONTACT: John Hennigan, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue, SW., Room 409, Washington, DC 20591; (202) 631–6644.

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

Pamela Hamilton-Powell,

Designated Federal Official, Future of Aviation Advisory Committee.

[FR Doc. 2010–14515 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

New Jersey Transit Rail

[Waiver Petition Docket Number FRA–2010–0099]

The New Jersey Transit Rail (NJTR) seeks a waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.129(b)(2), which requires that the sound level of horns of locomotives manufactured before September 18, 2006, be tested before June 24, 2010. NJTR operates approximately 700 pieces of equipment (locomotives) with train horns that were manufactured before the September 18, 2006, date. NJTR states in their request the site requirements required by the horn test regulation and community noise complaints has caused NJTR to perform all horn testing at their Meadows Maintenance Facility in Kearny, NJ. NJTR requests that the requirements to complete testing of horns on locomotives built prior to September 18, 2006, be extended to June 24, 2012.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number 2010–0099) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC, on June 10, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14471 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Indiana Transportation Museum

[Waiver Petition Docket Number FRA–2010–0021]

The Indiana Transportation Museum (ITMZ) seeks a waiver of compliance from certain provisions of the Railroad Freight Car Safety Standards, 49 CFR 215.303, which requires stenciling of restricted cars. ITMZ owns four cabooses. They are car numbers: Monon 81528, C & O 90876, NKP 405, and W & LR 770 that are older than 50 years, and therefore, restricted by the provision of 49 CFR 215.203(a). ITMZ is seeking special approval to continue to use these cars under proceeding according to 49 CFR 215.203(b).

ITMZ claims that it operates and maintains the subject cars. These cars are in good operating condition. These cars do not carry a load, travel at a maximum speed of 25 miles per hour, and will not be interchanged. All these cars are operated in captive service on the railroad which runs between Tipton, Indiana, to downtown Indianapolis, Indiana, and owned by the Hoosier Heritage Port Authority. These cars are preserved in historically accurate condition. Stenciling the cars because of their restricted equipment status would interfere with the historically integrity.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0021) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on June 10, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14474 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Santa Cruz, Big Trees & Pacific Railway Company

[Waiver Petition Docket Number FRA–2010–0001]

The Santa Cruz, Big Trees & Pacific Railway Company (SCBG) seeks a waiver of compliance from certain provisions of 49 CFR part 215, Railroad Freight Car Safety Standards, specifically 49 CFR 215.303 (Stenciling of restricted cars), which requires that restricted railroad freight cars shall be stenciled or marked in clearly legible letters with the letter "R" and a series of designated terms to completely indicate the basis for the restricted operation of the car. In addition, SCBG seeks a waiver of compliance from all of 49 CFR part 224 (Reflectorization of Rail Freight Rolling Stock).

The petition concerns 10 SCBG freight cars numbered: SCBG 401–402, 501–504 and 701–704, which are railroad flat cars converted to passenger carriage cars for tourist and excursion railroad service by the addition of seating, side structures, and steps. Each of the SCBG freight cars in the present petition is more than 50 years old, measured from the date of original construction, and these freight cars are the subject of a parallel petition for special approval for continued operation under § 215.203(c). Therefore, in the first portion of its petition, SCBG seeks a waiver of the requirement for stencilling found in § 215.303, as the railroad states that the stencilling would detract from both the aesthetic and historical nature of the vintage rail car equipment. As SCBG passenger carriage cars are not interchanged, SCBG suggests that the record-keeping requirements of the stencilling may be preserved by maintaining a permanent file of the restrictive conditions at the local SCBG office. Additionally, SCBG petitions for relief from all of the requirements of 49 CFR part 224, as the railroad states that reflectorization would detract from both the aesthetic and historical nature of their vintage equipment.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0001) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that

date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on June 10, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14475 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Copper Basin Railway, Inc.

[Waiver Petition Docket Number FRA–2010–0025]

The Copper Basin Railway, Inc. (CBR) seeks a waiver of compliance from certain provisions of the Railroad Freight Car Safety Standards, 49 CFR 215.303, which requires stenciling of restricted cars. CBR owns 46 open top hopper cars that were built in 1958, and are restricted by the provision of 49 CFR 215.203(a). CBR is seeking special approval to continue to use these cars under proceeding according to 49 CFR 215.203(b).

This request is for 46 open top hopper cars. The car numbers and the pertinent information in support of the petition are contained in the docket. CBR claims that these cars are captive ore cars used to haul ore from the mine at Ray Mine yard, in Ray, Arizona, to the Hayden smelter yard in Hayden, Arizona, in a local unit train with like kind ore cars never used with HAZMAT or other cars. These cars will not interchange with other railroads.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0025) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on June 10, 2005.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14473 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

City of Seattle, Washington

[Waiver Petition Docket Number FRA–2010–0097]

The City of Seattle, Washington (City), and the BNSF Railway Company (BNSF) jointly seek a temporary waiver of compliance from certain provisions of the Use of Locomotive Horns at Highway-Rail Grade Crossings, 49 CFR part 222. The City intends to establish a Pre-Rule Quiet Zone that it had previously continued under the provisions of 49 CFR 222.41(c)(1). The City is seeking a waiver for the requirement to construct and complete a Pre-Rule Quiet Zone by June 24, 2010, as required by 49 CFR 222.41(c)(2), and for an extension of such date to September 24, 2010.

The City states that it has engaged in numerous meetings with BNSF to negotiate a Construction and Maintenance Agreement (CMA) for the necessary improvements to establish a Pre-Rule Quiet Zone. There are 4 crossings in the existing Pre-Rule Quiet Zone. Three of these crossings will be treated with Supplementary Safety Measures (SSM) and Alternative Safety Measures (ASM) as follows: 2 crossings with four-quadrant gates (SSM), and 1 crossing with three-quadrant gates and a median on the approach that has only one gate (ASM). The 4th crossing will be upgraded from a pedestrian-only crossing to a crossing for both vehicles and pedestrians which will be equipped with standard flashing lights and gates.

The City and BNSF finalized the CMA on June 29, 2009. Since that date, the City has funded almost $1 million in improvements, specifically to improve

crossings in the Pre-Rule Quiet Zone. However, the City and BNSF have concluded that all of the planned improvements will not be completed by June 24, 2010. The City requests that the existing Pre-Rule Quiet Zone be allowed to continue until September 24, 2010, by which time all of the improvements will have been completed.

The City states that construction so far has focused on the installation of the vehicle detection system and upgraded signal electronics. Rail has also been removed from a non-operating streetcar system as part of the project. Since the construction of the improvements has been made in good faith by both parties and is nearing completion, both the City and BNSF are requesting that the June 24, 2010, deadline be extended so that the Pre-Rule Quiet Zone can remain consistently active.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2010–0097) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received within 15 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

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

Issued in Washington, DC, on June 10, 2010.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2010–14470 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0138]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 25 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 16, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0138 using any of the following methods:

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this Notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 25 individuals listed in this Notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMV in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting

the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Calvin R. Adams

Mr. Adams, age 62, has had ITDM since 1997. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Adams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Texas.

Michael R. Amstutz

Mr. Amstutz, 59, has had ITDM since 1994. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Amstutz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Clinton R. Carlson, II

Mr. Carlson, 22, has had ITDM since 2002. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Carlson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class 10 operator's license from Rhode Island, which allows him to operate any motor vehicle except a motorcycle and a vehicle that weighs more than 26,000 pounds, carries 16 or more passengers or transports placarded amounts of hazardous materials.

Brandon L. Cheek

Mr. Cheek, 34, has had ITDM since 1980. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Cheek meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C operator's license from North Carolina.

Michael J. Drake

Mr. Drake, 52, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Drake meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Richard A. Dufton, Jr.

Mr. Dufton, 58, has had ITDM since 2010. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Dufton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Hampshire.

Kenneth Dunn

Mr. Dunn, 44, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Dunn meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Robert J. Dyxin

Mr. Dyxin, 29, has had ITDM since 1999. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Dyxin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Illinois.

Scott D. Endres

Mr. Endres, 31, has had ITDM since 1987. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Endres meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Michael H. Hayden

Mr. Hayden, 52, has had ITDM since 1984. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr.

Hayden meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Jarvis D. Hubbell

Mr. Hubbell, 48, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Hubbell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from California.

John T. Jones

Mr. Jones, 40, has had ITDM since 1997. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Oklahoma.

Blake A. S. Keeten

Mr. Keeten, 23, has had ITDM since 1994. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Keeten meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class O operator's license from Nebraska, which allows him to drive any non-commercial vehicle except motorcycles

Randall L. Koegel

Mr. Koegel, 55, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Koegel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Nicholas J. Niemerg

Mr. Niemerg, 27, has had ITDM since 1984. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Niemerg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

Dereck J. Oliveira

Mr. Oliveira, 52, has had ITDM since 2000. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Oliveira meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Hampshire.

Paul J. O'Neil, Jr.

Mr. O'Neil, 56, has had ITDM since 1991. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. O'Neil meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Worden T. Price

Mr. Price, 25, has had ITDM since 2008. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Price meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

Frankie R. Ramey

Mr. Ramey, 55, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Ramey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Michael Romero

Mr. Romero, 48, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Romero meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have

diabetic retinopathy. He holds a Class B CDL from New Mexico.

Gary L. Sager

Mr. Sager, 42, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Sager meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

Darrel D. Schroeder

Mr. Schroeder, 54, has had ITDM since 1985. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Schroeder meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Steven M. Sernett

Mr. Sernett, 24, has had ITDM since 1988. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Sernett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

Scott C. Sevedge

Mr. Sevedge, 55, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Sevedge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Steven G. Woltman

Mr. Woltman, 47, has had ITDM since 1982. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; has stable control of his diabetes using insulin; and is able to drive a CMV safely. Mr. Woltman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class R operator's license from Colorado, which allows him to drive any motor vehicle with a gross weight of less than 26,001 pounds.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: June 10, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–14538 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0114]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 30 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before July 16, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–

2010–0114 using any of the following methods:

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

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

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this Notice. 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 for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 30 individuals listed in this Notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

David E. Balboni

Mr. Balboni, age 41, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "This small limitation of his central field in the right eye should not in any way impair his ability to drive a commercial vehicle." Mr. Balboni reported that he has driven straight trucks for 15 years, accumulating 750,000 miles. He holds a Class B Commercial Driver's License (CDL) from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark S. Berkheimer

Mr. Berkheimer, 47, has complete loss of vision in his right eye. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "Mr. Berkheimer has safely driven commercial vehicles for a number of years without incident. It continues to be my medical opinion that he should be able to continue to operate a commercial vehicle and be approved for an exemption." Mr. Berkheimer reported that he has driven straight trucks for 21 years, accumulating 627,186 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rodney H. Bridges

Mr. Bridges, 39, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "In my medical opinion, Mr. Bridges' vision is sufficient to perform the driving tasks to operate a commercial vehicle." Mr. Bridges reported that he has driven straight trucks for 20 years, accumulating 700,000 miles and tractor-trailer combinations for 17 years accumulating 255,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James D. Broadway

Mr. Broadway, 41, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Broadway is visually capable of driving safely." Mr. Broadway reported that he has driven straight trucks for 3.5 years, accumulating 42,000 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wesley M. Creamer

Mr. Creamer, 46, has had glaucoma and angle recession in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/300. Following an examination in 2010, his optometrist noted, "I believe he has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Creamer reported that he has driven straight trucks for 15 years, accumulating 75,000 miles and tractor-trailer combinations for 18 years, accumulating 270,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and two convictions for speeding in a CMV. In one instance, he exceeded the speed limit by 14 miles per hour (mph) and in the other by 8 mph.

Charles M. Dunn

Mr. Dunn, 46, has had macular scarring in his left eye since 1990. The best corrected visual acuity in his right eye is 20/16 and in his left eye, hand-motion vision. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Dunn has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Dunn reported that he has driven straight trucks for 30 years, accumulating 3 million miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no

convictions for moving violations in a CMV.

Tony K. Ellis

Mr. Ellis, 57, has had optic atrophy in his right eye since 1995. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/15. Following an examination in 2010, his ophthalmologist noted, "I believe his vision is sufficient for him to operate a commercial vehicle safely." Mr. Ellis reported that he has driven tractor-trailer combinations for 38 years, accumulating 3.8 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leonard J. Ferrin

Mr. Ferrin, 25, has had retinal scarring in his left eye since age 14. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his optometrist noted, "In my medical opinion, Leonard has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ferrin reported that he has driven straight trucks for 1 year, accumulating 5,000 miles and tractor-trailer combinations for 5 years, accumulating 125,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul A. Giarrusso

Mr. Giarrusso, 56, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion Mr. Giarrusso has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Giarrusso reported that he has driven straight trucks for 2 years, accumulating 2,000 miles and tractor-trailer combinations for 32 years, accumulating 2 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jerry L. Gibson

Mr. Gibson, 59, has retinal scarring in his right eye due to trauma sustained during childhood. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/25. Following an examination in 2010, his ophthalmologist noted, "I believe he has sufficient vision to maintain his license as a commercial driver in any state." Mr. Gibson reported that he has driven straight trucks for 20 years, accumulating 1 million miles and tractor-trailer combinations for 16 years, accumulating 1.1 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rici W. Giesseman

Mr. Giesseman, 37, has had macular scarring in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Giesseman reported that he has driven straight trucks for 20 years, accumulating 300,000 miles and tractor-trailer combinations for 8 years, accumulating 320,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

George R. House

Mr. House, 53, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2009, his optometrist noted, "In my opinion his vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. House reported that he has driven straight trucks for 33 years, accumulating 330,000 miles and tractor-trailer combinations for 33 years, accumulating 627,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael A. Jabro

Mr. Jabro, 46, has had glaucoma in his right eye since 1998. The best corrected visual acuity in his right eye is 20/100 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "I certify in my medical opinion that Mr. Jabro has sufficient vision to perform the driving tasks required to operate a commercial vehicle without any restrictions." Mr. Jabro reported that he has driven straight trucks for 5 years, accumulating 575,000 miles and tractor-trailer combinations for 8 years, accumulating 920,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Thomas L. Jashurek, Jr.

Mr. Jashurek, 38, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "Thomas has sufficient vision to operate a commercial vehicle." Mr. Jashurek reported that he has driven straight trucks for 14 years, accumulating 518,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael M. Martinez

Mr. Martinez, 47, has had macular scarring and retinal detachment in his right eye due to a traumatic injury sustained in 2001. The best corrected visual acuity in his right eye is count-finger vision and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "Binocularly he has full peripheral vision and sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Martinez reported that he has driven straight trucks for 16 years, accumulating 384,000 miles and tractor-trailer combinations for 16 years, accumulating 384,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert L. McClain

Mr. McClain, 54, has had complete loss of vision in his right eye since childhood. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2010, his optometrist noted, "I certify that his medical condition in my medical opinion provides still sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. McClain reported that he has driven straight trucks for 20 years, accumulating 2.5 million miles. He holds a Class B CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel E. Miller

Mr. Miller, 59, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, he is visually capable of safely operating a

commercial motor vehicle." Mr. Miller reported that he has driven straight trucks for 10 years, accumulating 1.2 million miles and tractor-trailer combinations for 29 years, accumulating 2.7 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Buddy W. Myrick

Mr. Myrick, 71, has had macular degeneration in his right eye since 2002. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/25. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Myrick has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Myrick reported that he has driven tractor-trailer combinations for 30 years, accumulating 3.2 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James L. Okonek

Mr. Okonek, 46, has had a prosthetic left eye since 2006. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his optometrist noted, "James has sufficient vision to perform the driving tasks to operate a commercial vehicle." Mr. Okonek reported that he has driven straight trucks for 5 years, accumulating 50,000 miles, tractor-trailer combinations for 14 years, accumulating 1.8 million miles and buses for 5 years, accumulating 60,000 miles. He holds a Class D operator's license from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Aaron L. Paustian

Mr. Paustian, 42, has macular scarring in his right eye due to a traumatic injury sustained during childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my medical opinion I believe that Mr. Aaron Paustian has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Paustian reported that he has driven straight trucks for 13 years, accumulating 36,504 miles and tractor-trailer combinations for 17 years, accumulating 1.8 million miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Alan J. Reynaldos

Mr. Reynaldos, 45, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, "Mr. Reynaldos has sufficient vision to operate a commercial vehicle." Mr. Reynaldos reported that he has driven straight trucks for 8 years, accumulating 8,000 miles. He holds a Class D operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kenneth R. Riener

Mr. Riener, 48, has a prosthetic right eye due to a traumatic injury sustained in 1965. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2010, his optometrist noted, "I certify that in my medical opinion Mr. Kenneth Raymond Riener has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Riener reported that he has driven straight trucks for 5 years, accumulating 90,000 miles. He holds a Class D operator's license from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles L. Rill, Sr.

Mr. Rill, 60, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/150. Following an examination in 2010, his optometrist noted, "He has sufficient vision to operate a commercial vehicle." Mr. Rill reported that he has driven straight trucks for 42 years, accumulating 1 million miles and tractor-trailer combinations for 42 years, accumulating 4,200 miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jules M. Sancho, Jr.

Mr. Sancho, 50, has corneal scarring in his right eye due to a traumatic injury sustained during childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. Sancho has the visual capability to operate a commercial vehicle." Mr. Sancho reported that he has driven straight trucks for 18 years, accumulating 108,000 miles and tractor-trailer combinations for 15 years, accumulating 187,500 miles. He holds a Class D Chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert Smiley

Mr. Smiley, 53, has a prosthetic left eye due to a traumatic injury sustained in 2000. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, "Mr. Smiley meets the requirements and has sufficient vision to perform the driving tasks required to operate a commercial vehicle in his right eye." Mr. Smiley reported that he has driven straight trucks for 1½ years, accumulating 6,000 miles and tractor-trailer combinations for 18 years, accumulating 2.2 million miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and one conviction for speeding in a CMV. He exceeded the speed limit by 10 mph.

Roger L. Sulfridge

Mr. Sulfridge, 60, has had complete loss of vision in his right eye since childhood due to a dense cataract. The best corrected visual acuity in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "I feel Mr. Sulfridge has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Sulfridge reported that he has driven straight trucks for 23 years, accumulating 287,500 miles and tractor-trailer combinations for 3 years, accumulating 75,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Christopher M. Vincent

Mr. Vincent, 32, has had complete loss of vision his left eye since childhood due to a traumatic injury. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his optometrist noted, "Mr. Vincent is a one eyed driver with a very healthy right eye, normal color vision and normal peripheral vision. I do not consider this significant to restrict his operation of a commercial vehicle." Mr. Vincent reported that he has driven straight trucks for 4 years, accumulating 528,000 miles and tractor-trailer combinations for 1 year, accumulating 22,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows

no crashes and one conviction for a moving violation in a CMV. He was cited for an improper stop on a highway.

Derik T. Winebrenner

Mr. Winebrenner, 26, has had complete loss of vision his right eye since birth due to optic nerve hypoplasia. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "I believe that Derik Winebrenner has more than adequate visual skills to perform the duties of a commercial vehicle operator." Mr. Winebrenner reported that he has driven straight trucks for 10 years, accumulating 200,000 miles and tractor-trailer combinations for 10 years, accumulating 275,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Curtis L. Wolff

Mr. Wolff, 47, has had loss of vision his left eye since 1981 due to cataract surgery and retinal surgery. The best corrected visual acuity in his right eye is 20/20 and in his left eye, hand-motion vision. Following an examination in 2010, his optometrist noted, "In my opinion, Curtis has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wolff reported that he has driven straight trucks for 25 years, accumulating 1.2 million miles and tractor-trailer combinations for 2 years, accumulating 140,000 miles. He holds a Class D Chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert L. Zebrowski

Mr. Zebrowski, 68, has had amblyopia in his right eye since birth. The best corrected visual acuity in his right eye is 20/50 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "I believe Mr. Zebrowski is safe to operate a commercial vehicle." Mr. Zebrowski reported that he has driven straight trucks for 6 years, accumulating 150,000 miles and tractor-trailer combinations for 27 years, accumulating 499,500 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. The Agency will consider all comments received before the close of business July 16, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 10, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–14537 Filed 6–15–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Solicitation of Applications and Notice of Funding Availability for the FRA Railroad System Issues Research and Development Program

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

ACTION: Notice of funding availability; extension of deadline on solicitation for applications.

SUMMARY: Under a notice published in the **Federal Register** on May 13, 2010 (75 FR 27112), the FRA sought applications from interested and responsible parties for two grants: to conduct a Locomotive Biofuel Study, and to conduct a Study of the Use of Bio-based Technologies (Lubricants) that can be used in locomotives, rolling stock and other rail equipment. The application deadline was June 7, 2010. FRA is extending the deadline until June 21, 2010 to give applicants additional time to complete the application process and submit applications.

DATES: FRA will accept applications for these grant opportunities until June 21, 2010.

ADDRESSES: Applications must be submitted electronically to *http://www.grants.gov* ("Grants.gov"). Grants.gov allows organizations electronically to find and apply for competitive grant opportunities from all Federal grant-making agencies. Any entity wishing to submit an application pursuant to this notice should immediately initiate the process of registering with Grants.gov at *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Shurland, Office of Research and Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Phone: (202) 493–1316; or Jennifer Capps, Grants Officer, Office of Acquisition and Grants Services, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Phone: (202) 493–0112.

SUPPLEMENTARY INFORMATION: This notice simply extends the application deadline for the two grant programs: (1) To conduct a Locomotive Biofuel Study, and (2) to conduct a Study of the Use of Bio-based Technologies (Lubricants) that can be used in locomotives, rolling stock and other rail equipment. The new application deadline is June 21, 2010. Interested applicants should consult the notice published on May 13, 2010 in the **Federal Register** (75 FR 27112) for additional details about the program and the application process.

Issued in Washington, DC, on June 10, 2010.

Mark Yachmetz,

Associate Administrator, Office of Railroad Policy and Development.

[FR Doc. 2010–14478 Filed 6–11–10; 4:15 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 9, 2010.

The Department of 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 this submission may be obtained by calling the Treasury Department Office Clearance Officers 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 July 16, 2010 to be assured of consideration.

Office of Financial Stability (OFS)

OMB Number: 1505–0222.

Type of Review: Extension without change of a currently approved collection.

Title: Troubled Asset Relief Program (TARP)—Capital Purchase Program (CPP) Participants Use of Funds Survey.

Description: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Pub. L. 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program (TARP). The TARP includes several components including a voluntary Capital Purchase Program (CPP) under which the Department has purchased qualifying capital in U.S. banking organizations. The CPP is an important part of the Department's efforts to restore confidence in our financial system and ensure that credit continues to be available to consumers and businesses. As an essential part of restoring confidence, the Treasury has committed to determining the effectiveness of the CPP. Additionally, American taxpayers are particularly interested in knowing how banks have used the money that Treasury has invested through the CPP. Consequently, the Treasury is seeking responses from banking institutions that have received CPP funds regarding: how the CPP investment has affected the banks' operations, how these institutions have used CPP funds, and how their usage of CPP funds has changed over time. The information will be used to gauge how participants in the CPP are utilizing TARP capital.

Respondents: Private Sector: Businesses or other for-profit institutions.

Estimated Total Reporting Burden: 51,200 hours.

OFS Clearance Officer: Daniel Abramowitz, OFS, 1801 L Street, NW., Washington, DC 20036; (202) 927–9645

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. 2010–14501 Filed 6–15–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 2 individuals and 2 entities whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 2 individuals and 2 entities identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on June 9, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On June 9, 2010, the Director of OFAC designated 2 individuals and 2 entities whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

Individuals:

1. ALVAREZ ALVAREZ, Wenceslao (a.k.a. Wencho ALVAREZ ALVAREZ; a.k.a. Wenchin ALVAREZ ALVAREZ; a.k.a. Wencholin ALVAREZ ALVAREZ; a.k.a. Dobel ALVAREZ ALVAREZ); Esquina de la Calle Vicente Guerrero Y Plan de Iguala Numero 74, Colonia Libertad, Nueva Italia, Michoacán, Mexico; Calle Articulo 123 Numero 103, Colonia Centro, Nueva Italia, Michoacán, Mexico; Avenida Circuito Mexico Numero 1204 L–29, Colonia Las Americas Britania, CP 58270, Morelia, Michoacán; Calle Ignacio Allende S/N Casi Esquina Con Lazaro Cardenas Norte, Nueva Italia, Michoacán, Mexico; Esquina de Ignacio Allende Numero y Lazaro Cardenas Norte Numero 500, Nueva Italia, Michoacán, Mexico; DOB 13 Jun 1972; C.U.R.P. AAAW720613HMNLLN02 (Mexico); POB Mugica, Michoacán, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]
2. MEJIA GUTIERREZ, Ignacio (a.k.a. Nacho Mejia GUTIERREZ, a.k.a. Ygnacio Mejia GUTIERREZ); c/o Mega Empacadora, Carretera Nueva Italia-Uruapan, Kilometro 2, Colonia La Estacion, C.P. 61760, Nueva Italia, Michoacán, Mexico; DOB 23 April 1946; C.U.R.P. MEGI460423HMNJTG04 (Mexico); POB Ziracuetrio, Michoacán, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

Entities:

1. Mega Empacadora de Frutas, S.A. de C.V. Carretera Nueva Italia-Uruapan, Kilometro 2, Colonia La Estacion, C.P. 61760, Nueva Italia, Michoacán,

Mexico, R.F.C. MEF9603051L4 (Mexico); (ENTITY) [SDNTK]

2. Importaciones y Exportaciones Nobaro S.A. de C.V. Avenida Lazaro Cardenas Numero 730, Nahuatzen, Michoacán, Mexico; Calle Rafael Gomez Campos Numero 249, Colonia El Carriel, Múgica (Nueva Italia), Michoacán, Mexico; Francisco I Madero Numero 105, Colonia Centro, Múgica, Michoacán, Mexico; Calle Ignacio Allende S/N Casi Esquina Con Lazaro Cardenas Norte, Nueva Italia, Estado de Michoacán, Mexico; Esquina de Ignacio Allende Numero Y Lazaro Cardenas Norte Numero 500, Nueva Italia, Estado de Michoacán, Mexico; (ENTITY) [SDNTK]

Dated: June 9, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–14499 Filed 6–15–10; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Renewal Without Change; Comment Request; Imposition of Special Measure Against Commercial Bank of Syria, Including Its Subsidiary Syrian Lebanese Commercial Bank, as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite comment on a proposed renewal, without change, to information collection requirements found in existing regulations imposing the imposition of a special measure against the Commercial Bank of Syria, including its subsidiary Syrian Lebanese Commercial Bank, as a financial institution of primary money laundering concern. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before August 16, 2010.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Comment Request; Imposition of Special Measure against Commercial Bank of Syria. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov,* again with a caption, in the body of the text, "Attention: Comment Request; Imposition of Special Measure against Commercial Bank of Syria."

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905–5034 (not a toll free call).

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732. Select option 6.

SUPPLEMENTARY INFORMATION:

Abstract: The Director of the Financial Crimes Enforcement Network is the delegated administrator of the Bank Secrecy Act. The Act authorizes the Director to issue regulations to require all financial institutions defined as such pursuant to the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism.[1]

Regulations implementing section 5318A of title 31, United States Code can be found in part at 31 CFR 103.188. In general, the regulations require covered financial institutions to establish, document, and maintain programs as an aid in protecting and securing the U.S. financial system.

Title: Imposition of Special Measure against Commercial Bank of Syria, Including its Subsidiary Syrian Lebanese Commercial Bank, as a Financial Institution of Primary Money Laundering Concern.

Office of Management and Budget Control Number: 1506–0036.

Abstract: The Financial Crimes Enforcement Network is issuing this notice to renew the imposition of a special measure against the Commercial Bank of Syria, including its subsidiary Syrian Lebanese Commercial Bank, as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A.

Current Action: Renewal without change to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and certain not-for-profit institutions.

Burden:

Estimated Number of Respondents: 5000.

Estimated Number of Responses: 5000.

Estimated Number of Hours: 5000. (Estimated at one hour per respondent).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: June 8, 2010.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2010–14433 Filed 6–15–10; 8:45 am]

BILLING CODE 4810–02–P

[1] Public Law 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107–56.

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee June 28, 2010 Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee June 28, 2010 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 June 28, 2010.

Date: June 28, 2010.

Time: 6:30 p.m. to 9 p.m.

Location: Gaylord Hall in the Worner Center, Campus of Colorado College, 902 N. Cascade Ave., Colorado Springs, CO 80903.

Subject: Discussion of the 2010 Annual Report, including commemorative coin program recommendations for next five calendar years, and discussion on coin design quality.

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: June 11, 2010.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 2010–14543 Filed 6–15–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control ("OFAC") is publishing the names of five individuals whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, *Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers.*

DATES: The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons ("SDN list") of the five individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on June 10, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, U.S. Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, tel.: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) ("IEEPA"), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the "Order"). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On June 10, 2010, OFAC removed from the SDN list the five individuals listed below, whose property and interests in property were blocked pursuant to the Order:

1. BUENO GUERRERO, Alfonso, c/o APOYOS DIAGNOSTICOS S.A., Tulua, Valle, Colombia; c/o CLINICA SAN FRANCISCO S.A., Tulua, Valle, Colombia; Carrera 52 No. 33–84, Tulua, Valle, Colombia; Carrera 45 No. 4A–10, Cali, Colombia; DOB 17 Sep 1941; POB Tulua, Valle, Colombia; citizen Colombia; nationality Colombia; Cedula No. 17056503 (Colombia) (individual) [SDNT]
2. GAVIRIA RUEDA, Gloria Ines (a.k.a. GAVIRIA DE INDABURU, Gloria Ines), c/o COMERCIALIZADORA MOR GAVIRIA S.A., Quito, Ecuador; c/o INTERNACIONAL DE PROYECTOS INMOBILIARIOS S.A., Quito, Ecuador; POB Colombia; Cedula No. 41576358 (Colombia); alt. Cedula No. 1719011601 (Ecuador); RUC # 1233779 (Ecuador) (individual) [SDNT]
3. INDABURU LUENGAS, Pedro Enrique, c/o COMERCIALIZADORA MOR GAVIRIA S.A., Quito, Ecuador; c/o COMERCIALIZADORA MORDUR S.A., Quito, Ecuador; c/o INTERNACIONAL DE PROYECTOS INMOBILIARIOS S.A., Quito, Ecuador; DOB 29 Jun 1948; POB Bogota, Colombia; Cedula No. 19074171 (Colombia); alt. Cedula No. 1719011619 (Ecuador); RUC # 171901161–9 (Ecuador) (individual) [SDNT]
4. OLIVEROS GUZMAN, Henry, c/o PARQUE ECOLOGICO RECREACIONAL DE LAS AGUAS DE GIRARDOT LIMITADA, Girardot, Colombia; c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; c/o HOTEL LA CASCADA S.A., Girardot, Colombia; POB Colombia; Cedula No. 79484051 (Colombia) (individual) [SDNT]
5. ROJAS VARGAS, Alberto, c/o COLFARMA PERU S.A., Lima, Peru; c/o ESPIBENA S.A., Quito, Ecuador; c/o FARFALLA INVESTMENT S.A., Panama City, Panama; Cedula No. 13922413 (Colombia) (individual) [SDNT]

Dated: June 10, 2010.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2010–14500 Filed 6–15–10; 8:45 am]

BILLING CODE 4810–AL–P

Federal Register

Wednesday,
June 16, 2010

Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171

Revision of Fee Schedules; Fee Recovery for FY 2010; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

NRC–2009–0333

RIN 3150–AI70

Revision of Fee Schedules; Fee Recovery for FY 2010

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires the NRC to recover through fees approximately 90 percent of its budget authority in fiscal year (FY) 2010, not including amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR), and amounts appropriated for generic homeland security activities. Based on the Energy and Water Development and Related Agencies Appropriation Act, 2010, signed by the President on October 28, 2009, the NRC's required fee recovery amount for the FY 2010 budget is approximately $912.2 million. After accounting for billing adjustments, the total amount to be billed as fees is approximately $911.1 million.

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

ADDRESSES: The comments received on the proposed rule and the NRC's work papers that support these final changes to 10 CFR parts 170 and 171 are available from the following locations:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0333. Address questions about NRC dockets to Carol Gallagher, 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

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

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

FOR FURTHER INFORMATION CONTACT: Renu Suri, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–0161, e-mail *Renu.Suri@NRC.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Response to Comments
III. Final Action
A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended
B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis
X. Congressional Review Act

I. Background

The NRC is required each year, under OBRA–90 (42 U.S.C. 2214), as amended, to recover approximately 90 percent of its budget authority through fees to NRC licensees and applicants, not including the following non-fee items: amounts appropriated from the NWF, amounts appropriated for WIR, and amounts appropriated for generic homeland security activities. The NRC receives 10 percent of its budget authority (not including non-fee items) from the general fund each year to pay for the cost of agency activities that do not provide a direct benefit to NRC licensees, such as international assistance and Agreement State activities (as defined under section 274 of the Atomic Energy Act of 1954, as amended).

The NRC assesses two types of fees to meet the requirements of OBRA–90. First, user fees, presented in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701), recover the NRC's cost of providing special benefits to identifiable applicants and licensees. For example, the NRC assesses these fees to cover the cost of inspections, applications for new licenses and license renewals, and requests for license amendments. Second, annual fees, presented in 10 CFR part 171 under the authority of OBRA–90, recover generic regulatory costs not otherwise recovered through 10 CFR part 170 fees.

Based on Pub. L. 111–85, the NRC's required fee recovery amount for the FY 2010 budget is approximately $912.2 million, which is reduced by approximately $1.1 million to account for billing adjustments (*i.e.,* expected unpaid invoices, payments for prior year invoices), resulting in a total of approximately $911.1 million to be billed as fees in FY 2010.

In accordance with OBRA–90, $22.2 million of the agency's budgeted resources for generic homeland security activities are excluded from the NRC's fee base in FY 2010. These funds cover generic activities such as rulemakings and the development of guidance documents that support entire license fee classes or classes of licensees. Under its IOAA authority, the NRC will continue to charge part 170 fees for all licensee-specific homeland security-related services provided, including security inspections and security plan reviews.

The amount of the NRC's required fee collections is set by law, and is, therefore, outside the scope of this rulemaking. In FY 2010, the NRC's total fee recovery amount has increased by $41.5 million from FY 2009, mostly in response to increased activities for reactor oversight, new reactor programs, information technology support, homeland security issues, and licensing reviews for fuel facilities, non-power reactors and spent fuel storage. The FY 2010 budget was allocated to the fee classes that the budgeted activities support. As such, the annual fees for power reactor, most fuel facility, uranium recovery, and small materials licensees have increased. Another factor affecting the amount of annual fees for each fee class is the estimated collection under part 170, discussed in Section III, "Final Action", of this document.

II. Response to Comments

The NRC published the FY 2010 proposed fee rule on March 10, 2010 (75 FR 11375) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. By the close of the comment period (April 9, 2010), the NRC received six comments and one comment thereafter, for a total of seven comments that were considered in this fee rulemaking. The comments have been grouped by issues and are addressed in a collective response.

A. Specific Part 171 Issues

1. Fuel Facilities Annual Fee Increase

Comment. Some commenters were concerned about the increase in annual fees. For fee category 1.A.(1)(b), Low Enriched Uranium Fuel, one commenter noted that the increase appears disproportionate to the overall increase for FY 2010 annual fee. Another commenter requested NRC to reconsider the increase in annual fee for the fee category Gas Centrifuge Enrichment Demonstration, because the risk of their facility licensed under 1.A.(2)(b) is very low relative to other operating fuel cycle facilities.

Response. Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. The higher FY 2010 fee is primarily due to an increase in total budgeted resources allocated to the fuel facilities fee class for increased support for environmental reviews, and licensing amendments and renewals for existing fuel fabrication facilities. Because annual fees must recover all budgeted resources for a fee class not recovered through part 170 fees, annual fees for all facilities in the fee class are impacted by the lower part 170 fee collections estimate for FY 2010. A higher fee-relief adjustment and low-level waste (LLW) surcharge for this fee class also increased the annual fee.

The commenter requests reconsideration of their annual fee because their facility poses a lower risk relative to other fuel facilities due to the small amount of the radioactive material, uranium hexafluoride, that it is authorized to possess and because it has not deployed all the machines that are authorized in the license issued to the facility. However, the NRC is unable to change the fee for the following reasons. The NRC is mandated to recover most of its budget resources through fees based on the costs of providing regulatory services. Under NRC's methodology established through public notice and comment rulemaking (64 FR 31448; June 10, 1999) the total budgeted resources for fuel facilities are allocated to individual fuel facility fee categories based on the effort/fee determination matrix, which was described in detail in the FY 2010 proposed fee rule. Although a licensee may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. The NRC continues to believe that an effort/fee determination matrix, based on the commensurate level of regulatory effort related to the various fuel facility categories from a safety and safeguards perspective, results in annual fees that accurately reflect the current costs of providing generic and other regulatory services to each fuel facility type. As they do each year, the NRC's fuel facility project managers and regulatory analysts reviewed the safety and safeguards effort factors and did not make any changes for fee category 1.A.(2)(b). Therefore, the NRC is retaining the effort/fee determination matrix as outlined in the proposed rule. The Commission will continue to review these factors and make changes, as appropriate.

2. Uranium Recovery Annual Fees

Comment: Some commenters were concerned that the percentage increase in uranium recovery fees is greater than the fee increase for power reactors.

Response. Annual fees fluctuate from year to year based on a number of factors, including the budgeted resources for a license fee class. As stated in the proposed rule, the increase in the FY 2010 total required annual fee recovery amount for uranium recovery licensees is mainly due to increased budget resources allocated to support uranium recovery legal and program infrastructure. In addition, the FY 2010 fee-relief adjustment amount is an additional charge compared to a reduction in FY 2009. For more discussion on the fee-relief adjustment, refer to Section III.B.1. of this final rule.

In response to the concern that the proposed fee structure favors power reactors at the expense of other licensees, the NRC disagrees. The agency is mandated to recover most of its budget resources through fees. The NRC complies with this law by calculating fees based on allocation of budget resources to each fee class. The NRC strives to ensure that the fees are equitable and fair to each class of licensees. This is why in FY 2010, as noted in the March 2010 proposed fee rule, generic budgeted resources supporting applications for new uranium recovery facilities are excluded from the calculation of annual fee charged to current uranium recovery licensees. Instead these resources are included in the calculation of fee charged to operating reactors and fuel facility licensees because they will potentially benefit from increased production of the uranium milled by the new facilities. The NRC's annual fees for the uranium recovery licensees reflect the budgeted cost of NRC's regulatory services for this class of licensees.

3. Agreement State Activities

Comment. Some commenters expressed concern about the impact on NRC materials program licensees once additional states beyond the State of New Jersey become Agreement States.

Response. This concern has been largely addressed by legislation. To address fairness and equity concerns associated with licensees paying for the cost of activities that do not directly benefit them, the FY 2001 Energy and Water Development Appropriations Act amended OBRA–90 to decrease the NRC's fee recovery amount to 90 percent beginning in FY 2005. In response to concerns about decreasing numbers of NRC licensees as more states become Agreement States, the NRC notes that the fee calculation methodology considers the percentage of licensees in Agreement States in establishing fees for the materials users fee class. As explained in the proposed fee rule, the budgeted resources providing support to Agreement States or their licensees are included in total fee-relief costs, which are offset by the 10 percent non-fee recoverable funding (fee relief) provided by Congress. For example, if the NRC develops a rule, guidance document, or a tracking system that is associated with or otherwise benefits Agreement State licensees, the costs of these activities are prorated to the fee-relief activities according to the percentage of licensees in that fee class in Agreement States (e.g., if 85 percent of materials users licensees are in Agreement States, 85 percent of these regulatory infrastructure costs are included in the fee-relief category). To the extent that the 10 percent fee relief is insufficient to cover the total cost of all fee-relief activities, these remaining costs are spread to all licensees based on their percentage of the budget.

B. Other Issues

1. Fee Increases Are Inconsistent With Current Economic Conditions

Comment. Some commenters stated that the NRC fees are increasing in spite of the fact that the country is experiencing economic downturn. The commenters recommended revising the fees to be in line with inflation. They also expressed concern that the NRC hourly rate is extremely high.

Response. The NRC acknowledges that an increase in fees is more difficult to absorb in the current economic downturn. In compliance with OBRA–90, as amended, NRC's fees are calculated to recover 90 percent of its approved budget. Any adjustments in fees to align it with the rate of inflation

or other external factors could result in NRC's not recovering 90 percent of its budget and thus not complying with the law. As such, the purpose of the FY 2010 fee rulemaking, as with prior year fee rulemakings, is to establish fees in a fair and transparent manner to recover the required portion of the NRC's budget.

In response to the comment on the high hourly rate, the NRC's rate is calculated to recover all the budgeted costs supporting the services provided under part 170, including all programmatic and agency overhead, which is consistent with the full cost recovery concept emphasized in the Office of Management and Budget's Circular No. A–25, "User Charges." The NRC did not receive any comments suggesting ways to revise its hourly rate calculation methodology, and comments on this fee rule and other rulemakings have consistently supported the NRC's efforts to collect more of its budget through part 170 fees-for-services rather than part 171 annual fees. As discussed in the proposed rule, the increase in the hourly rate is due to the higher budget necessary for supporting increased infrastructure and support costs for the new reactors program, fuel facility reviews, reactor licensing renewal, international activities, and spent fuel storage and transportation activities. Therefore, the NRC is retaining the hourly rate formula as presented in the FY 2010 proposed rule.

2. Hold an Annual Public Meeting To Share Fee Projections

Comment. Some commenters expressed an interest in an annual public meeting early in the year with NRC stakeholders to share information on the budget request and its impact on the future fees.

Response. The NRC's Congressional Budget Justification is submitted to Congress in early February for review and approval by the U.S. Congress and is publicly available at that time. An Appendix in this document provides an estimate of fees. The current document (NUREG–1100, Volume 26) can be viewed on NRC's Web site *http://www.nrc.gov.* The proposed fee rule for the current fiscal year is published subsequent to the submittal of the Congressional document. The Commission acknowledges the importance of this information to a licensee's budget but cannot provide predecisional policies or certain administrative fee-related information until the proposed fee rule is published. The timing of a periodic meeting will depend on the timing of the budget process, publication of the proposed rule, and NRC staff availability.

3. Performance Based Licensing

Comment. Some commenters recommended expansion of performance based licensing and the increased use of Safety and Environment Review Panel (SERP) to help in reducing review costs/hourly charges for uranium recovery facilities.

Response. The NRC currently allows changes to a facility and tests through a SERP as part of a performance based license condition (PBLC). However, to use the PBLC, the licensee must not undertake an activity that falls outside the scope of the safety and environmental reviews already performed at a particular site. The scope of a SERP review is, therefore, necessarily limited to what is already known and reviewed about a particular site, *i.e.* to information that cannot change.

The use of a SERP would have no effect on the uranium recovery facility annual fee because these fees are based on the generic activities that are not charged to a particular licensee, but to the industry as a whole. Furthermore, as noted previously, generic costs for the new uranium recovery facilities in FY 2010 were allocated to the operating power reactors and fuel facilities. A SERP would also have no effect on inspections and license renewal costs because the NRC must perform those functions. Most license amendments are of a nature that cannot be addressed by a SERP because of the necessary limitations that are placed on performance based licensing. Amendments such as expansions (*i.e.,* new satellites and plant upgrades), restarts, surety updates, process changes, toll milling, and change-of-control comprise the majority of amendments that the staff reviews. None of these amendments can be addressed using a SERP. Therefore, the Commission disagrees that the use of a SERP can be expanded to the point where hourly or annual fees would substantively decrease.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2010 budget authority less the appropriations for non-fee items. The NRC's total budget authority for FY 2010 is $1,066.9 million. The non-fee items include $29.0 million appropriated from the NWF, $2.1 million for WIR activities, and $22.2 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC will have to recover approximately $912.2 million in FY 2010 through part 170 licensing and inspection fees and part 171 annual fees. The amount required by law to be recovered through fees for FY 2010 is $41.5 million more than the amount estimated for recovery in FY 2009, an increase of approximately 5 percent.

The FY 2010 fee recovery amount is reduced by $1.1 million to account for billing adjustments (*i.e.,* for FY 2010 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2010 for prior year invoices). This leaves approximately $911.1 million to be billed as fees in FY 2010 through part 170 licensing and inspection fees and part 171 annual fees.

Table I summarizes the budget and fee recovery amounts for FY 2010. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2010

[Dollars in millions]

Total Budget Authority	$1,066.9
Less Non-Fee Items	−53.3
Balance	$1,013.6
Fee Recovery Rate for FY 2010	90%
Total Amount to be Recovered for FY 2010	$912.2
Less Part 171 Billing Adjustments:	
Unpaid FY 2010 Invoices (estimated)	2.1
Less Payments Received in FY 2010 for Prior Year Invoices (estimated)	−3.2
Subtotal	−1.1
Amount to be Recovered Through Parts 170 and 171 Fees	$911.1

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2010—Continued

[Dollars in millions]

Less Estimated Part 170 Fees	−357.3
Part 171 Fee Collections Required	$553.8

In this final rule, NRC amends fees for the power reactors, non-power reactors, some fuel facilities and small materials users, and DOE's Transportation license. The changes to the annual fee are primarily due to updated part 170 collections estimate. The NRC updated the part 170 collections estimate based on the latest billing data available, adjusted for FY 2010 budget changes, as appropriate. The total part 170 collections estimate for FY 2010 final rule decreased by approximately $6.7 million compared to the proposed rule, primarily for the operating reactors and spent fuel storage/reactors in decommissioning classes of licensees resulting in a greater amount to be recovered through annual fees from these licensees. The NRC estimates that $357.3 million will be recovered from part 170 fees in FY 2010 which represents an increase of approximately seven percent compared to $332.6 million in part 170 collections during FY 2009. The change for each class of licensees affected is discussed in Section III.B.3., below.

The FY 2010 final fee rule is a "major rule" as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2010 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactor licensees, 10 CFR part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of $100,000 or more, upon publication of the FY 2010 final rule. For these licensees, payment is due on the effective date of the FY 2010 final rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2010 annual fee, less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than $100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2010 falls before the effective date of the FY 2010 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2009 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2010 final rule will be billed for the annual fee at the FY 2010 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC currently does not routinely mail the final fee rule to licensees, but will send the final rule to any licensee or other person upon specific request. To request a copy, contact the Accounts Receivable and Payable Branch, Division of the Controller, Office of the Chief Financial Officer, at 301–415–7554, or e-mail *fees.resource@nrc.gov.* In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://www.regulations.gov.*

The NRC plans to review its fee policies for power reactors. The NRC anticipates that it will receive applications to license small and medium sized commercial nuclear reactors. The NRC published an Advance Notice of Final Rulemaking (ANPR) on March 25, 2009 (74 FR 12735) to receive early input from the public on issues relevant to the establishment of an annual fee structure based on the size of the reactor. The NRC received sixteen comments in response to the ANPR. The general consensus from the commenters is that an adjustment to the current power reactor annual fee methodology is needed to account for small and medium sized power reactors. The NRC plans to analyze suggested methodologies for a variable annual fee structure for power reactors and present its findings in a future rule.

The NRC is changing its current policy with regard to billing inspection costs. Currently, inspection costs are billed only after the inspection is completed (*i.e.,* approximately 30 days after the inspection report is issued). As a result, in some cases inspection costs accumulate over several billing cycles, and the licensee receives one invoice for these accumulated costs rather than being billed as the costs are incurred. Therefore, the NRC will bill for accumulated inspection costs each quarter. Billing for incurred inspection costs will begin in the first quarter of FY 2011, when the NRC's new accounting system is implemented. This policy change does not require a revision to part 170.

The NRC is amending 10 CFR parts 170 and 171, as follows:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended

In FY 2010, the NRC is increasing the hourly rate to recover the full cost of activities under part 170 and is using this rate to calculate "flat" application fees.

The NRC is making the following changes:

1. Hourly Rate

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is changing the FY 2010 hourly rate to $259. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31. The FY 2010 hourly rate is higher than the FY 2009 hourly rate of $257. The increase is primarily due to the higher FY 2010 budget supporting increased infrastructure and support costs for the new reactors program, fuel facility reviews, reactor licensing renewal, international activities, spent fuel storage, and transportation activities. The hourly rate calculation is described in further detail in the following paragraphs.

The NRC's hourly rate is derived by dividing the sum of recoverable budgeted resources for (1) Mission direct program salaries and benefits; (2) mission indirect salaries and benefits and contract activity; and (3) agency management and support and the Inspector General (IG), by mission direct full-time equivalent (FTE) hours. The mission direct FTE hours are the product of the mission direct FTE times the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for mission direct contract activities.

In FY 2010, the NRC is using 1,371 hours per direct FTE, the same amount as FY 2009, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2010 fee rule. Based on this review of the most recent data available, the NRC determined that 1,371 hours is the best estimate of direct hours worked annually per direct FTE. This estimate

excludes all indirect activities such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. (Individual values may not sum to totals due to rounding.)

TABLE II—FY 2010 HOURLY RATE CALCULATION

[Dollars in millions]

Mission Direct Program Salaries & Benefits	$343.8
Mission Indirect Salaries & Benefits, and Contract Activity	$135.6
Agency Management and Support, and the IG	$330.4
Subtotal	$809.8
Less Offsetting Receipts	−$0.0
Total Budget Included in Hourly Rate	$809.8
Mission Direct FTEs	2,276
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours)	$259

As shown in Table II, dividing the $809.8 million budgeted amount (rounded) included in the hourly rate by total mission direct FTE hours (2,276 FTE times 1,371 hours) results in an hourly rate of $259. The hourly rate is rounded to the nearest whole dollar.

2.“Flat” Application Fee Changes

The NRC is adjusting the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $259. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the professional hourly rate for FY 2010. The agency estimates the average professional staff hours needed to process licensing actions every other year as part of its biennial review of fees performed in compliance with the Chief Financial Officers Act of 1990. This review was last performed as part of the FY 2009 fee rulemaking. The higher hourly rate of $259 is the main reason for the increase in application fees.

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be minimal. Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.B. through 9.D., 10.B., 15.A. through 15.R., 16, and 17 of § 170.31. Applications filed on or after the effective date of the FY 2010 final fee rule would be subject to the revised fees in the final rule.

3. Administrative Amendments

In the FY 2009 final rule, § 170.11, regarding fee exemptions for special projects, was changed to simplify the language. In the FY 2010 final rule, the NRC is modifying the introductory text of paragraph (a)(1) to clarify that this paragraph applies to special projects. There is no change to the NRC’s fee exemption policy.

In addition, the NRC is updating some of the program codes found next to the materials users fee categories in § 170.31. The program codes were added in the FY 2008 final rule, and the NRC plans to update the program codes as needed.

In summary, the NRC is making the following changes to 10 CFR part 170:

1. Establish a revised professional hourly rate to use in assessing fees for specific services;
2. Revise the license application fees to reflect the FY 2010 hourly rate; and
3. Make certain administrative changes for purposes of updating some program codes and improving the clarity of the rule.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

The NRC will recover its fee-relief shortfall by increasing all licensees’ annual fees. This rulemaking also makes changes to the number of NRC licensees and to establish rebaselined annual fees based on Public Law 111–85. The amendments are described as follows:

1. Application of Fee-Relief and Low-Level Waste Surcharge

The NRC will recover its fee-relief shortfall by increasing all licensees’ annual fees, based on their percent of the budget.

The NRC applies the 10 percent of its budget that is excluded from fee recovery under OBRA–90, as amended (fee relief), to offset the total budget allocated for activities which do not directly benefit current NRC licensees. The budget for these fee-relief activities is totaled and then reduced by the amount of the NRC’s fee relief. Any difference between the fee relief and the budgeted amount of these activities results in a fee-relief adjustment (increase or decrease) to all licensees’ annual fees, based on their percent of the budget (*i.e.,* over 80 percent is allocated to power reactors each year).

In FY 2010, the NRC’s 10 percent fee relief is less than the total budget for fee-relief activities by $7.1 million. In FY 2009, the 10 percent fee relief exceeded the total budget by $3.2 million. The FY 2010 budget for fee-relief activities is higher than FY 2009, primarily due to an increase in small entity subsidies, non-profit educational exemptions, and regulatory support to Agreement States.

The NRC is increasing all licensees’ annual fees to recover the shortfall amount of $7.1 million, based on their percent of the fee recoverable budget authority. This is consistent with the existing fee methodology, in that the fee-relief shortfall amount is allocated to licensees in the same manner as benefits are allocated as a reduction when the NRC receives enough fee relief to pay for fee-relief activities. In FY 2010, the power reactors class of licensees will be allocated approximately 88 percent of the fee-relief shortfall based on their share of the NRC fee recoverable budget authority.

The FY 2010 budgeted resources for NRC’s fee-relief activities are $108.5 million. The NRC’s total fee relief in FY 2010 is $101.4 million, leaving a $7.1 million fee-relief shortfall to be recovered by increasing all licensees’ annual fees. These values are shown in Table III. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE–RELIEF ACTIVITIES

[Dollars in millions]

Fee-relief activities	FY 2010 Budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$18.2
b. Agreement State oversight	11.2
c. Scholarships and Fellowships	15.0
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	17.4
b. Costs not recovered from small entities under 10 CFR 171.16(c)	6.1
c. Regulatory support to Agreement States	23.1
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	15.1
e. In situ leach rulemaking and unregistered general licensees	2.4
Total fee-relief activities	108.5
Less 10 percent of NRC's FY 2010 total budget (less non-fee items)	−101.4
Fee-Relief Adjustment to be Allocated to All Licensees' Annual Fees	7.1

Table IV shows how the NRC is allocating the $7.1 million fee-relief adjustment to each license fee class. As explained previously, the NRC is allocating this fee-relief adjustment to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee-relief adjustment is added to the required annual fee recovery from each fee class.

Separately, the NRC has continued to allocate the LLW surcharge based on the volume of LLW disposal of three classes of licenses: Operating reactors, fuel facilities, and materials users. Table IV also shows the allocation of the LLW surcharge activity. Because LLW activities support NRC licensees, the costs of these activities are recovered through annual fees. For FY 2010, the total budget allocated for LLW activity is $2.3 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ADJUSTMENT AND LLW SURCHARGE, FY 2010

[Dollars in millions]

	LLW Surcharge		Fee-Relief adjustment		Total
	Percent	$	Percent	$	$
Operating Power Reactors	54.0	$1.3	87.8	$6.3	$7.5
Spent Fuel Storage/Reactor Decommissioning	—	—	2.7	0.2	0.2
Test and Research Reactors	—	—	0.2	0.0	0.0
Fuel Facilities	15.0	0.3	5.5	0.4	0.7
Materials Users	31.0	0.7	2.6	0.2	0.9
Transportation	—	—	0.5	0.0	0.0
Uranium Recovery	—	—	0.7	0.1	0.1
Total	100.0	2.3	100.0	7.1	9.5

2. Agreement State Activities

New Jersey became the 37th Agreement State, effective September 30, 2009. Materials licenses transferred to a new Agreement State are terminated by the NRC. New Jersey assumed regulatory authority for approximately 500 former NRC licensees. A larger share of the generic budget resources for small materials licensees has been allocated to the Regulatory Support to Agreement States fee-relief category to mitigate the impact on the annual fee for the remaining small materials NRC licensees, as seen in Table III.

Note that the continuing costs of oversight and regulatory support for the State of New Jersey, as for any other Agreement State, are recovered as fee-relief activities, consistent with existing policy. The budgeted resources for the regulatory support of Agreement State licensees are prorated to the fee-relief activity based on the percent of total licensees in Agreement States. The NRC has updated the proration percentage in its fee calculation to ensure that resources are allocated equitably between the NRC materials users fee class and the regulatory support to Agreement States fee-relief category. Accordingly, as a result of the State of New Jersey becoming an Agreement State, the NRC has increased the percentage of materials users regulatory support costs prorated to the fee-relief activity from 85 percent in FY 2009 to 87 percent in FY 2010. The resources for licensing and inspection activities supporting NRC licensees in the materials users fee class are not prorated to the fee-relief activity.

3. Revised Annual Fees

The NRC is revising its annual fees in §§ 171.15 and 171.16 for FY 2010 to recover approximately 90 percent of the NRC's FY 2010 budget authority, after subtracting the non-fee amounts and the estimated amount to be recovered through part 170 fees. The part 170 collections estimate for this final rule increased by $23.4 million from the FY 2009 fee rule, based on the latest invoice data available. The total amount to be recovered through annual fees for FY 2010 is $553.8 million. The required annual fee collection in FY 2009 was $532.6 million.

The Commission has determined (71 FR 30721; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that most years there will be budgetary and other changes that warrant the use of the rebaselining method.

As compared with FY 2009 annual fees, rebaselined fees are higher for five classes of licensees (power reactors, spent fuel storage/reactor decommissioning, transportation, uranium recovery and materials users), and lower for one class of licensees (non-power reactors). Within the fuel facilities fee class, annual fees for most licensees increase, while the annual fee for one fee category decreases.

The NRC's total fee recoverable budget, as mandated by law, is approximately $41.5 million larger in FY 2010 as compared with FY 2009. Much of this increase is in response to increased activities for reactor oversight, new reactor programs, information technology support, homeland security issues, and licensing reviews for fuel facilities, non-power reactors, and spent fuel storage. The FY 2010 budget was allocated to the fee classes that the budgeted activities support. As in FY 2009, generic NRC resources supporting new uranium recovery applications are included in the budget allocated to operating power reactors and fuel facility fee classes, because these licensees will potentially benefit from increased production of uranium milled by new uranium recovery facilities. The impact of this allocation on the operating reactors and fuel facilities annual fees is less than one percent.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities the NRC will perform in FY 2010), the estimated part 170 collections for the various classes of licenses, and allocation of the fee-relief adjustment to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained at 10 percent from FY 2009 to FY 2010.

Table V shows the rebaselined annual fees for FY 2010 for a representative list of categories of licenses. The FY 2009 fee is also shown for comparative purposes.

TABLE V—REBASELINED ANNUAL FEES

Class/category of licenses	FY2009 Annual fee	FY 2010 Annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	$4,625,000	$4,784,000
Spent Fuel Storage/Reactor Decommissioning	122,000	148,000
Test and Research Reactors (Non-power Reactors)	87,600	81,700
High Enriched Uranium Fuel Facility	4,691,000	5,439,000
Low Enriched Uranium Fuel Facility	1,649,000	2,047,000
UF_6 Conversion Facility	969,000	1,111,000
Conventional Mills	31,200	38,300
Typical Materials Users:		
Radiographers (Category 3O)	22,700	28,200
Well Loggers (Category 5A)	9,700	11,900
Gauge Users (Category 3P)	3,700	4,500
Broad Scope Medical (Category 7B)	36,300	45,100

The work papers that support this final rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The reports included in these work papers summarize the FY 2010 budgeted FTE and contract dollars allocated to each fee class and fee-relief category at the planned activity and program level and compare these allocations to those used to develop the final FY 2009 fees. The work papers are available electronically at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0333 and at the NRC's Electronic Reading Room on the Internet at Web site address *http://www.nrc.gov/reading-rm/adams.html*. The work papers may also be examined at the NRC PDR located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, Maryland.

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in paragraphs a. through h. of this section. Individual values in the Tables presented in this section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2010 budgeted cost to be recovered in the annual fees assessment to the fuel facility class of licenses [which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1), under § 171.16] is approximately $28.8 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated part 170 collections and adjusted for allocated generic transportation resources and fee-relief. In FY 2010, the LLW surcharge for fuel facilities is added to the allocated fee-relief adjustment (see Table IV in Section III.B.1., "Application of Fee-Relief and Low-Level Waste Surcharge" of this document). The summary calculations used to derive this value are presented in Table VI for FY 2010, with FY 2009 values shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary Fee Calculations	FY 2009 Final	FY 2010 Final
Total budgeted resources	$44.6	$48.8
Less estimated part 170 receipts	−22.0	−21.2
Net part 171 resources	22.6	27.6

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES—Continued

[Dollars in millions]

Summary Fee Calculations	FY 2009 Final	FY 2010 Final
Allocated generic transportation	+0.4	+0.5
Fee-relief adjustment/LLW surcharge	+0.2	+0.7
Billing adjustments	−0.2	−0.1
Total required annual fee recovery	23.0	28.8

The increase in total budgeted resources allocated to this fee class from FY 2009 to FY 2010 is primarily due to increased support for environmental reviews and for licensing amendments and renewals for existing fuel fabrication facilities. This is partially offset by reductions in fuel facility inspections and licensing and inspection activities for enrichment facilities. In the final rule, due to a small decrease ($16,000) in the generic transportation resources allocated to fuel facility fee class, the FY 2010 annual fee for some of the facilities decreased slightly from the proposed rule.

The total required annual fee recovery amount is allocated to the individual fuel facility licensees, based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the publicly available NRC work papers, licensees are grouped into categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee, as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate (*e.g.,* decommissioning or license termination) that results in it not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/ certificate holders.

The methodology is applied as follows. First, a fee category is assigned, based on the nuclear material and activity authorized by license or certificate. Although a licensee/ certificate holder may elect not to fully use a license/certificate, the license/ certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes ten types of regulatory activities, including enrichment and scrap/waste-related activities (*see* the work papers for the complete list). Effort factors are assigned as follows: one (low regulatory effort), five (moderate regulatory effort), and ten (high regulatory effort). These effort factors are then totaled for each fee category, so that each fee category has a total effort factor for safety activities and a total effort factor for safeguards activities.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). Note that the total effort factors for the High Enriched Uranium Fuel (HEU), Low Enriched Uranium Fuel (LEU), Hot Cell and Uranium Enrichment fee categories have increased from FY 2009, while the Limited Operations fee category decreased from FY 2009. The safety and safeguards factors increased in FY 2010 to reflect process changes, such as emphasis on emergency planning, ongoing uranium enrichment activities, and a new facility in the Uranium Enrichment fee category. The safety factor decreases for Low Enriched Uranium Fuel and Limited Operations fee categories in FY 2010 reflect the lower level of safety issues at two facilities. Taking into account the addition of a new facility, the total safety and safeguards effort factor change is relatively small.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES, FY 2010

Facility Type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High Enriched Uranium Fuel (1.A.(1)(a))	2	89 (32.5)	97 (44.3)
Low Enriched Uranium Fuel (1.A.(1)(b))	3	70 (25.5)	35 (16.0)
Limited Operations (1.A.(2)(a))	1	8 (2.9)	4 (1.8)
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.1)	15 (6.8)
Hot Cell (1.A.(2)(c))	1	6 (2.2)	3 (1.4)
Uranium Enrichment (1.E)	3	86 (31.4)	58 (26.5)
UF_6 Conversion (2.A.(1))	1	12 (4.4)	7 (3.2)

For FY 2010, the total budgeted resources for safety activities, before the fee-relief adjustment is made, is $15,613,008. This amount is allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources amount of $12,479,010 for safeguards activities is allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the fee-relief adjustment ($740,003) is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category. The fee (rounded) for each facility is summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2010 Annual fee
High Enriched Uranium Fuel (1.A.(1)(a))	$5,439,000
Low Enriched Uranium Fuel (1.A.(1)(b))	2,047,000
Limited Operations Facility (1.A.(2)(a))	702,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1,053,000
Hot Cell (and others) (1.A.(2)(c))	526,000
Uranium Enrichment (1.E.)	2,807,000
UF_6 Conversion (2.A.(1))	1,111,000

The NRC expects to authorize operation of one new uranium enrichment facility in FY 2010. The annual fee applicable to any type of new uranium enrichment facility is the annual fee in § 171.16, fee category 1.E., Uranium Enrichment, unless the NRC establishes a new fee category for the facility in a subsequent rulemaking. The applicable annual fee for a facility that is authorized to operate during the FY will be prorated in accordance with the provisions of § 171.17.

b. Uranium Recovery Facilities

The total FY 2010 budgeted costs to be recovered through annual fees assessed to the uranium recovery class [which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under § 171.16], is approximately $0.91 million. The derivation of this value is shown in Table IX, with FY 2009 values shown for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2009 Final	FY 2010 Final
Total budgeted resources	$7.21	$6.69
Less estimated part 170 receipts	− 6.64	− 5.83
Net part 171 resources	0.57	0.86
Allocated generic transportation	N/A	N/A
Fee-relief adjustment	− 0.03	+ 0.05
Billing adjustments	− 0.03	− 0.01
Total required annual fee recovery	0.51	0.91

The increase in the total required annual fee recovery is mainly due to increased support for uranium recovery legal and program infrastructure and the increased fee-relief adjustment, which was a reduction in FY 2009. As in FY 2009, the NRC is excluding the generic budgeted resources supporting applications for new uranium recovery facilities from the FY 2010 annual fee charged to current uranium recovery licensees. Because operating reactors and fuel facility licensees would potentially benefit from increased production of the uranium milled by the new facilities, the budgeted resources would be allocated to these fee classes. The generic resources supporting the new uranium recovery facilities do not benefit the existing uranium recovery licensees. In the final rule, there were no changes to the fees for this class of licensees.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class between the Department of Energy (DOE) and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2010, 35 percent of the total annual fee amount, less $419,769 specifically budgeted for Title I activities, is allocated to DOE's UMTRCA facilities. The budgeted resources for Title I activities increased in FY 2010 primarily due to additional Title I sites. The remaining 65 percent of the total annual fee (less the amounts specifically budgeted for Title I activities) is allocated to other licensees. This is the same as in FY 2009. The remaining $317,000 (rounded) would be recovered through annual fees assessed to the other licensees in this fee class *(i.e.,* conventional uranium mills and heap leach facilities, uranium solution mining and resin in-situ recovery (ISR) facilities, mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities).

The annual fee assessed to DOE includes recovery of the costs specifically budgeted for NRC's Title I activities, plus 35 percent of the remaining annual fee amount, including

the fee-relief and generic/other costs, for the uranium recovery class. The remaining 65 percent of the fee-relief and generic/other costs are assessed to the other NRC licensees in this fee class that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

DOE Annual Fee Amount (UMTRCA Title I and Title II) general licenses:	
UMTRCA Title I budgeted costs	$419,769
35 percent of generic/other uranium recovery budgeted costs	151,950
35 percent of uranium recovery fee-relief adjustment	+ 18,519
Total Annual Fee Amount for DOE (rounded)	590,000
Annual Fee Amount for Other Uranium Recovery Licenses:	
65 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I activities	282,193
65 percent of uranium recovery fee-relief adjustment	+ 34,393
Total Annual Fee Amount for Other Uranium Recovery Licenses	316,586

The NRC will continue to use a matrix (which is included in the supporting work papers) to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately $317,000 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2010 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). In FY 2010, these categories are conventional uranium mills and heap leach facilities, uranium solution mining and resin ISR facilities, mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. In FY 2010, the activities related to generic decommissioning/reclamation are not included in the matrix, because they are included in the fee-relief activities. Therefore, they are not a factor in determining annual fees. The activities included in the FY 2010 matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of 0, 5, and 10, respectively, in the FY 2010 matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of 0 to 10 as follows: Zero (no regulatory benefit), five (moderate regulatory benefit), and ten (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). Total benefit factors by fee category, and per licensee in each fee category, are then calculated. These benefit factors thus reflect the relative regulatory benefit associated with each licensee and fee category. The NRC expects to license an In Situ Recovery Resin Facility in FY 2010. Therefore, the benefit factors for fee category 2.A.(2)(d) have been included in the FY 2010 matrix, and an annual fee has been established.

The benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class, are as follows:

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES, FY 2010

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills	1	200	200	12
Basic In Situ Recovery facilities	5	190	950	57
Expanded In Situ Recovery facilities	1	215	215	13
In Situ Recovery Resin Facilities	1	180	180	11
11e.(2) disposal incidental to existing tailings sites	1	65	65	4
Uranium water treatment	1	45	45	3
			1,655	

Applying these factors to the approximately $317,000 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the total annual fees for each fee category. The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category, as summarized in Table XII:

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES

[Other than DOE]

Facility type (fee category)	FY 2010 Annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	$38,300
Basic In Situ Recovery facilities (2.A.(2)(b))	36,300
Expanded In Situ Recovery facilities (2.A.(2)(c))	41,100
In Situ Recovery Resin facilities (2.A.(2)(d))	34,400
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	12,400
Uranium water treatment (2.A.(5))	8,600

c. Operating Power Reactors

The $482.1 million in budgeted costs to be recovered through FY 2010 annual fees assessed to the power reactor class was calculated as shown in Table XIII. FY 2009 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2009 Final	FY 2010 Final
Total budgeted resources	$761.5	$787.3
Less estimated part 170 receipts	−288.8	−312.5
Net part 171 resources	472.7	474.8
Allocated generic transportation	+0.9	+0.8
Fee-relief adjustment/LLW surcharge	−1.6	+7.5
Billing adjustments	−3.6	−1.0
Total required annual fee recovery	468.3	482.1

The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 104 power reactors licensed to operate. This results in a FY 2010 annual fee of $4,636,000 per reactor, of which approximately $72,200 is the fee-relief adjustment/LLW surcharge. Additionally, each power reactor licensed to operate would be assessed the FY 2010 spent fuel storage/reactor decommissioning annual fee of $148,000 which results in a total FY 2010 annual fee of $4,784,000 for each power reactor licensed to operate. The part 170 collections estimate for the final rule decreased by approximately $6.2 million compared with the proposed rule primarily due to decreased billing for work related to new applications. As a result, the annual fee for each power reactor in the final rule increased by approximately 1.3 percent compared to the proposed rule.

The annual fee for power reactors is higher in FY 2010 than in FY 2009, primarily due to increased budgeted resources for licensing, international, oversight, and new reactor activities, and the increased fee-relief adjustment, which was a reduction in FY 2009. This increase is partially offset by a decrease in budgeted resources for incident response activities and higher estimated part 170 collections. The annual fees for power reactors are presented in §171.15.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2010, budgeted costs of approximately $18.2 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to 10 CFR part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. FY 2009 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2009 Final	FY 2010 Final
Total budgeted resources	$21.1	$24.1
Less estimated part 170 receipts	−6.1	−6.4
Net part 171 resources	15.0	17.7
Allocated generic transportation	+0.2	+0.4
Fee-relief adjustment	−0.1	+0.2
Billing adjustments	−0.1	0.0
Total required annual fee recovery	15.1	18.2

The required annual fee recovery amount is divided equally among 123 licensees, resulting in a FY 2010 annual fee of $148,000 per licensee. The value of total budgeted resources for this fee class is higher in FY 2010 than in FY 2009, due to increased budgeted resources for information technology and legal support and for spent fuel storage licensing and certification activities. This increase is partially offset by a decrease in reactor decommissioning inspection and licensing activities. The part 170 collections estimate for the final rule decreased by approximately eight percent due to decreased billings which resulted in a higher FY 2010 annual fee compared with the proposed rule.

e. Test and Research Reactors (Non-power Reactors)

Approximately $330,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2010. Table XV summarizes the annual fee calculation for test and research reactors for FY 2010. FY 2009 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR TEST AND RESEARCH REACTORS

[Dollars in millions]

Summary fee calculations	FY 2009 Final	FY 2010 Final
Total budgeted resources	$1.22	$1.31
Less estimated part 170 receipts	−0.87	−1.01
Net part 171 resources	0.35	0.30
Allocated generic transportation	+0.01	+0.01
Fee-relief adjustment	−0.00	+0.01
Billing adjustments	−0.01	−0.00
Total required annual fee recovery	0.35	0.33

This required annual fee recovery amount is divided equally among the four test and research reactors subject to annual fees and results in a FY 2010 annual fee of $81,700 for each licensee. The decrease in annual fees from FY 2009 to FY 2010 is due to a higher part 170 revenue estimate for license renewal activity. In the final rule, annual fee for the test and research reactors decreased slightly compared to the proposed rule due to a small decrease ($450) in generic transportation resources allocated to this fee class.

f. Rare Earth Facilities

The agency does not anticipate receiving an application for a rare earth facility this fiscal year, so no budget resources are allocated to this fee class, and no annual fee will be published in FY 2010.

g. Materials Users

Table XVI shows the calculation of the FY 2010 annual fee amount for materials users licensees. FY 2009 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17. (Individual values may not sum to totals due to rounding.)

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2009 Final	FY 2010 Final
Total budgeted resources	$28.7	$28.8
Less estimated part 170 receipts	−1.7	−1.8
Net part 171 resources	27.0	27.0
Allocated generic transportation	+0.8	+0.8
Fee-relief adjustment/LLW surcharge	+0.6	+0.9
Billing adjustments	−0.1	−0.0
Total required annual fee recovery	28.4	28.7

The total required annual fees to be recovered from materials licensees increases in FY 2010, mainly because of increases in the budgeted resources allocated to this fee class for legal support, information technology support, and enforcement activities. This is partially offset by a decrease in budgeted resources for licensing activities and higher estimated part 170 revenue resulting from the higher FY 2009 fees. Annual fees for all fee categories within the materials users fee class increase. The number of licensees decreased because of the transfer of licensees to the State of New Jersey, which became an Agreement State on September 30, 2009. In the final rule, annual fees for some licensees decrease slightly (fee categories 3.A., 3.C., 3.G., 3.I., 4.C., 5.A., and 17) compared to the proposed rule because of a small decrease ($25,000) in the generic transportation resources allocated to this fee class.

To equitably and fairly allocate the $28.7 million in FY 2010 budgeted costs to be recovered in annual fees assessed to the approximately 3,150 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for

allocating the generic and other regulatory costs to the diverse categories of licenses based on the NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $20 million in general costs (including allocated generic transportation costs) and is 1.5 for FY 2010. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of $259. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately $7.6 million in inspection costs, and is 2.2 for FY 2010. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2010, approximately $107,500 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs) has been allocated to holders of NRC human use licenses.

The annual fee to be assessed to each licensee also includes a share of the fee-relief adjustment of approximately $187,000 allocated to the materials users fee class (*see* Section III.B.1., "Application of Fee-Relief and Low-Level Waste Surcharge," of this document), and for certain categories of these licensees, a share of the approximately $719,000 in LLW surcharge costs allocated to the fee class. The annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVII shows the calculation of the FY 2010 generic transportation budgeted resources to be recovered through annual fees. FY 2009 values are shown for comparison. (Individual values may not sum to totals due to rounding.)

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2009 Final	FY 2010 Final
Total budgeted resources	$6.1	$6.6
Less estimated part 170 receipts	−$2.9	−$3.3
Net part 171 resources	$3.1	$3.3

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR part 71. The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2010 budgeted resources for generic transportation activities, including those to support DOE CoCs, are $3.3 million. The budgeted resources for these activities are higher in FY 2010 than in FY 2009, mostly due to an increase in budgeted resources for homeland security safeguards, licensing, and certification activities. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (*e.g.,* the fee-relief category for nonprofit educational institutions). In the final rule, the part 170 collections estimate increased by approximately $105,000 due to increased billings. The higher part 170 collections estimate for Transportation results in a lower annual fee for the DOE in the final rule compared to the proposed rule.

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30721; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. The NRC will continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities. The amount of the allocated generic resources is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered. Because of the increase in total budgeted resources for transportation, the generic transportation cost allocated to most fee classes is higher than the FY 2009 cost. Compared to the proposed rule, the generic transportation cost allocated to some fee classes decreased in the final rule. This resulted in decreases in annual fees for non-power reactors, fuel facilities, and some materials users.

The distribution of these costs to be recovered through annual fees to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee-exempt. For example, if 3 CoCs benefit the entire test and research reactor class, but only 4 of 32 test and research reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to test and research reactor annual fees equals ((4/32)*3), or 0.4 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2010

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
Total	82.7	100.0	$3.28

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2010—Continued

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class or DOE	Percentage of total CoCs	Allocated generic transportation resources
DOE	21.0	25.4	0.83
Operating Power Reactors	19.0	23.0	0.75
Spent Fuel Storage/Reactor Decommissioning	9.0	10.9	0.36
Test and Research Reactors	0.4	0.5	0.01
Fuel Facilities	13.0	15.7	0.52
Materials Users	20.3	24.5	0.80

The NRC is proposing to continue to assess an annual fee to DOE based on the part 71 CoCs it holds and not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes an increase for the fee-relief adjustment (*see* Section III.B.1, "Application of Fee-Relief and Low-Level Waste Surcharge," of this document), resulting in a total annual fee of $861,000 for FY 2010. This fee increase from last year is primarily due to an increase in budgeted resources for transportation activities and a higher percentage of the total number of CoCs. The FY 2010 final fee rule amount for DOE decreased by 2.8 percent compared to the proposed rule due to higher part 170 collections estimate used in the final rule.

4. Administrative Amendments

The NRC is updating some of the program codes found next to the materials users fee categories in § 171.16. The program codes were added in the FY 2008 final rule and the NRC plans to update the program codes as needed.

In addition, the NRC is editing footnote 4 in § 171.16 to use the same descriptive language that is used for fee category 2.A(f) "Other facilities" that footnote 4 references. This does not change the meaning of footnote 4 but provides consistency.

In summary, the NRC is—

1. Recovering the NRC's fee-relief shortfall by increasing all licensees' annual fees, based on their percent of the NRC budget;

2. Revising the number of NRC licensees to reflect that the State of New Jersey became an Agreement State effective September 30, 2009;

3. Establishing rebaselined annual fees for FY 2010; and

4. Making certain administrative changes for purposes of updating some program codes and providing rule consistency.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 3701) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies, unless using these standards is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2010, as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final rule. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

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

Public Protection Notification

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

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed under Title V of the IOAA (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines, the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States,* 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company,* 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976 by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission,* 554 F.2d 1094 (DC Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission,* 554 F.2d 1118 (DC Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission,* 554 F.2d 1109 (DC Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission,* 554 F.2d 1135 (DC Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission,* 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act (42 U.S.C. 4321);

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed OBRA–90, which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority, less appropriations from the NWF, be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriation Act (EWDAA) amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005. The FY 2006 EWDAA extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007. As a result, the NRC is required to recover through fees approximately 90 percent of its FY 2010 budget authority, less the amounts appropriated from the NWF and amounts appropriated for WIR and generic homeland security activities. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2010 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of CoCs, registrations of sealed source and devices, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees will be based on approximately 90 percent of the Commission's FY 2010 budget of $1,066.9 million not including the following items: funds appropriated from the NWF to cover the NRC's high-level waste program, amounts appropriated for WIR and generic homeland security activities, and the amount of funds collected from part 170 fees;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Part 171, which established annual fees for operating power reactors, effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States,* 846 F.2d 765 (DC.Cir. 1988), *cert. denied,* 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the DC Circuit Court of Appeals in *Allied Signal* v. *NRC,* 988 F.2d 146 (DC Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2010 budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2010. This final rule results in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and in decreases in annual fees charged to others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2010.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of, or additions to, systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

X. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801–808), the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

Authority: Section 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 623, Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w)); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 2. In § 170.11, the introductory text of paragraph (a)(1), is revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(1) A special project that is a request/report submitted to the NRC—

* * * * *

■ 3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $259 per hour.

■ 4. In § 170.21, in the table, fee category K is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections, and import and export licenses.

* * * * *

SCHEDULE OF FACILITY FEES

[*See* footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.	
1. Application for import or export of production and utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b)..	
Application—new license, or amendment; or license exemption request	$16,900
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license, or amendment; or license exemption request	$9,900
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,200
4. Application for export of facility components and equipment (examples provided in 10 CFR part 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	$2,600
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment to license	$780

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.,* 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989 will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989 will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989 through August 8, 1991 will not be billed to the applicant. Any professional hours expended on or after August 9, 1991 will be assessed at the applicable rate established in § 170.20.

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[4] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

■ 5. In §170.31, the table is revised to read as follows:

§170.31 Schedule of fees for materials licenses and other regulatory services, including inspections and import and export licenses.

* * * * *

SCHEDULE OF MATERIALS FEES

[*See* footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	Full Cost.
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	Full Cost.
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	Full Cost.
(b) Gas centrifuge enrichment demonstration facilities	Full Cost.
(c) Others, including hot cell facilities	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[*See* footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4]	
Application [Program Code(s): 22140]	$1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[4]	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310].	$2,400
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400].	Full Cost.
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities, and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost.
(b) Basic In Situ Recovery facilities [Program Code(s): 11500]	Full Cost.
(c) Expanded In Situ Recovery facilities [Program Code(s): 11510]	Full Cost.
(d) In Situ Recovery Resin facilities [Program Code(s): 11550]	Full Cost.
(e) Resin Toll Milling facilities [Program Code(s): 11555]	Full Cost.
(f) Other facilities [Program Code(s): 11700]	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000].	Full Cost.
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010].	Full Cost.
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820].	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.	
Application [Program Code(s): 11210]	$570
C. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	$10,200
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213]	$12,100
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$4,600
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under §170.11(a)(4). These licenses are covered by fee Category 3.D.	
Application [Program Code(s): 02500, 02511, 02513]	$6,600
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under §§ 170.11(a)(4).	
Application [Program Code(s): 02512, 02514]	$4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	$3,000
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	$6,100
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	$29,000
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03254, 03255]	$5,500

SCHEDULE OF MATERIALS FEES—Continued

[*See* footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03256]	$10,100
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	$1,900
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	$1,100
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$10,200
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	$3,500
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	$6,100
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320]	$5,800
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130].	$1,400
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	$320
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[6]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	$1,190
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5).	
Application [Program Code(s): 02710]	$1,400
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	$6,600
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101].	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	$4,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	$4,700
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	$3,400
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	$20,700
7. Medical licenses:	

SCHEDULE OF MATERIALS FEES—Continued

[*See* footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310]	$11,300
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	
Application [Program Code(s): 02110]	$8,100
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$2,300
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	$1,190
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	$8,400
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	$8,400
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$5,900
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	$990
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost.
2. Other Casks	Full Cost.
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$3,200
Inspections	Full Cost.
2. Users.	
Application	$3,200
Inspections	Full Cost.
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost.
11. Review of standardized spent fuel facilities	Full Cost.
12. Special projects:	
Including approvals, preapplication/licensing activities, and inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost.
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter.	Full Cost.
B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed.	Full Cost.
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$16,900
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities (i.e., Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.).	
Application—new license, or amendment; or license exemption request	$9,900
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	$4,200

SCHEDULE OF MATERIALS FEES—Continued

[*See* footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes applications for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license, or amendment; or license exemption request	$2,600
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	$780
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).[5]	
Category 1 Exports:	
F. Application for export of Category 1 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4).	
Application—new license, or amendment; or license exemption request	$16,900
G. Application for export of Category 1 materials requiring Executive Branch review, Commission review, and/or government-to-government consent.	
Application—new license, or amendment; or license exemption request	$9,900
H. Application for export of Category 1 materials requiring Executive Branch review and government-to-government consent.	
Application—new license, or amendment; or license exemption request	$6,200
I. Application for export of Category 1 material requiring government-to-government consent.	
Application—new license, or amendment; or license exemption request	$5,200
Category 2 Exports:	
J. Application for export of Category 2 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4).	
Application—new license, or amendment; or license exemption request	$16,900
K. Applications for export of Category 2 materials requiring Executive Branch review and/or Commission review.	
Application—new license, or amendment; or license exemption request	$9,900
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request	$4,700
Category 1 Imports:	
M. Application for the import of Category 1 material requiring Commission review.	
Application—new license, or amendment; or license exemption request	$4,900
N. Application for the import of Category 1 material.	
Application—new license, or amendment; or license exemption request	$4,200
Category 2 Imports:	
O. Application for the import of Category 2 material.	
Application—new license, or amendment; or license exemption request	$3,600
Category 1 Imports with Agent and Multiple Licensees:	
P. Application for the import of Category 1 material with agent and multiple licensees requiring Commission review.	
Application—new license, or amendment; or license exemption request	$5,700
Q. Application for the import of Category 1 material with agent and multiple licensees.	
Application—new license, or amendment; or license exemption request	$4,700
Minor Amendments (Category 1 and 2 Export and Imports):	
R. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment	$780
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,900
17. Master materials licenses of broad scope issued to Government agencies:	
Application	$73,800
18. Department of Energy:	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost.
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost.

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession-only licenses; issuances of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses, except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1.C. only.

(b) *Licensing fees*. Fees for reviews of applications for new licenses, renewals, and amendments to existing licenses, pre-application consultations and other documents submitted to the NRC for review, and project manager time for fee categories subject to full cost fees are due upon notification by the Commission in accordance with §170.12(b).

(c) *Amendment fees*. Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment, unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees*. Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5*. Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984 and July 2, 1990 rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989 will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989 will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports for which costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989 through August 8, 1991 will not be billed to the applicant. Any professional hours expended on or after August 9, 1991 will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1.A., 1.B., and 1.E. are not subject to fees under Categories 1.C. and 1.D. for sealed sources authorized in the same license, except for an application that deals only with the sealed sources authorized by the license.

[5] For a combined import and export license application for material listed in Appendix P to part 110 of this chapter, only the higher of the two applicable fee amounts must be paid.

[6] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

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

Authority: Section 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 7. In § 171.15, paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (c)(1), the introductory text of paragraph (c)(2) and the introductory text of paragraph (d)(1), and paragraphs (d)(2), (d)(3), and paragraph (e), are revised to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2010 annual fee for each operating power reactor which must be collected by September 30, 2010 is $4,784,000.

(2) The FY 2010 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2010 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2010 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2010 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession-only status and has spent fuel onsite, and for each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is $148,000.

(2) The FY 2010 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section) and an additional charge (fee-relief adjustment). The activities comprising the FY 2010 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2010 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section are reduced by the appropriations the NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, annual fees will be reduced. The activities comprising the FY 2010 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2010 fee-relief adjustment allocated to the operating power reactor class of licenses is $7.5 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2010 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately $72,200. This amount is calculated by dividing the total operating power reactor fee-relief adjustment ($7.5 million) by the number of operating power reactors (104).

(3) The FY 2010 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is $194,250. The FY 2010 spent fuel storage/reactor decommissioning fee-relief adjustment to be assessed to each operating power reactor, each power reactor in decommissioning or possession-only status that has spent fuel onsite, and to each independent

spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license, is approximately $1,579. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2010 annual fees for licensees authorized to operate a test and research (non-power) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under §171.11(a), are as follows:

Research reactor—$81,700

Test reactor—$81,700

■ 8. In §171.16, the introductory text of paragraph (b), paragraphs (c) and (d), and the introductory text of paragraph (e) are revised to read as follows:

171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(b) The annual fee is comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the fee-relief adjustment are shown in paragraph (e) of this section. The base annual fee is the sum of budgeted costs for the following activities:

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the receipt of a delinquent invoice requesting the outstanding balance due and/or denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
$450,000 to $6.5 million	$1,900
Less than $450,000	$400
Small Not-For-Profit Organizations (Annual Gross Receipts):	
$450,000 to $6.5 million	$1,900
Less than $450,000	$400
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	$1,900
Fewer than 35 employees	$400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	$1,900
Fewer than 20,000	$400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer 35 to 500 employees	$1,900
Fewer than 35 employees	$400

(d) The FY 2010 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2010 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2010 annual fees for materials licensees and holders of certificates, registrations, or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[*See* footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	$5,439,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	$2,047,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	$702,000
(b) Gas centrifuge enrichment demonstration facilities	$1,053,000
(c) Others, including hot cell facilities	$526,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers [Program Code(s): 22140]	$3,300
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310]	$9,300
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	$2,807,000
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400]	$1,111,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[*See* footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion-exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	$38,300
(b) Basic In Situ Recovery facilities [Program Code(s): 11500]	$36,300
(c) Expanded In Situ Recovery facilities [Program Code(s): 11510]	$41,100
(d) In Situ Recovery Resin facilities [Program Code(s): 11550]	$34,400
(e) Resin Toll Milling facilities [Program Code(s): 11555]	[5] N/A
(f) Other facilities [4] [Program Code(s): 11700]	[5] N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600, 12000]	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) [Program Code(s): 12010]	$12,400
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water [Program Code(s): 11820]	$8,600
B. Licenses that authorize only the possession, use, and/or installation of source material for shielding [Program Code(s): 11210]	$1,600
C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	$21,100
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]	$49,100
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]	$12,700
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee under Category 3.D. [Program Code(s): 02500, 02511, 02513]	$16,600
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license [Program Code(s): 02512, 02514]	$10,600
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]	$8,200
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]	$15,500
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]	$76,800
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03254, 03255]	$9,900
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03256]	$18,000
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]	$4,200
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]	$3,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[*See* footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$24,200
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	$9,100
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226]	$13,800
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320]	$28,200
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130]	$4,500
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section: [14]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	$4,100
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5) [Program Code(s): 02710]	$4,500
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	$15,000
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	$23,100
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	$14,500
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]	$11,900
B. Licenses for possession and use of byproduct material for field flooding tracer studies [Program Code(s): 03113]	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	$42,900
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [Program Code(s): 02300, 02310]	$21,300
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02110]	$45,100
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$7,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	$4,100
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	$12,600
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	$12,600
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	$8,800

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[*See* footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	$1,500
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	[6] N/A
2. Users	[6] N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
B. Site-specific decommissioning activities associated with unlicensed sites, whether or not the sites have been previously licensed	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies	$234,000
18. Department of Energy:	
A. Certificates of Compliance	[10] $861,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	$590,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2009, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession-only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (*e.g.,* human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] Other facilities include licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under Categories 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to the Department of Energy that are not funded from the Nuclear Waste Fund.

[11] *See* § 171.15(c).

[12] *See* § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section, as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section for a given FY, a negative fee-relief adjustment (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2010 fee-relief adjustment are as follows:

* * * * *

Dated at Rockville, Maryland, this 28th day of May 2010.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Chief Financial Officer.

Note: This appendix will not appear in the code of Federal Regulations.

Appendix A to This Final Rule—Regulatory Flexibility Analysis for the Final Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended at 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These standards were based on the Small Business Administration's most common receipts-based size standards and provides for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this rule are based on the NRC's size standards.

The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. In total, the NRC is required to bill approximately $911.1 million in fees for FY 2010.

OBRA–90 requires that the schedule of charges established by rulemaking should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by the NRC in identifying and determining the fees to be assessed and collected in any given FY.

The Commission is proposing to rebaseline its 10 CFR part 171 annual fees in FY 2010. Rebaselining fees results in higher annual fees for five classes of licensees (power reactors, spent fuel storage/reactor decommissioning, transportation, uranium recovery and materials users), and lower for one class of licensees (non-power reactors). Within the fuel facilities fee class, annual fees for most licensees increase, while the annual fee for one fee category decreases.

The Small Business Regulatory Enforcement Fairness Act (SBREFA) provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective.

The SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final RFA is prepared. As required by law, this analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2010 fee rule, as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees charged to those individuals, organizations, and companies licensed by the NRC, including those licensed under the NRC materials program. Comments received on previous proposed fee rules and the small entity certifications in response to previous final fee rules indicate that licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of fees on materials licensees. In FY 2009, about 26 percent of these licensees (approximately 1,000 licensees) qualified as small entities.

Commenters on previous fee rulemakings consistently indicated that the following would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soil testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be identical for both small and large firms.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to abandon the materials license altogether. Commenters estimated that the proposed rule would cause roughly 10 percent of the well-logging licensees to terminate their licenses immediately and approximately 25 percent to terminate before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship difficult for some facilities to meet.

Over 3,000 licenses, approvals, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some terminations were requested because the license was no longer needed or could be combined with registrations, indications are that the economic impact of the fees caused other terminations.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).

2. Base fees on frequency of use of licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that a maximum fee for small entities is the most appropriate and effective option for reducing the impact of fees on small entities.

III. Maximum Fee

The SBREFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined 10 CFR part 170 licensing and inspection fees and Agreement State fees for fee categories which were expected to have a substantial number of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the NRC used Washington's maximum Agreement State fee of $3,800 as the ceiling for total fees. Thus NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments, and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800, while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000 and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991,

as well as changes in the fee structure for materials licensees. The structure of fees NRC charged its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. Because of the 25 percent increase, in FY 2000 the maximum small entity annual fee increased from $1,800 to $2,300. However, despite the increase, total fees for many small entities were reduced because they no longer paid part 170 fees. Costs not recovered from small entities were allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities could continue to have a significant impact on materials licensees with relatively low annual gross receipts. Therefore, the NRC continued to provide the lower-tier small entity annual fee for small entities with relatively low gross annual receipts, manufacturing concerns, and for educational institutions not State or publicly supported with fewer than 35 employees. The NRC also increased the lower tier small entity fee by 25 percent, the same percentage increase to the maximum small entity annual fee, resulting in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC stated in the RFA for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the Chief Financial Officers Act. Accordingly, the NRC examined the small entity fees again in FY 2003 and FY 2005, determining that a change was not warranted to those fees established in FY 2001.

As part of the small entity review in FY 2007, the NRC also considered whether it should establish reduced fees for small entities under part 170. The NRC received one comment requesting that small entity fees be considered for certain export licenses, particularly in light of the recent increases to part 170 fees for these licenses. Because the NRC's part 170 fees are not assessed to a licensee or applicant on a regular basis (i.e., they are only assessed when a licensee or applicant requests a specific service from the NRC), the NRC does not believe that the impact of its part 170 fees warrants a fee reduction for small entities, in addition to the part 171 small entity fee reduction. Regarding export licenses, the NRC notes that interested parties can submit a single application for a broad scope, multi-year license that permits exports to multiple countries. Because the NRC charges fees per application, this process minimizes the fees for export applicants. Because a single NRC fee can cover numerous exports, and because there are a limited number of entities who apply for these licenses, the NRC does not anticipate that the part 170 export fees will have a significant impact on a substantial number of small entities. Therefore, the NRC retained the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2007 and FY 2008.

The NRC conducted an in-depth biennial review of the FY 2009 small entity fees. The review noted significant changes between FY 2000 and FY 2008 in both the external and internal environment which impacted fees for NRC's small materials users licensees. Since FY 2000, small entity licensees in the upper tier had increased approximately 53 percent. In addition, due to changes in the law, NRC is now only required to recover 90 percent of its budget authority compared to 100 percent recovery required in FY 2000. This ten percent fee relief has influenced the small materials users' annual fees. A decrease in the NRC's budget allocation to the small materials users also influenced annual fees in FY 2007 and FY 2008.

Based on the review, the NRC changed the methodology for reviewing small entity fees. The NRC determined the maximum small entity fee should be adjusted each biennial year using a fixed percentage of 39 percent applied to the prior two-year weighted average of small materials users fees for all fee categories which have small entity licensees. The 39 percent was based on the small entity annual fee for FY 2005, which was the first year the NRC was required to recover only 90 percent of its budget authority. The FY 2005 small entity annual fee of $2,300 was 39 percent of the two-year weighted average for all fee categories in FY 2005 and FY 2006 that had an upper tier small entity licensee. The new methodology allows small entity licensees to be able to predict changes in their fee in the biennial year based on the small materials fees for the previous two years. Using a two-year weighted average smoothes the fluctuations caused by programmatic and budget variables and reflects the importance of the fee categories with the majority of small entities. The agency also determined the lower tier annual fee should remain at 22 percent of the maximum small entity annual fee.

Therefore, for FY 2009 the NRC decreased the maximum small entity fee from $2,300 to $1,900 and decreased the lower tier annual fee from $500 to $400. The NRC is not making any changes to these fees in FY 2010 and plans to re-examine the small entity fees again in FY 2011.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 90 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $1,900 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $450,000, small governmental jurisdictions with a population of fewer than 20,000, small manufacturing entities that have fewer than 35 employees, and educational institutions that are not State or publicly supported and have fewer than 35 employees, reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2010.

Attachment 1 to Appendix A—U.S. Nuclear Regulatory Commission Small Entity Compliance Guide; Fiscal Year 2010

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NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Congressional Review Act requires all Federal agencies to prepare a written guide for each "major" final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a "major" rule under the Congressional Review Act. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2010 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2010 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity (listed in 10 CFR 2.810) must submit a completed NRC Form 526 "Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171" to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov.* The form can then be accessed by selecting "Business with NRC," then "NRC Forms," selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's "Materials Annual Fee Billing Handbook," NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees.resource@nrc.gov.* The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, Accounts Receivable/Payable Branch, at the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*—a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of $6.5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*—a manufacturing concern with an average of 500 or fewer employees based on employment during each pay period for the preceding 12 calendar months;

(3) *Small organizations*—a not-for-profit organization that is independently owned and operated and has annual gross receipts of $6.5 million or less;

(4) *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district, or special district, with a population of fewer than 50,000;

(5) *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR part 121).

(1) A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC-licensed activities for the company).

(3) Gross annual receipts include all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions from whatever sources derived (i.e., not solely receipts from NRC-licensed activities).

(4) A licensee who is a subsidiary of a large entity, including a foreign entity, does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16(c), the NRC has established two tiers of fees for licensees that qualify as a small entity under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
$450,000 to $6.5 million	$1,900
Less than $450,000	$400
Small Not-For-Profit Organizations (Annual Gross Receipts):	
$450,000 to $6.5 million	$1,900
Less than $450,000	$400
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	$1,900
Fewer than 35 employees	$400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	$1,900
Fewer than 20,000	$400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer	
35 to 500 employees	$1,900
Fewer than 35 employees	$400

Instructions for Completing NRC Small Entity Form 526

1. Complete all items on NRC Form 526 as follows: (**Note:** Incomplete or improperly completed forms will be returned as unacceptable.)

(a) Enter the license number and invoice number exactly as they appear on the annual fee invoice.

(b) Enter the North American Industry Classification System (NAICS).

(c) Enter the licensee's name and address exactly as they appear on the invoice. Annotate name and/or address changes for billing purposes on the payment copy of the invoice—include contact's name, telephone number, e-mail address, and company Web site address. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license.

(d) Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(i) A licensee who is a subsidiary of a large entity, including foreign entities, does not qualify as a small entity. The calculation of a firm's size includes the employees or receipts of all affiliates. Affiliation with another concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management, and identity of interest (often found in members of the same family), among others, are indications of affiliation. The affiliated business concerns need not be in the same line of business.

(ii) Gross annual receipts, as used in the size standards, include all revenue received or accrued by your company from all sources, regardless of the form of the revenue and not solely receipts from licensed activities.

(iii) NRC's size standards on a small entity are based on the Small Business Administration's regulations (13 CFR part 121).

(iv) The size standards apply to the licensee, not to the individual authorized users who may be listed in the license.

2. If the invoice states the "Amount Billed Represents 50% Proration," the amount due is not the prorated amount shown on the invoice but rather one-half of the maximum small entity annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies (either $950 or $200) for each category billed.

3. If the invoice amount is less than the reduced small entity annual fee shown on this form, pay the amount on the invoice; there is no further reduction. In this case, do not file NRC Form 526. However, if the invoice amount is greater than the reduced small entity annual fee, file NRC Form 526 and pay the amount applicable to the size standard you checked on the form.

4. The completed NRC Form 526 must be submitted with the required annual fee payment and the "Payment Copy" of the invoice to the address shown on the invoice.

5. 10 CFR 171.16(c)(3) states licensees shall submit a new certification with its annual fee payment each year. Failure to submit NRC Form 526 at the time the annual fee is paid will require the licensee to pay the full amount of the invoice.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which is either $1,900 or $400 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a"possession-only" license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

of the annual fee for that year. Such invoices state that the "amount billed represents 50% proration."

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee, and licensees must complete and return NRC Form 526 for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT RECEIVE A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy" of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, Accounts Receivable/Payable Branch, at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301–415–7554, e-mail the fee staff at *fees.resource@nrc.gov,* or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. 2010–14069 Filed 6–15–10; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Wednesday,
June 16, 2010

Part III

Department of Education

Centers for Independent Living Program—Training and Technical Assistance; Notices

DEPARTMENT OF EDUCATION

Centers for Independent Living Program—Training and Technical Assistance

Catalog of Federal Domestic Assistance (CFDA) Number: 84.400B.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority under the Centers for Independent Living Program—Training and Technical Assistance. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010, using American Recovery and Reinvestment Act of 2009 (ARRA) funds appropriated for the Centers for Independent Living (CIL) program authorized under title VII, chapter 1, part C of the Rehabilitation Act of 1973, as amended (the Act), and competitions in later years. We take this action to improve outcomes for individuals with significant disabilities by enhancing the quality of independent living (IL) services provided to those individuals and the efficiency of the delivery of those services by CILs funded through the CIL program.

DATES: *Effective Date:* This priority is effective July 16, 2010.

FOR FURTHER INFORMATION CONTACT: Sean Barrett, U.S. Department of Education, 400 Maryland Avenue, SW., room 5016, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7604 or by e-mail: *sean.barrett@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the CIL program is to maximize independence, productivity, empowerment, and leadership of individuals with disabilities and integrate these individuals into the mainstream of society.

CILs are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within a local community by individuals with disabilities and provide an array of IL services to individuals with significant disabilities, including the core services of information and referral, IL skills training, peer counseling, and individual and systems advocacy.

Each State has established a Statewide Independent Living Council (SILC) that jointly develops and signs the State Plan for Independent Living with the designated State unit; monitors, reviews, and evaluates the implementation of the State plan; and coordinates activities with the State Rehabilitation Council and other organizations related to issues that affect individuals with disabilities. A majority of a SILC's members are individuals with disabilities. Other members include CIL representatives and State agency representatives, as well as other appropriate individuals.

Through the ARRA, Congress has appropriated $87,500,000 for the CIL program to be obligated by FY 2010. Under section 721(b)(1) of the Act, the Department is required to reserve between 1.8 and 2 percent of the funds appropriated for the CIL program to provide training and technical assistance to CILs, agencies eligible to become CILs, and SILCs with respect to planning, developing, conducting, administering, and evaluating CILs.

Program Authority: 29 U.S.C. 796f(b).

Applicable Program Regulations: 34 CFR part 366.

We published a notice of proposed priority for this program in the **Federal Register** on March 22, 2010 (75 FR 13521). That notice contained background information and our reasons for proposing the particular priority.

There are no differences between the proposed priority and this final priority.

Public Comment: In response to our invitation in the notice of proposed priority, we did not receive any comments on the proposed priority.

Final Priority

Centers for Independent Living (CILs) Community-Based Training and Technical Assistance Project

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority to support a Training and Technical Assistance Project to assist CILs in one or more of the following important and challenging areas: Developing strategies to address the needs of underserved populations and underserved geographic areas; promoting community-based alternatives to institutionalization; assisting transition-age youths to succeed after secondary school; and providing IL services in rural settings.

To meet this priority, applicants must demonstrate all of the following in their applications:

(a) Evidence that the project team includes staff members with expertise in each of the priority topic areas on which the applicant is proposing to provide training and technical assistance;

(b) A sound plan for providing training and technical assistance and materials that (1) Is based on rigorous research, where available; (2) utilizes a broad range of available, accessible technologies and methodologies; and (3) is sufficient to provide training and technical assistance to as many CILs as possible.

(c) An assurance that the applicant will coordinate and collaborate with other training projects funded by the Department to ensure that its training activities are complementary and non-duplicative and that its dissemination activities are effective and efficient. At a minimum, the Training and Technical Assistance Project must coordinate with RSA's CILs Training and Technical Assistance Center.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action and have

determined that it is not "significant" under the terms of that Executive order.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed priority.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 9, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–14404 Filed 6–15–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Centers for Independent Living Program—Training and Technical Assistance; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.400B.

Dates: Applications Available: June 16, 2010.

Deadline for Transmittal of Applications: July 16, 2010.

Deadline for Intergovernmental Review: September 14, 2010.

I. Funding Opportunity Description

Purpose of Program: The purpose of the Centers for Independent Living (CIL) program is to maximize independence, productivity, empowerment, and leadership of individuals with disabilities and integrate these individuals into the mainstream of society.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register.**

Absolute Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Centers for Independent Living (CILs) Community-Based Training and Technical Assistance Project.

Program Authority: 29 U.S.C. 796f(b); American Recovery and Reinvestment Act of 2009, Pub. L. 111–5 (ARRA).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 366. (c) The notice of final priority, published elsewhere in this issue of the **Federal Register.**

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grant.

Estimated Available Funds: $1,325,303 from the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5 (ARRA).

Maximum Award: We will reject any application that proposes a budget exceeding $1,325,303 for a single budget period of 60 months. The Assistant Secretary for OSERS may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Entities that have experience in the operation of CILs.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.400B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 45 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier

New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: June 16, 2010.

Deadline for Transmittal of Applications: July 16, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 14, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) You must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Centers for Independent Living Program—Training and Technical Assistance—CFDA Number 84.400B must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the

Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sean Barrett, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5016, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.400B),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.400B),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 366.15 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of

this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

The funds awarded through this program were appropriated under the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (ARRA), and are subject to additional accountability and transparency reporting requirements, which are described in section 1512(c) of the ARRA. Grantees receiving funds provided by the ARRA must be able to distinguish these funds from any other funds they receive through this program. Recipients of ARRA funds will be required to submit quarterly reports on the expenditure of these funds no later than 10 days after the end of each calendar quarter through a centralized reporting Web site administered by the Office of Management and Budget (OMB): *http://www.federalreporting.gov.* The information reported at this Web site will be available to the Department, the White House, OMB, and the public on *http://www.Recovery.gov.* Further detail on the reporting requirements of Department of Education grantees under ARRA can be found at *http://www2.ed.gov/policy/gen/leg/recovery/section-1512.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Centers for Independent Living Program—Training and Technical Assistance grant is to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating CILs to the following eligible entities authorized under title VII of the Rehabilitation Act of 1973, as amended: Eligible agencies (*i.e.,* consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agencies), CILs, and Statewide Independent Living Councils (SILCs). 29 U.S.C. 796f(b)(1), 796f-5.

In annual performance reports, grantees are required to provide specific information on the number of training activities, they completed during the reporting period, the topics of each training program provided during that period, the number and types of participants served (*i.e.,* CILs, SILCs, or eligible agencies), and summary data from participant evaluations.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sean Barrett, U.S. Department of Education, 400 Maryland Avenue, SW., room 5016, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7604 or by e-mail: *sean.barrett@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 9, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–14405 Filed 6–15–10; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
June 16, 2010

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1, et al.
Federal Acquisition Regulation; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0076, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–42; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–42. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov*.

DATES: For effective dates and comment dates, see separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR Case. Please cite FAC 2005–42 and the specific FAR Case numbers. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–42

Item	Subject	FAR case	Analyst
I	American Recovery and Reinvestment Act (the RecoveryAct) of 2009—Whistleblower Protections	2009–012	Parnell.
II	Electronic Subcontracting Reporting System (eSRS)	2005–040	Cundiff.
III	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions.	2009–010	Jackson.
IV	Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008.	2008–003	Woodson.
V	Additional Requirements for Market Research (Interim)	2008–007	Blankenship.
VI	American Recovery and Reinvestment Act of 2009 (Recovery Act)—GAO/IG Access	2009–011	Chambers.
VII	New Designated Country—Taiwan	2009–014	Sakalos.
VIII	Nonavailable Articles	2009–013	Davis.
IX	Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (Interim).	2009–025	Chambers.
X	Compensation for Personal Services (Interim)	2009–026	Chambers.
XI	Payrolls and Basic Records (Interim)	2009–018	Woodson.
XII	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–42 amends the FAR as specified below:

Item I—American Recovery and Reinvestment Act (the Recovery Act) of 2009—Whistleblower Protections (FAR Case 2009–012)

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 74 FR 14633 on March 31, 2009, amending the FAR to implement the American Recovery and Reinvestment Act of 2009 (the Recovery Act) with respect to section 1553 of Division A, Protecting State and Local Government and Contractor Whistleblowers. This rule prohibits non-Federal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information.

Item II—Electronic Subcontracting Reporting System (eSRS)(FAR Case 2005–040)

This rule amends the Federal Acquisition Regulation (FAR) to adopt as final, with changes, an interim FAR rule published in the **Federal Register** at 73 FR 21779 on April 22, 2008, amending the FAR to implement the use of the Electronic Subcontracting Reporting System (eSRS) to fulfill small business subcontracting reporting requirements. The eSRS, a web-based system, replaces the Standard Forms 294 and 295 as the mechanism for submitting reports required by the small business subcontracting program. In addition, this rule adds a new Alternate III to FAR clause 52.219–9 to recognize that there is a circumstance under which contractors will need to use SF 294, rather than eSRS, to submit an Individual Subcontract Report. The contractor will use SF 294 if a contract is not reported in the Federal Procurement Data System because reporting it in that system may disclose information that would compromise national security.

Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (FAR Case 2009–010)

This rule adopts as final, with minor changes, the interim rule published in the **Federal Register** at 74 FR 14636 on March 31, 2009. The interim rule amended the FAR to implement section 6.2 of the Office of Management and Budget (OMB) Memorandum M–09–10, dated February 18, 2009, entitled "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009" (the Recovery Act). Section 6.2 of the OMB guidance mandates accountability and transparency relative to publicizing contract actions. The OMB guidance requires that the FAR be amended to reflect—

1. Unique requirements for posting of pre-solicitation notices;
2. Unique requirements for announcing contract awards;
3. Unique requirements for entering awards into the Federal Procurement Data System (FPDS); and
4. Unique requirements for actions that are not fixed–price or competitive.

OMB Memorandum M–09–15, dated April 3, 2009, entitled "Updated

Implementing Guidance for the American Recovery and Reinvestment Act of 2009," supplements, amends, and clarifies the initial guidance in OMB Memorandum M–09–10. The final rule makes the following amendments:

• FAR 5.704(a)(2) to clarify that modifications of orders are not required to be publicized at the preaward stage.

• FAR 5.704(b) to require contracting officers to identify proposed contract actions, funded in whole or in part by the Recovery Act, by using the instructions that are at FAR 5.704(b) and available in the Recovery FAQs at the GPE *https://www.fedbizopps.gov*.

• FAR 5.704(c) and 5.705(a) to ensure that the description required by FAR 5.207(a)(16) clearly defines the elements of the requirement to the general public.

•FAR 5.705(b) to require contracting officers to include in the description of the contract action a statement specifically noting if the action was not awarded competitively, or was not fixed-price, or was neither competitive nor fixed-price.

Item IV—Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (FAR Case 2008–003)

This final rule adopts, with changes, an interim rule published in the **Federal Register** at 74 FR 2731 on January 15, 2009. The rule amends the FAR to implement the requirements of Section 844 of the National Defense Authorization Act for Fiscal Year 2008. The interim rule required the head of an executive agency to make certain justification and approval documents relating to the use of noncompetitive procedures in Federal contracting be posted on the website of an agency and through FedBizOpps. The final rule requires that if the justification is a brand name justification under FAR 6.302–1(c) then it must be posted with the solicitation. Justifications must remain posted for a minimum of 30 days. The final rule clarifies that posting the justification does not apply if it would disclose the executive agency's needs and disclosure of such needs would compromise national security or create other security risks. The final rule also establishes procedures at FAR 13.501 similar to procedures at FAR 6.305. The rule is intended to enhance competition in Federal contracting and provide greater transparency to the taxpayer.

Item V—Additional Requirements for Market Research (FAR Case 2008–007) (Interim)

This interim rule amends the FAR at parts 10, 44, and 52 by adding market research requirements. This change implements Section 826 of Pub. L. 110–181, the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA). As a matter of policy, this provision of law is applied to contracts awarded by all executive agencies. This rule requires that market research must be accomplished before an agency places an indefinite-delivery/indefinite-quantity (ID/IQ) task or delivery order in excess of the simplified acquisition threshold. In addition, a prime contractor with a contract in excess of $5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold when the contractor is acting as a purchasing agent for the Government. This interim rule is applicable to any solicitations issued and contracts (to include any subcontracts issued under such contracts) awarded on or after the effective date of the rule.

Item VI—American Recovery and Reinvestment Act of 2009 (Recovery Act)—GAO/IG Access (FAR Case 2009–011)

This final rule adopts, with changes, the interim rule published in the **Federal Register** at 74 FR 14646 on March 31, 2009. This final rule amends the FAR to implement sections 902, 1514, and 1515 of the American Recovery and Reinvestment Act of 2009 (Recovery Act). Collectively, these sections provide for the audit and review of both contracts and subcontracts, and the ability to interview such contractor and subcontractor personnel under contracts containing Recovery Act funds.

These Recovery Act provisions are implemented in new alternate clauses to FAR 52.212–5 "Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items" and FAR 52.214–26 "Audit and Records—Sealed Bidding," and by amending FAR 52.215–2 "Audit and Records—Negotiation." For the Comptroller General, these alternate clauses provide specific authority to audit contracts and subcontracts and to interview contractor and subcontractor employees under contracts using Recovery Act funds. Agency Inspector Generals receive the same authorities, with the exception of interviewing subcontractor employees.

The changes to the interim rule clarify its application to supplemental agreements, and orders under task- or delivery-order contracts, involving Recovery Act funds.

Item VII—New Designated Country—Taiwan (FAR Case 2009–014)

This final rule adopts as final, without change, an interim rule implementing the designation of Taiwan under the World Trade Organization Agreement on Government Procurement, which took effect on July 15, 2009. This FAR change allows contracting officers to purchase goods and services made in Taiwan without application of the Buy American Act if the acquisition is covered by the World Trade Organization Agreement on Government Procurement.

Item VIII—Nonavailable Articles (FAR Case 2009–013)

This final rule amends FAR 25.104(a) to add certain items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality. This case is based on extensive market research by the Defense Logistics Agency. Unless the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality, the Buy American Act does not apply to acquisition of these items as end products, and the contracting officer may treat foreign components of the same class or kind as domestic components.

Item IX—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009–025) (Interim)

This interim rule amends the FAR to align the existing FAR clause 52.230–4 with the changes made in Cost Accounting Standards (CAS) Board clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

On March 26, 2008, the CAS Board published, without change from the proposed rule (72 FR 32829, June 14, 2007), a final rule in the **Federal Register** at 73 FR 15939 to utilize the clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns. This rule is necessary in order to maintain consistency between CAS and FAR in matters relating to the administration of CAS.

Item X—Compensation for Personal Services (FAR Case 2009–026) (Interim)

This interim rule amends the FAR to align the existing FAR 31.205(q)(2)(i) and (ii) with the changes made in Cost Accounting Standards (CAS) Board Standards 412, "Cost Accounting Standard for composition and measurement of pension cost," and 415, "Accounting for the cost of deferred compensation." Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

Item XI—Payrolls and Basic Records (FAR Case 2009–018) (Interim)

This interim rule implements changes that the Department of Labor (DOL) instituted regarding the submission of payroll data in their final rule, Protecting the Privacy of Workers: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, published in the **Federal Register** at 73 FR 77504 on December 19, 2008. The rule revises FAR 52.222–8, Payrolls and Basic Records, to delete the requirement for submission of full social security numbers and home addresses of individual workers, prime contractor, on weekly payroll transmittals as required on covered construction contracts. The rule requires contractors and subcontractors to maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting officer, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. The rule recognizes DOL's finding that complete social security numbers and home addresses for individual workers is personal information to the worker and that any unnecessary disclosure and submittal of such information creates an exposure to identity theft and the invasion of privacy for workers.

Item XII—Technical Amendments

Editorial changes have been made at FAR 31.205–6, 31.205–16, 49.505, and 52.222–34.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-42 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-42 is effective June 16, 2010, except for Items II, III, IV, VI, and VIII which are effective July 16, 2010.

Dated: June 8, 2010.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: June 2, 2010.

Edward Loeb,

Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: June 3, 2010.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2010–14184 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[FAC 2005–42; FAR Case 2009–012; Item I; Docket 2009–0009, Sequence 1]

RIN 9000–AL19

Federal Acquisition Regulation; FAR Case 2009–012, American Recovery and Reinvestment Act (the Recovery Act) of 2009— Whistleblower Protections

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the American Recovery and Reinvestment Act of 2009 (the Recovery Act) with respect to section 1553 of Division A, Protecting State and Local Government and Contractor Whistleblowers. This rule prohibits non-Federal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information.

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

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 74 FR 14633 on March 31, 2009, to implement the Recovery Act with respect to section 1553 of Division A, Protecting State and Local Government and Contractor Whistleblowers. A Technical Amendment was published in the **Federal Register** at 74 FR 22810 on May 14, 2009.

The comment period closed on June 1, 2009. Six comments from two respondents were received. The Councils considered the comments received and concluded that the interim rule should be converted to a final rule with minor changes.

The comments received are discussed below.

a.The first respondent submitted the following 4 comments.

Comment 1. The respondent believes that the prescription at FAR 3.907–7 is too broad and should be revised to limit application more specifically to work funded with the Recovery Act funds. Revised language is proposed for FAR 3.907–7 as follows: "Use the clause at 52.203–15, Whistleblower Protections under the ARRA of 2009 in—All solicitations and contracts entirely funded with Recovery Act funds; and All solicitations and contracts funded in part with Recovery Act funds for the work to be funded with those Recovery Act funds."

Response. Section 1553 prohibits reprisals against any employee of a contractor receiving "covered funds" for disclosing certain information related to "covered funds." The limitation of the applicability of the rule is created by the

definition of covered information, which means only information that the employee reasonably believes is evidence of gross mismanagement of the contract or subcontract related to covered funds, gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to covered funds. It does not apply to information relating to problems not associated with the use of covered funds.

Section 1553 defines "Covered funds" to mean any contract, grant, or other payment received by a contractor if—

(1) The Federal Government provides any portion of the money or property that is provided, requested, or demanded; and

(2) At least some of the funds are appropriated or otherwise made available by the Recovery Act.

As defined in section 1553, covered funds is broader than just funds appropriated or otherwise made available by the Recovery Act.

Since the prohibition of reprisals applies to any employee of the contractor receiving the covered funds, the clause prescription as stated in the interim rule at FAR 3.907–7 is correct. However, the Councils have revised the definition of "covered funds" at FAR 3.907–1 to be more consistent with the statutory definition, and have revised the flowdown in the clause at FAR 52.203–15(b) to apply only to subcontracts that are funded in whole or in part with the Recovery Act funds.

Comment 2. The respondent states that because section 1553 of the Recovery Act is implemented by FAR 52.203–15 and included in contracts for commercial items by FAR 52.212–5(b)(3), it is not necessary to amend paragraph (r) of FAR 52.212–4.

Response. The Councils agree. The newly added language at FAR 52.212–4(r) is deleted.

Comment 3. The respondent states that the clause at FAR 52.203–15 should be indicated as a "check-off" clause as has been noted for FAR 52.212–5(b)(4), and FAR 52.204–11 (FAR Case 2009–009).

Response. The Councils agree. However, it is not necessary to make any further changes to the rule. This is a checklist being interpreted correctly by the U.S. National Archives and Records Administration and the U.S. Government Printing Office.

Comment 4. The respondent states that it is unnecessary to include the reference to FAR 52.203–15 in paragraph (e)(1) of FAR 52.212–5 because this was incorporated under FAR Case 2009–011.

Response. The Councils partially agree. The Technical Amendment to the rule, published in the **Federal Register** at 74 FR 22810 on May 14, 2009, moved this paragraph to the Alternate II.

b. The second respondent submitted 2 comments to the interim rule.

Comment 1. The respondent believes that the rule should be amended to require the contracting officer to immediately forward the complaint ONLY to the Office of Inspector General (OIG).

Response. The Councils partially agree. The language in FAR 3.907–3(c) is revised to add "and to other designated officials in accordance with agency procedures (e.g., agency legal counsel") so that agencies are informed as well as the OIG.

Comment 2. The respondent believes that the Recovery Act grants authority concerning the extension of time for investigating complaints and the determination on whether or not to investigate or to discontinue an investigation to the IG, not to the agency head as stated in FAR 3.907–6(c)(1).

Response. The Councils agree that subsection (b) of section 1553 gives the authority to the IG. However, FAR 3.907–6(c)(1) reflects the wording of subsection (c)(3) of section 1553. The FAR did not create any new authority here.

In addition, the Councils added a reference, at FAR 52.203–15, to the web address where contractors may obtain a whistleblower poster developed by the Recovery Accountability and Transparency (RAT) Board.

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget review under section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies similar, but not identical, whistleblower protections to contractor and subcontractor employees as currently covered in FAR subpart 3.9. Likewise, this rule only applies to contracts awarded with Recovery Act funds.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Accordingly, the interim rule published in the **Federal Register** at 74 FR 14633 on March 31, 2009, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Amend section 3.907–1 by revising the definition of "Covered funds" to read as follows:

3.907–1 Definitions.

* * * * *

Covered funds means any contract payment, grant payment, or other payment received by a contractor if—

(1) The Federal Government provides any portion of the money or property that is provided, requested, or demanded; and

(2) At least some of the funds are appropriated or otherwise made available by the Recovery Act.

* * * * *

■ 3. Amend section 3.907–3 by revising paragraph (c) to read as follows:

3.907–3 Procedures for filing complaints.

* * * * *

(c) A contracting officer who receives a complaint of reprisal of the type described in 3.907–2 shall forward it to the Office of Inspector General and to other designated officials in accordance with agency procedures (*e.g.*, agency legal counsel).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 52.203–15 by revising the date of the clause, and paragraphs (a) and (b) to read as follows:

52.203–15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.

* * * * *

WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUN 2010)

(a) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act).

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are funded in whole or in part with Recovery Act funds.

* * * * *

52.212–4 [Amended]

■ 5. Amend section 52.212–4 by removing the clause date "(Mar 2009)" and adding "(JUN 2010)" and removing from paragraph (r) "Section 1553 of the American Recovery and Reinvestment Act of 2009 relating to whistleblower protections for contracts funded under that Act;".

■ 6. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(3) "(Mar 2009)" and adding "(JUN 2010)" in its place; and

■ c. Revising paragraph (e)(1)(ii)(B) of Alternate II.

The revised text reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JUN 2010)

* * * * *

Alternate II * * *

* * * * *

(e)(1) * * *

(ii) * * *

(B) 52.203—15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111–5).

* * * * *

■ 7. Amend section 52.213–4 by revising the date of the clause and paragraph (a)(2)(vi) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (JUN 2010)

(a) * * *

(2) * * *

(vi) 52.244–6, Subcontracts for Commercial Items (JUN 2010).

* * * * *

■ 8. Amend section 52.244–6 by revising the date of the clause and paragraph (c)(1)(ii) to read as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

SUBCONTRACTS FOR COMMERCIAL ITEMS (JUN 2010)

* * * * *

(c)(1) * * *

(ii) 52.203–15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111–5), if the subcontract is funded under the Recovery Act.

* * * * *

[FR Doc. 2010–14189 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 19, 52, and 53

[FAC 2005–42; FAR Case 2005–040; Item II; Docket 2008–0001, Sequence 26]

RIN 9000–AK95

Federal Acquisition Regulation; FAR Case 2005–040, Electronic Subcontracting Reporting System (eSRS)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to require that contractors' small business subcontract reports be submitted using the Electronic Subcontracting Reporting System (eSRS), rather than Standard Form 294 - Subcontract Report for Individual Contracts and Standard Form 295 - Summary Subcontract Report.

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

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2005–040.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published an interim rule in the **Federal Register** at 73 FR 21779 on April 22, 2008, to implement in the FAR the use of the Electronic Subcontracting Reporting System (eSRS) to fulfill small business subcontracting reporting requirements. The eSRS is a web-based system under the umbrella of the Integrated Acquisition Environment. It replaces Standard Forms 294 and 295 as the mechanism for submitting reports required by the small business subcontracting program. The eSRS is intended to streamline the small business subcontracting program reporting process and provide the data to agencies in a manner that will enable them to more effectively manage the program.

The interim rule also amended FAR subpart 19.7 and related clauses to clarify existing small business subcontracting program requirements.

The FAR interim rule was not intended to change any of the requirements for the individual or summary subcontract reports. Its purpose was only to require submission of subcontract reports electronically, rather than in hardcopy.

Nineteen commenters submitted comments on the interim rule. A discussion of those comments and the changes made to the rule as a result of those comments is provided below.

The comments will be discussed in three overall categories. Those that pertain to the FAR rule itself, those that do not pertain to the FAR rule, and those that were submitted in response to the Councils' question in the **Federal Register** notice for the interim rule concerning whether the reporting period covered by a Summary Subcontract Report for a commercial subcontracting plan should remain the Government's fiscal year, or be the contractor's fiscal year.

The comments submitted that did not pertain to the FAR rule itself covered such things as changes that need to be made to eSRS to ensure that the instructions in that electronic system are consistent with this FAR rule, changes that need to be made to electronic business systems that interface with eSRS, and changes that need to be made to regulations that supplement the FAR. These comments will be referred to the appropriate Government officials for their consideration. These comments will not be addressed individually in this

Federal Register notice, except when it is necessary to address them in order to clarify existing policy.

Comments pertaining to the FAR rule.

Comment: One commenter recommended revising FAR 19.704(a)(10)(v) and 19.704(a)(10)(vi) by replacing "Government or Contractor official" with "Government official (for SSRs) and the Prime's Contracting official (for ISRs)." The reason for the change is that the Government reviews all Summary Subcontract Reports (SSRs) submitted by prime contractors and subcontractors, and whoever awarded the contract/subcontract is responsible for acknowledging receipt of, or rejecting, the Individual Subcontract Report (ISR). The contractor, therefore, must provide both the Government official's and the prime's contracting official's e-mail address to be consistent with FAR 19.705–6(h) and FAR 52.219–9(l)(1)(iii)(B) for ISRs, and (1)(2)(F) for SSRs.

Response: The Councils concur that both e-mail addresses need to be provided to subcontractors with subcontracting plans since these subcontractors will be required to submit both an ISR and an SSR. The Councils further believe that the proposed revisions to FAR 19.704 will make this aspect of the rule clearer and have revised the language in the final rule accordingly. The contractor must provide the email address of the official responsible for acknowledging receipt of or rejecting the reports, to be consistent with FAR 19.705–6(h) and FAR 52.219–9(l)(1)(iii)(B) for ISRs, and 52.219–9(l)(2)(F) for SSRs. Similar changes have been made to 52.219–9(d)(10)(v) and (vi).

Comment: Two commenters recommended revising the second sentence in FAR 19.705–6(h) to provide examples of what constitutes a report not being adequately completed (*i.e.*, errors, omissions, and incomplete data).

Response: Concur. The Councils believe that adding a list of examples such as, "errors, omissions, and incomplete data", should help clarify what is meant by not adequately completed. FAR 19.705–6(h) has been revised accordingly in the final rule.

Additionally, it should be noted that acknowledging receipt does not mean acceptance or approval of the report.

Comment: One commenter questioned the need to clarify in FAR clause 52.219–9 that "subcontracting plans are not required from subcontractors when the prime contract contains the FAR clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items". The commenter believes that FAR clause 52.219–9 should be included in contracts for commercial items.

Response: The clarification is consistent with FAR 52.212–5(e)(1) "Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items." The current FAR clause 52.212–5(e)(1) includes FAR clause 52.219–8 but does not include clause 52.219–9.

Comment: One commenter proposes changing FAR 52.219–9(l)(1) in order to make it consistent with FAR 19.705–6, Postaward Responsibilities of the Contracting Officer, and to enforce the cut-off date for report submission. The commenter recommends changing FAR 52.219–9(l)(1) from: "(1) ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned," to: "(1) ISR. The report is required for each contract containing an individual subcontract plan and shall be submitted to the contracting officer who approved the subcontracting plan. Failure to submit or late submission of reports shall be a breach of contract and will be documented as past performance for future acquisitions."

Response: Partially concur. The Councils do not agree with adding the sentence concerning failure to submit or late submission of reports. Paragraph (k)(2) of FAR clause 52.219–9 already addresses the breach of contract issue when the contractor or subcontractor fails to comply in good faith with the approved subcontracting plan. Reporting is an element of the plan.

Although the Councils have not adopted the changes that the commenter has recommended to the first two sentences in this paragraph of the interim rule, the Councils have revised the language in the final rule so that this paragraph does not address to whom the ISR is submitted. That issue is already adequately addressed in paragraph (l)(1)(iii) of FAR clause 52.219–9 and does not need to be addressed in paragraph (l)(1). Paragraph (l)(1)(iii) of FAR clause 52.219–9 is completely consistent with FAR 19.705–6(h).

Comment: One commenter recommended revising the second sentence of FAR clause 52.219–9(l)(l) to read, "The report is required for each contract containing an individual subcontracting plan and shall be submitted to the Contracting Officer from the Government agency who awarded the prime contract or as prescribed by agency regulations." The commenter stated that the rationale for this revision is to make this paragraph of the clause consistent with paragraphs (l)(1)(iii)(A) and (l)(2)(i)(F) of the clause. These paragraphs state that the authority to acknowledge receipt or reject ISRs resides with the Contracting Officer, and for SSRs resides with the Government agency awarding the prime contracts.

Response: Nonconcur. The Councils believe it is not necessary for this sentence to address to whom the report is submitted. That issue is already adequately addressed in paragraph (l)(1)(iii) of FAR clause 52.219–9 and does not need to be addressed in paragraph (l)(1) of the clause. Accordingly, this sentence has been revised in the final rule and now reads, "The report is required for each contract containing an individual subcontract plan."

Comment: One commenter recommended revising FAR 52.219–9(l)(2)(i)(F) to read, "The authority to acknowledge or reject SSRs in eSRS including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding prime contracts or as prescribed in agency regulations." The rationale the commenter provided for adding the words, "or as prescribed in agency regulations," is that the DoD Comprehensive Subcontracting Plan (Test Program) covers all Military Service and Defense Agency contracts. The Defense Contract Management Agency has the responsibility to perform management and oversight of plans included in this program, as delegated by the Military Services and Defense Agencies. Therefore, the Government agency awarding the prime contract would not be the entity acknowledging or rejecting SSRs under the DoD Comprehensive Subcontracting (Test Program).

Response: The Councils do not agree with adding the words, "or as prescribed in agency regulations" to this paragraph in the FAR clause. The Councils have, however, revised the language in the final rule to add the words, "unless stated otherwise in this contract." This language will alert the contractor to the fact that although authority to acknowledge or reject SSRs resides with the Government agency awarding the contracts, that agency may delegate the authority to another agency, but if this occurs, the information on what

Government entity has the authority will be contained in the contract itself.

Comment: One commenter stated that paragraph (d)(10)(iii) of FAR clause 52.219–9, Small Business Subcontracting Plan, adds the requirement to report information for Historically Black Colleges and Universities and Minority Institutions (HBCU/MI); however, HBCU/MIs are not included elsewhere in the clause when the clause references the various programs (*i.e.*, small business, HUBZones, *etc.*) and what should be contained in a subcontracting plan.

Paragraphs (c), (d)(1) to (9), (d)(11), (e), and Alternates I and II, refer to the requirements of a subcontracting plan. Defense Federal Acquisition Regulation Supplement (DFARS) 226.370–8, Goals and incentives for subcontracting with HBCU/MIs, states that when reviewing subcontracting plans submitted under FAR clause 52.219–9, Small Business Subcontracting Plan, the contracting officer shall ensure the contractor included awards to HBCU/MIs in the Small Disadvantaged Business (SDB) goal. In addition, DFARS 219.704, Subcontracting plan requirements, states the SDB goal shall include subcontracts with HBCU/MI, in addition to subcontracts with SDB concerns.

There is a disconnect between what is required on the report for the Department of Defense, Coast Guard, and National Aeronautics and Space Administration and what is required in the subcontracting plan. Recommend either including or deleting HBCU/MI throughout the clause for consistency. If deleting from the FAR clause, consider including coverage in the DFARS.

Response: The commenter states that the rule added the requirement to report information for HBCUs/MIs and suggests revising FAR clause 52.219–9 to add HBCUs/MIs to the entities listed in the requirements for subcontracting plans, or remove the reference to HBCUs/MIs in the reporting requirements. The commenter states that either proposed change would make the language consistent with the other parts of the clause.

The Councils do not concur. This rule did not add the requirement to report information for HBCUs/MIs. The language in FAR clause 52.219–9(d)(10)(iii) concerning reporting subcontract awards to HBCUs/MIs was already in the FAR. The requirement was already in place for the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration. Standard Forms 294 and 295 both required these departments to report on awards to HBCUs/MIs.

The purpose of this rule is only to require the use of eSRS rather than Standard Forms 294 and 295, it is not to change any of the requirements for subcontracting plans or subcontract reports.

Comment: One commenter recommended modifying the second sentence in paragraph (l)(2)(iii) of FAR clause 52.219–9, Small Business Subcontracting Plan, to read, "The report, which can be submitted into eSRS, shall include…"

Response: Nonconcur. The Councils believe that the addition of this language is unnecessary and would lead to confusion. The Year-End Supplementary Report for Small Disadvantaged Businesses is a part of the SSR that is submitted at the close of each fiscal year. The SSR is submitted using eSRS. There is nothing in the FAR that provides for the Year-End Supplementary Report for Small Disadvantaged Businesses to be submitted in any way other than by using eSRS. If the words, "which can be submitted into eSRS," were added to the second sentence in FAR clause 52.219–9(l)(2)(iii), it would suggest that there is some other means for submitting this information and there is not.

Comment: One commenter recommended removing the last sentence of paragraph (b) of FAR clause 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and replacing it with the following: "If this contract contains an Individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report into eSRS at the completion of the contract." The commenter indicated that in this instance where the contractors will be using eSRS to submit the Individual Subcontract Report (ISR) it would be consistent to require the contractors to use eSRS to submit the Small Disadvantaged Business Participation Report. The commenter indicated that having the information submitted electronically would facilitate access to the information by multiple Government organizations.

Response: Nonconcur. The Councils do not believe it is necessary to require that the Small Disadvantaged Business Participation Report be submitted using eSRS when it is submitted with the final ISR. It is already likely that in this instance contractors will use eSRS to submit the Small Disadvantaged Business Participation Report, since it is expected to be a less burdensome means of submitting that report for contractors who are also submitting an ISR. Further, not all contractors required to submit Small Disadvantaged Business Participation Reports will also be required to submit ISRs, so this revision would not result in uniform electronic submission of the Small Disadvantaged Business Participation Report. The benefits to the Government of having the reports submitted electronically are not as great if not all of the reports are required to be submitted in that manner. Therefore, the Councils do not believe that revising the language in the interim rule to require some contractors to submit the Small Disadvantaged Business Participation Report in a particular manner is warranted.

Comment: One commenter has suggested revising paragraph (d)(10)(iii) of FAR clause 52.219–9 to include "Alaska Native Corporations and Indian Tribes that are not Small Businesses" and "Alaska Native Corporations and Indian Tribes that have not been certified by the Small Business Administration as Small Disadvantaged Businesses" to be consistent with (d)(1)(i) of the clause.

Response: The Councils acknowledge the commenter's concern that paragraph (d)(1)(i) of FAR clause 52.219–9 is inconsistent with paragraph (d)(10)(iii). The Councils have revised paragraph (d)(10)(iii) in the final rule to clarify that awards to Alaska Native Corporations and Indian Tribes shall be reported as awards to small business and small disadvantaged business concerns.

Comment: One commenter stated that the first sentence in FAR 19.704(a)(2) should be revised to read "Submit a new commercial plan, 30 working days before the end of the contractor's fiscal year, or 30 days prior to the expiration of the current subcontracting plan to the contracting officer."

Response: The Councils do not concur. The commenter did not provide any rationale for making this change. FAR 19.704(a)(2) does not have to do with submitting commercial plans. The Councils believe the commenter means FAR 19.704(d)(2). The commercial subcontracting plan covers the contractor's fiscal year. Commercial plans, therefore, expire at the end of the contractor's fiscal year. Adding, "or 30 days prior to the expiration of the current subcontracting plan" would, therefore, be redundant.

Comment: One commenter stated that FAR 19.705–2(e) states that a contract may have no more than one plan. This will not work for 20 year multiple award contracts. The commenter recommended having a new individual plan prior to each 5 year option to allow for other changes in addition to goals (including a change in the point of contact, or the items that are being

subcontracted and the concerns that will receive the subcontracts, *etc.*)

Response: The Councils do not concur. The FAR language means that a contract may have no more than one plan at any given time. There should not be one plan that covers the contract at time of award and then additional plans covering work that is added to the contract after award.

A contracting officer may negotiate changes to the subcontracting plan whenever they are necessary. The FAR does not prohibit having the plan change during the course of the contract, it merely prohibits having more than one plan apply to the contract at a time.

Comment: One commenter indicated that the contracting officer is responsible for action on Individual Subcontract Reports and Summary Subcontract Reports (SSRs) in eSRS. The current General Services Administration, Office of Small Business Utilization, Agency Coordinator, has been delegated this function for SSRs in lieu of the contracting officer. The commenter wants the contracting officer that awards a commercial subcontracting plan to review SSRs for compliance. However, the commenter believes it is better to have a central point rather than each regional office responsible for accepting/rejecting the data which is sent to Congress.

Response: The Councils note the comment. The commenter did not provide any particular recommendations. It is necessary to have the contracting officer that approved the commercial subcontracting plan acknowledge receipt of, or reject, the SSR because that individual is responsible for the contractor complying with that subcontracting plan, and submitting the SSR is a requirement under the plan. Contracting officers, however, may delegate duties, as provided in agency procedures. Further, eSRS is the central point for collecting the data which is provided to Congress. Government personnel other than the individual that acknowledged receipt of the SSR can review the data in eSRS.

Comment that does not pertain to the FAR rule but which is being addressed in order to clarify existing policy.

Comment: One commenter believes there is a need to accommodate changing small business size status in eSRS. The commenter stresses the need to ensure that the Federal Procurement Data System–Next Generation (FPDS-NG), eSRS, and agency contract systems are properly updated in order to ascertain whether a subcontracting plan is required, in the event that a company's size changes from large to small or vice versa, during contract performance.

Response: Non-concur. Although it is essential that the Central Contractor Registration, the Online Representations and Certifications Application and FPDS-NG reflect the current size status of the prime contractor, size status is no longer a consideration, in determining the need for a subcontracting plan, after contract award. The requirement for a subcontracting plan resides in the prime contract, and is contingent, among other things, on the size status of the prime contractor at the time of award. If the prime contractor was small at the time of award, there would have been no contractual requirement for a subcontracting plan. Even if the size status of the prime contractor were to change during contract performance, *e.g.*, as a result of growth, a novation agreement, or a non-novated merger acquisition, the terms and conditions of the prime contract regarding the subcontracting plan will not change.

Likewise, if the prime contract was awarded to a business that was other than small and the terms and conditions of the prime contract included a requirement for a subcontracting plan, then this requirement for a subcontracting plan will remain unchanged for the life of the contract, regardless of whether the size status of the prime contractor changes.

Comments on whether the reporting period covered by a SSR for a Commercial Subcontracting Plan should remain the Government's fiscal year or be the contractor's fiscal year.

The purpose of the interim rule was to require that small business subcontract reports be submitted using the eSRS, rather than Standard Form 294 and Standard Form (SF) 295. The FAR interim rule was not intended to change any of the requirements for the individual or summary subcontract reports.

The interim rule retained the requirement that a commercial subcontracting plan cover the contractor's fiscal year but the time period covered by the year-end SSR submitted for that subcontracting plan covers the Government's fiscal year. It also retained the requirement that the year-end SSR for a commercial subcontracting plan be submitted 30 days after the end of the Government's fiscal year.

As stated above, the interim rule retained the FAR requirement (reflected in the SF 295) that the SSR must cover subcontracting done during the Government's fiscal year.

However, the eSRS, which many agencies and contractors were already using, was deployed with instructions that informed the contractor that the year-end SSR for a commercial subcontracting plan should reflect subcontracting performed during the contractor's fiscal year. The eSRS instructions indicated that all other SSRs, those not tied to a commercial subcontracting plan, should cover the Government's fiscal year.

Since there was a discrepancy between the FAR and the instructions in eSRS itself, the **Federal Register** notice for the interim rule specifically solicited public comment on this issue.

The comments received in response to the question on what period the year-end SSR for a commercial plan should cover, the Government's fiscal year or the contractor's fiscal year, requires a review of the policy on commercial subcontracting plans and the year-end SSRs that are submitted for these plans.

The **Federal Register** notice for the interim rule stated that, "the Councils may consider adding further coverage in the FAR to mirror the instructions that are currently in SFs 294 and 295". The following sentence had been in SFs 294 and 295: "Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports". This sentence has been revised and added to FAR clause 52.219–9 to state "Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas."

Additionally, changes have been made to FAR parts 4, 19, and 53, and a new Alternate III added to FAR clause 52.219–9 to recognize that there is a circumstance under which contractors will need to use SF 294, rather than eSRS, to submit an ISR. If a contract is not reported in the FPDS because reporting it in that system may disclose information that would compromise national security, the contractor will use SF 294 to submit an ISR on that contract rather than submitting an ISR in eSRS.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new reporting, recordkeeping or other compliance requirements and the existing requirements pertain only to other than small businesses. The rule only requires that reports that were previously submitted in hardcopy now be submitted electronically.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because this final rule contains information collection requirements. Accordingly, the FAR Secretariat has forwarded a request for approval of a revision to the information collection requirements concerning OMB Control Number 9000–0006, Subcontracting Plans/Subcontracting Reporting for Individual Contracts, and OMB Control Number 9000–0007, Summary Subcontract Report, to the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.* Public comments concerning this request will be invited through a subsequent **Federal Register** notice.

List of Subjects in 48 CFR Parts 4, 19, 52, and 53

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Accordingly, the interim rule published in the **Federal Register** at 73 FR 21779 on April 22, 2008, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 1, 4, 19, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINSTRATIVE MATTERS

■ 2. Amend section 4.606 by adding paragraph (c)(5) to read as follows:

4.606 Reporting Data.

* * * * *

(c) * * *

(5) Actions that, pursuant to other authority, will not be entered in FPDS (*e.g.*, reporting of the information would compromise national security).

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 3. Amend section 19.704 by adding paragraphs (a)(10)(iii)(A) and (a)(10)(iii)(B), and revising paragraphs (a)(10)(v) and (a)(10)(vi) to read as follows:

19.704 Subcontracting plan requirements.

(a) * * *

(10) * * *

(iii) * * *

(A) The ISR shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(B) The SSR shall be submitted as follows: For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

* * * * *

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

* * * * *

19.705–6 [Amended]

■ 4. Amend section 19.705–6 by removing from the third sentence in paragraph (h) "completed" and adding "completed, for instance, if there are errors, omissions, or incomplete data" in its place.

■ 5. Amend section 19.708 by revising paragraph (b)(1), and removing from paragraph (b)(2) "Alternate I or II." and adding "Alternate I, II, or III." in its place.

The revised text reads as follows:

19.708 Contract clauses.

* * * * *

(b)(1) Insert the clause at 52.219–9, Small Business Subcontracting Plan, in solicitations and contracts that offer subcontracting possibilities, are expected to exceed $550,000 ($1,000,000 for construction of any public facility), and are required to include the clause at 52.219–8, Utilization of Small Business Concerns, unless the acquisition is set aside or is to be accomplished under the 8(a) program. When—

(i) Contracting by sealed bidding rather than by negotiation, the contracting officer shall use the clause with its Alternate I.

(ii) Contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705–2(d), the contracting officer shall use the clause with its Alternate II.

(iii) The contract action will not be reported in the Federal Procurement Data System pursuant to 4.606(c)(5), the contracting officer shall use the clause with its Alternate III.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.212–5 by revising the date of the clause; removing from paragraph (b)(11)(i) "(Apr 2008)" and adding "(JUL 2010)" in its place; and adding paragraph (b)(11)(iv) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JUL 2010)

* * * * *

(b) * * *

(11) * * *

____(iv) *Alternate III* ([JUL 2010) of 52.219–9.

* * * * *

■ 7. Amend section 52.219–9 by—

■ a. Revising the date of the clause, and paragraphs (d)(10)(iii), (d)(10)(v), and (d)(10)(vi);

■ b. Adding a sentence to the end of paragraph (l) introductory text.

■ c. Removing from paragraph (l)(1) introductory text "and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned";

■ d. Removing from paragraph (l)(2)(i)(F) "prime contracts." and adding "prime contracts unless stated otherwise in the contract." in its place;

■ e. Revising the introductory text of Alternate I and II, respectively; and

■ f. Adding Alternate III.

The revised and added text reads as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (JUL 2010)

* * * * *

(d) * * *

(10) * * *

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at *http://www.esrs.gov*. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

* * * * *

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

* * * * *

(l) * * * Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

* * * * *

Alternate I (Oct 2001). As prescribed in 19.708(b)(1)(i), substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

Alternate II (Oct 2001). As prescribed in 19.708(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

* * * * *

Alternate III (JUL 2010). As prescribed in 19.708(b)(1)(iii), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause;

(d)(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at *http://www.esrs.gov*. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the eSRS.

(l) *The Contractor shall submit a SF 294.* The Contractor shall submit SSRs using the web-based eSRS at *http://www.esrs.gov*. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) *SSR.* (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a

separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over $550,000 (over $1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(iii) All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

PART 53—FORMS

■ 8. Revise section 53.219 to read as follows:

53.219 Small Business Programs.

(a) The following form may be used in reporting small disadvantaged business contracting data: OF 312 (10/00), Small Disadvantaged Business Participation Report. (See subpart 19.12.)

(b) The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes) and women-owned small business subcontracting data, as specified in part 19: SF 294, (Rev. 1/2010) Subcontracting Report for Individual Contracts. SF 294 is authorized for local reproduction.

■ 9. Add section 53.301–294 to read as follows:

53.301–294 Subcontracting Report for Individual Contracts.

BILLING CODE 6820–EP–S

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(See instructions on reverse)

OMB No: **9000-0006**
Expires: 11/30/2010

Public reporting burden for this collection of information is estimated to average 55.34 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Acquisition Policy Division, Regulatory Secretariat, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY, OR SUBDIVISION COVERED

a. COMPANY NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

2. CONTRACTOR IDENTIFICATION NUMBER

3. DATE SUBMITTED

4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU:

☐ MAR 31 ☐ SEPT 30 YEAR

5. TYPE OF REPORT

☐ REGULAR ☐ FINAL ☐ REVISED

6. ADMINISTERING ACTIVITY *(Please check applicable box)*

☐ ARMY ☐ GSA ☐ NASA
☐ NAVY ☐ DOE ☐ OTHER FEDERAL AGENCY *(Specify)*
☐ AIR FORCE ☐ DEFENSE CONTRACT MANAGEMENT AGENCY

7. REPORT SUBMITTED AS *(Check one and provide appropriate number)*

☐ PRIME CONTRACTOR — PRIME CONTRACT NUMBER

☐ SUBCONTRACTOR — SUBCONTRACT NUMBER

8. AGENCY OR CONTRACTOR AWARDING CONTRACT

a. AGENCY'S OR CONTRACTOR'S NAME

b. STREET ADDRESS

c. CITY | d. STATE | e. ZIP CODE

9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS:

☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
10b. LARGE BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
10c. TOTAL *(Sum of 10a and 10b.)*		100.0%		100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
13. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) *(If applicable) (Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
14. HUBZone SMALL BUSINESS (HUBZone SB) CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
15. VETERAN-OWNED SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of 10c.)* (SEE SPECIFIC INSTRUCTIONS)				
16. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS *(Dollar Amount and Percent of 10c)* (SEE SPECIFIC INSTRUCTIONS)				
17. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT HAVE NOT BEEN CERTIFIED BY THE SMALL BUSINESS ADMINISTRATION AS SMALL DISADVANTAGED BUSINESSES *(Dollar Amount)* (SEE SPECIFIC INSTRUCTIONS)				
18. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT ARE NOT SMALL BUSINESSES *(Dollar Amount)* (SEE SPECIFIC INSTRUCTIONS)				

Previous Edition is Not Usable

STANDARD FORM 294 (REV. 6/2010)
Prescribed by GSA-FAR (48 CFR 53.219(a))

19. REMARKS

20a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	20b. TELEPHONE NUMBER	
	AREA CODE	NUMBER

GENERAL INSTRUCTIONS

1. This report is not required for small businesses.

2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting plans. The Summary Subcontract Report (SSR) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.

3. This form collects subcontract award data from prime contractors/ subcontractors that : (a) hold one or more contracts over $550,000 (over $1,000,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).

4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually, during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.

5. Only subcontracts involving performance in the United States or its outlying areas should be included in this report with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.

7. Subcontract award data reported on this form by prime contractors/ subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless you have been designated to receive an SB and SDB credit from an Alaska Native Corporation (ANC) or Indian tribe.

8. FAR 19.703 sets forth the eligibility requirements for participating in the subcontracting program.

9. Actual achievements must be reported on the same basis as the goals set forth in the contract. For example, if goals in the plan do not include indirect and overhead items, the achievements shown on this report should not include them either.

SPECIFIC INSTRUCTIONS

BLOCK 2: For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-866-705-5711 or via the Internet at http://www.dnb.com. The contractor should be prepared to provide the following information: (i) Company legal business name. (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized. (iii) Company physical street address, city, state and ZIP Code. (iv) Company mailing address, city, state and ZIP Code (if separate from physical). (v) Company telephone number. (vi) Date the company was started. (vii) Number of employees at your location. (viii) Chief executive officer/key manager. (ix) Line of business (industry). (x) Company Headquarters name and address (reporting relationship within your entity).

BLOCK 4: Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated on this block.

BLOCK 5: Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

BLOCK 6: Identify the department or agency administering the majority of subcontracting plans.

BLOCK 7: Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

BLOCK 8: Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

BLOCK 9: Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 16. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

BLOCKS 10a through 18: Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, service-disabled VOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 19. The amounts entered in Blocks 10a through 16 should reflect the revised goals.) There are no goals for Blocks 17 and 18. Under "Actual Cumulative," enter actual subcontract achievements (dollars and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards. However, the dollar amounts reported under "Actual Cumulative" must be for the same period of time as the dollar amounts shown under "Current Goal." For a contract with options, the current goal should represent the aggregate goal since the inception of the contract. For example, if the contractor is submitting the report during Option 2 of a multiple year contract, the current goal would be the cumulative goal for the base period plus the goal for Option 1 and the goal for Option 2.

BLOCK 10a: Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSB, VOSB, service-disabled VOSB, and HUBZone SBs. For DOD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs. Include subcontracts awarded to ANCs and Indian tribes that are not small businesses and that are not certified by the SBA as SDBs where you have been designated to receive their SB and SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive SB and SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company.

BLOCK 10b: Report all subcontracts awarded to large businesses (LBs) and any other-than-small businesses. Do not include subcontracts awarded to ANCs and Indian tribes that have been reported in 10a above.

BLOCK 10c: Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

BLOCKS 11 - 16: Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women or veterans).

BLOCK 11: Report all subcontracts awarded to SDBs (including WOSB, VOSB, service-disabled VOSBs, and HUBZone SB SDBs). Include subcontracts awarded to ANCs and Indian tribes that have not been certified by SBA as SDBs where you have been designated to receive their SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive their SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company. For DoD, NASA, and Coast Guard contracts, include subcontracting awards to HBCUs and MIs.

BLOCK 12: Report all subcontracts awarded to WOSBs (including SDBs, VOSBs (including service-disabled VOSBs), and HUBZone SBs that are also WOSBs).

BLOCK 13: (For contracts with DoD, NASA, and Coast Guard): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

BLOCK 14: Report all subcontracts awarded to HUBZone SBs (including WOSBs, VOSBs (including service-disabled VOSBs), and SDBs that are also HUBZone SBs).

BLOCK 15: Report all subcontracts awarded to VOSBs including service-disabled VOSBs (and including SDBs, WOSBs, and HUBZone SBs that are also VOSBs).

BLOCK 16: Report all subcontracts awarded to service-disabled VOSBs (including SDBs, WOSBs, and HUBZone SBs that are also service-disabled VOSBs).

BLOCK 17: Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 11, but have not been certified by SBA as SDBs.

BLOCK 18: Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 10a, but are not small businesses.

BLOCK 19: Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSB, service-disabled VOSB, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the six goals were not met.

DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

DISTRIBUTION OF THIS REPORT

For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Contract Management Agency (DCMA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

[FR Doc. 2010–14180 Filed 6–15–10; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 5, 8, 13, and 16

[FAC 2005–42; FAR Case 2009–010; Item III; Docket 2009–0010, Sequence 1]

RIN 9000–AL24

Federal Acquisition Regulation; FAR Case 2009–010, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, with minor changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Management and Budget (OMB) Memorandum M–09–10, entitled "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," (the Recovery Act) with respect to publicizing contract actions. The OMB issued Memorandum M–09–15, entitled "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," to supplement, amend, and clarify the initial guidance in OMB Memorandum M–09–10.

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

Applicability Date: This rule applies on or after the effective date of this rule to: (1) solicitations issued, (2) contracts awarded, (3) orders issued under task and delivery order contracts, and (4) modifications to orders issued under task and delivery order contracts.

FOR FURTHER INFORMATION CONTACT: Michael Jackson, Procurement Analyst, at (202) 208–4949, for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–010.

SUPPLEMENTARY INFORMATION:

A. Background

On February 17, 2009, the President signed the Recovery Act. On February 18, 2009, the Director of the Office of Management and Budget (OMB) issued initial implementing guidance, OMB Memorandum M–09–10. One of the provisions of the initial OMB guidance was to provide accountability and transparency relative to publicizing contract actions. The OMB guidance required that the FAR be amended to reflect—

1. Unique requirements for posting of presolicitation notices;
2. Unique requirements for announcing contract awards;
3. Unique requirements for entering awards into the Federal Procurement Data System (FPDS); and
4. Unique requirements for actions that are not fixed–price or competitive.

The OMB Memorandum M–09–15, dated April 3, 2009, entitled "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," supplements, amends, and clarifies the initial guidance issued on February 18, 2009. All significant updates to OMB Memorandum M–09–10 are outlined in section 1.5 of M–09–15. These updates are based on ongoing input received from the public, Congress, State and local government officials, grant and contract recipients, and Federal personnel.

The interim rule was published in the **Federal Register** at 74 FR 14636 on March 31, 2009, with a request for comments by June 1, 2009.

The interim rule implemented section 6.2 of the OMB Memorandum M–09–10. In addition, the interim rule enabled the Governmentwide Point of Entry (GPE) (*https://www.fedbizopps.gov*) to be leveraged for the purpose of fulfilling the requirements of sections 1526(c)(4) and 1554 of Division A of the Recovery Act.

Three respondents submitted seven comments in response to the interim rule.

B. Responses to Public Comments

Below are the comments received on the interim rule, along with the responses developed by the Councils.

1. Comment: In publicizing postaward notices, the Councils should require that contracting officers publicize the text of the entire contract awarded. A narrative description of the award only would hinder transparency since a summary would omit many key details that are essential benchmarks by which to measure the quality and effectiveness of Government contractors. Without this information, the public, Government watchdogs, and the news media would have a difficult time identifying waste, fraud, and abuse and excellent contract work, as well. While the Recovery Act specifies that a description of contracts be posted online, the FAR should be amended in order to realize the intent of the Act.

Response: The public may obtain copies of contracts using the Freedom of Information Act (FOIA) process in accordance with FAR subpart 24.2. The costs associated with redacting every Recovery Act contract action to guard against improper disclosure of proprietary, business confidential, or national security information would be prohibitive.

2. Comment: The case would have contracting officers "post preaward notices for orders exceeding $25,000 for 'informational purposes' only". On its face, this seems to apply to task and delivery orders placed competitively against multiple–award contract vehicles, such as indefinite–delivery–indefinite–quantity (IDIQ) contracts. Given that the regulations appear to be designed for non–FFP and/or non–competitive actions, can we confirm its justification and application to competitively awarded IDIQ orders?

Response: The requirement to post presolicitation and award notices on FedBizOpps GPE applies to all orders with a dollar value exceeding $25,000 regardless of competition procedures or pricing arrangements used, including those orders placed under Federal Supply Schedules, Governmentwide acquisition contracts, multiple–agency contracts, blanket purchase agreements, basic ordering agreements, and indefinite delivery type contracts. Additionally, if noncompetitive procedures or non–fixed–price arrangements were used for award of the order, then the contracting officer must provide the rationale required by FAR 5.705(b) in the award notice.

3. Comment: The case mandates that FedBizOpps notices "describe supplies and services in a narrative that is clear and unambiguous to the general public." The phrase, "clear and unambiguous to the general public" is itself ambiguous. Will there be supplemental guidance or definitions to avoid inevitable protests based on subjective interpretations of requirements descriptions? Suggest replacing the term "clear and unambiguous to the general public" with specific content elements required to satisfy the goals of providing appropriate information.

Response: The phrase "clear and unambiguous to the general public" is being replaced with "clear and concise language" to alleviate some confusion

associated with the word "unambiguous." This word is subject to interpretation by the reader. However, care must be taken not to tie the hands of the contracting officer with an overly restrictive description of the requirement that would result in limiting competition. The OMB Memorandum M–09–15 also advises that agencies should ensure that descriptions of procurements use language appropriate for a more general audience, avoiding industry–specific terms and acronyms without plain language explanations. This concept has been added to the FAR.

4. *Comment:* The case requires contracting officers to enter data in the Federal Procurement Data System on any action funded in whole or in part by the American Recovery and Reinvestment Act (ARRA) funds. However, there is a disconnect between reporting in FedBizOpps and FPDS–Next Generation (NG) since FPDS–NG Contract Action Reports do not have a field for appropriation. A field for appropriation (*e.g.*, ARRA funds) needs to be added to FPDS–NG. Otherwise, research in two separate systems is required to determine if an award is actually using ARRA funds.

Response: Instructions for how to enter the Treasury Account Symbol (TAS) for the Recovery Act actions in FPDS are posted at the FPDS website and have been provided to every Federal agency through the OMB guidance. The TAS is being collected for the Recovery Act–funded awards. The full appropriation is not required by the statute or OMB guidance. The GSA is working on usability enhancements to FedBizOpps to allow for easier comparisons between the two systems.

5. Comment: In the instructions regarding the applicability date, recommend adding modifications to this sentence as follows: "This rule applies on or after the effective date of this rule to (1) solicitations issued, (2) contracts awarded, (3) orders issued under existing task and delivery order contracts, and (4) any monetary modifications as defined in the rule."

Response: The Councils have expanded the instructions regarding the applicability date to add a fourth action to include: "modifications to orders issued under task and delivery order contracts." This addition will address modifications that are subject to the Recovery Act postaward reporting. Modifications to orders issued under new contracts are covered by paragraph (2) "contracts awarded."

6. Comment: Recommend revising FAR 5.704(a)(2) to clearly indicate that modifications to task and delivery orders of $25,000 or more also require publication in FedBizOpps. This could be achieved by revising FAR 5.704(a)(2) to read as follows: "In addition, notices of proposed contract actions are required for orders and modifications of orders of $25,000 or more, funded in whole or in part by the Recovery Act, which are issued under task or delivery orders."

Response: The Councils have not expanded the FAR to include posting preaward notices of modifications to orders; the FAR continues to cover modifications at the postaward notice stage.

7. Comment: This new rule is silent on FAR section 5.205, Special situations. There is no discussion on posting special notices on R&D, A&E, OMB Circular A–76, and 8(a). Guidance is needed in this area considering that a portion of ARRA funding should be awarded to American Indians, which comprise the largest percentage of 8(a) firms.

Response: Guidance is not necessary on this issue.

C. Changes to the FAR

The final rule makes the following amendments:

- FAR 5.704(a)(2) to clarify that modifications of orders are not required to be publicized at the preaward stage.
- FAR 5.704(b) to require contracting officers to identify proposed contract actions, funded in whole or in part by the Recovery Act, by using the instructions that are at FAR 5.704(b) and available in the Recovery FAQs at the GPE *https://www.fedbizopps.gov*.
- FAR 5.704(c) and 5.705(a) to ensure that the description required by FAR 5.207(a)(16) clearly defines the elements of the requirement to the general public.
- FAR 5.705(b) to require contracting officers to include in the description of the contract action a statement specifically noting if the action was not awarded competitively, or was not fixed–price, or was neither competitive nor fixed–price.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the OMB guidance affects only internal Government operations and provides a strong preference for using small businesses for Recovery Act programs wherever possible. The final rule does not impose any additional requirements on small businesses.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 4, 5, 8, 13, and 16

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Accordingly, the interim rule published in the **Federal Register** at 74 FR 14636 on March 31, 2009, is adopted as a final rule with the following changes:

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 1. The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 5.704 by revising the section heading, paragraphs (a)(2), (b), and (c) to read as follows:

5.704 Publicizing preaward.

(a) * * *

(2) In addition, notices of proposed contract actions are required for orders exceeding $25,000, funded in whole or in part by the Recovery Act, which are issued under task or delivery order contracts. This does not include modifications to existing orders, but these modifications are covered postaward, see 5.705. These notices are for "informational purposes only," therefore, 5.203 does not apply. Contracting officers should concurrently use their usual solicitation practice (*e.g.*, e–Buy).

(b) Contracting officers shall identify proposed contract actions, funded in whole or in part by the Recovery Act, by using the following instructions which are also available in the Recovery FAQs under "Buyers/Engineers" at the Governmentwide Point of Entry (GPE) (*https://www.fedbizopps.gov*):

(1) If submitting notices electronically via ftp or email, enter the word "Recovery" as the first word in the title field.

(2) If using the GPE directly, select the "yes" radio button for the "Is this a Recovery and Reinvestment Act action" field on the "Notice Details" form (Step 2) located below the "NAICS Code" field. In addition, enter the word "Recovery" as the first word in the title field.

(c) In preparing the description required by 5.207(a)(16), use clear and concise language to describe the planned procurement. Use descriptions of the goods and services (including construction), that can be understood by the general public. Avoid the use of acronyms or terminology that is not widely understood by the general public.

■ 3. Amend section 5.705 by revising the section heading, paragraph (a), the introductory text of paragraph (b), and paragraph (c) to read as follows:

5.705 Publicizing postaward.

* * * * *

(a)(1) Publicize the award notice for any action exceeding $500,000, funded in whole or in part by the Recovery Act, including—

(i) Contracts;

(ii) Modifications to existing contracts;

(iii) Orders which are issued under task or delivery order contracts; and

(iv) Modifications to orders under task or delivery order contracts.

(2) Contracting officers shall identify contract actions, funded in whole or in part by the Recovery Act, by using the following instructions which are also available in the Recovery FAQS under "Buyers/Engineers" at the Governmentwide Point of Entry (GPE) (*https://www.fedbizopps.gov*):

(i) If submitting notices electronically via ftp or email, enter the word "Recovery" as the first word in the title field.

(ii) If using the GPE directly, select the "yes" radio button for the "Is this a Recovery and Reinvestment Act action" field on the "Notice Details" form (Step 2) located below the "NAICS Code" field. In addition, enter the word "Recovery" as the first word in the title field.

(3) In preparing the description required by 5.207(a)(16), use clear and concise language to describe the planned procurement. Use descriptions of the goods and services (including construction), that can be understood by the general public. Avoid the use of acronyms or terminology that is not widely understood by the general public.

(b) Regardless of dollar value, if the contract action, including all modifications and orders under task or delivery order contracts, is not both fixed–price and competitively awarded, publicize the award notice and include in the description the rationale for using other than a fixed–priced and/or competitive approach. Include in the description a statement specifically noting if the contract action was not awarded competitively, or was not fixed–price, or was neither competitive nor fixed–price. These notices and the rationale will be available to the public at the GPE, so do not include any proprietary information or information that would compromise national security. The following table provides examples for when a rationale is required.

* * * * *

(c) Contracting officers shall use the instructions available in the Recovery FAQs under "Buyers/Engineers" at the GPE (*https://www.fedbizopps.gov*) to identify actions funded in whole or in part by the Recovery Act.

[FR Doc. 2010–14220 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 13, and 24

[FAC 2005–42; FAR Case 2008–003 Item IV; Docket 2008–0001, Sequence 27]

RIN 9000–AL13

Federal Acquisition Regulation; FAR Case 2008–003, Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, with changes, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the National Defense Authorization Act for Fiscal Year 2008, Section 844 "Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts" (FY08 NDAA). Section 844 of the FY08 NDAA stipulates the requirements regarding the public availability of justifications and approval documents after the award of Federal contracts, except for information exempt from public disclosure.

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

FOR FURTHER INFORMATION CONTACT: Ernest Woodson, Procurement Analyst, at (202) 501–3775, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2008–003.

SUPPLEMENTARY INFORMATION:

A. Background

The National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110–181, Section 844, entitled "Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts," amends 10 U.S.C. 2304 and 41 U.S.C. 253 regarding procurements made under subsection (c) (*i.e.*, other than competitive procedures) to require public availability of the justification and approval (J&A) documents after contract award, except for information exempt from public disclosure under 5 U.S.C. 552. The provisions of section 844 require the head of an executive agency to make certain J&A documents relating to the use of noncompetitive procedures in contracting available on the website of an agency and through a governmentwide website selected by the Administrator for Federal Procurement Policy (OFPP) within 14 days of contract award. In the case of noncompetitive contracts awarded on the basis of unusual and compelling urgency, the documents must be posted within 30 days of contract award. The Competition in Contracting Act (Pub. L. 98–369) already requires that such J&A documents be made available for public inspection, subject to the exemptions from public disclosure provided in the Freedom of Information Act (FOIA) (5 U.S.C. 552).

The interim rule was published in the **Federal Register** at 74 FR 2731 on January 15, 2009, with an effective date of February 17, 2009, and a request for comments by March 16, 2009.

Nine respondents submitted nineteen comments in response to the interim rule. There were six categories of comments. These categories were applicability, exceptions, Federal Business Opportunities (FedBizOpps), protests, FOIA, and veterans.

Below are the comments received on the interim rule along with the responses developed by the Councils.

Applicability:

1. Comment: The rule states that the posting requirement applies to all contracts awarded under FAR 6.303–1 J&A documents. Is the intent to include sole-source justifications prepared under FAR subpart 13.5?

Response: Section 844 of the FY08 NDAA requires posting of documents containing the J&A required by subsection (f)(1) of 10 U.S.C. 2304 or 41 U.S.C. 253. Subsection (g) of those statutes provides for streamlined procedures that promote efficiency and economy in contracting and avoid unnecessary burdens for agencies and contractors for purchases not greater than the simplified acquisition threshold and for purchases made pursuant to the commercial-items test program. Accordingly, FAR 6.001 states that part 6 does not apply to acquisitions for contracts awarded using the simplified acquisition procedures and adds a reference to FAR 13.501 for the requirements pertaining to sole-source acquisitions of commercial items over the simplified acquisition threshold under subpart 13.5. FAR 13.501 implemented 10 U.S.C. 4052(g), which stipulates that an executive agency may not conduct a purchase on a sole-source basis unless the need to do so is justified in writing and approved in accordance with 10 U.S.C. 2304 or 41 U.S.C. 253. Thus, 10 U.S.C. 4052(g) imposed a justification process on sole-source actions over the simplified acquisition threshold done under the commercial-items test program. Similarly, though section 844 does not require posting of the FAR 13.501 J&As document, the Councils recommend, as a matter of policy, that J&As required by FAR 13.501 also be posted on FedBizOpps. Such posting is consistent with the President's focus on creating a "New Era of Open Government" and is reasonable because these actions exceed the simplified acquisition threshold and posting could enhance opportunities for competition on future requirements of such commercial items. It is also consistent with the existing requirement (FAR 5.102(a)(6)) to post a brand name justification in FedBizOpps along with the solicitation. Therefore, the rule has been revised to include the requirement to post FAR 13.501 justifications.

2. Comment: The rule states that the posting requirement applies to all contracts awarded under FAR 6.303–1 J&A document. Is the intent to include limited-source justifications for orders placed under Federal Supply Schedules in accordance with FAR 8.405–6?

Response: The posting requirement of Section 844 of the FY08 NDAA pertains to J&As executed pursuant to FAR subpart 6.3, it does not apply to the placement of orders under the Federal Supply Schedules. However, a separate FAR Case will implement section 843 of the NDAA, which requires posting of sole source task or delivery orders in excess of the Simplified Acquisition Threshold that are placed against multiple award contracts.

Exceptions:

3. Comment: Will there be a dollar threshold for when we need to post the J&A to the FedBizOpps website?

Response: There is no dollar threshold that triggers the requirement to post the J&A.

4. Comment: If a purchase meets an exception at FAR 5.202 does it need to be posted? Recommend making exceptions to posting J&A consistent with the FAR exceptions to posting synopses (FAR 5.202), solicitation (FAR 5.102(a)(5)), or contract awards (FAR 5.301(b)).

Response: The exceptions provided at FAR 5.102, 5.202, and 5.301 all derive from section 18 of the Office of Federal Procurement Policy (OFPP) Act. The requirement to make the J&A available for public inspection is not a new requirement, but previously implemented 10 U.S.C. 2304(f)(4) and 41 U.S.C. 253(f)(4). Only the requirement to post the J&A is new. Section 844 of the FY08 NDAA requires posting of the J&A and provides for exclusion of information exempt from public disclosure under section 552 of Title 5 U.S.C. (FOIA). As such, the FAR exceptions cannot automatically be applied to the posting of J&A. The Councils revised FAR 6.305 to add a new paragraph (e) to recognize that, in addition to redacting information in the J&A consistent with FOIA exemptions, there may also be cases where the J&A itself would be exempted from being posted per the FOIA exemptions. One such instance is when posting the J&A would disclose the executive agency's needs and disclosure would compromise national security or create other security risks. The Councils added this specific exception to the FAR because it is clearly consistent with FOIA and FAR 5.102, 5.202, and 5.301. Any other FOIA exemption that might authorize not posting the J&A must be determined in accordance with FAR subpart 24.2.

5. Comment: Under FAR 5.202(a), there are several items that would prevent the agency from posting information available on the web for a pre-solicitation announcement. Currently, there is no such exception to posting the J&A, which can lead to a situation where the J&A gets posted while the award does not. When this happens, FedBizOpps rejects posting the J&A because it can't find the related award. FedBizOpps also rejects the J&A when a previously posted award has been placed in archive status.

Response: The Councils have confirmed that FedBizOpps allows for the posting of a J&A even if there was no prior synopsis.

6. Comment: A major concern for members of the intelligence community regards the potential security threat from publication of even unclassified material. Publicizing systems designed with the broader community in mind cannot always protect the sensitive but unclassified nature of the intelligence business. If this new requirement cannot be deleted in whole, then they request an exemption to the public disclosure requirement for the Office of the Director of National Intelligence until an ancillary classified database is developed for the intelligence community and others with sensitive information.

Response: The contracting officer already has the authority to determine when not to disclose information that would compromise national security or create other security risks, for example per FOIA exemptions 1 and 7. However, as explained in the response to comment 4, the Councils did revise FAR 6.305 to recognize that, in addition to redacting information in the J&A consistent with FOIA exemptions, there may also be cases where the J&A itself would be exempted from being posted per the FOIA exemptions.

Websites:

7. Comment: Is the award number a fill in-the-blank for FedBizOpps? Will the award date be a fill in-the-box? It would be helpful so vendors know that it was already awarded.

Response: When the Government is posting a J&A to FedBizOpps, it has the option of associating the J&A with an existing award notice in the system. In this case, the system will automatically populate the contract award number and award date. Otherwise, the Government will need to manually enter the contract award number and award date into the J&A notice form. (Note: An award number is not required for a brand-name J&A since a brand name J&A must be posted with the solicitation.)

Protests:

8. Comment: When a vendor sees a J&A posted, will they have protest rights?

Response: The statute did not change any protest rights, including any timeliness requirements. The rationale for posting is just to make the process more transparent.

9. Comment: One commenter recommends the rule should recognize the date publicized on FedBizOpps as the date upon which a basis of protest is known under GAO rules of procedure. Another commenter states that if the protest timeliness rules are revised, there will likely be more protests.

Response: Timeliness requirements have not been revised by the statute. The Councils cannot unilaterally change either the Government Accounting Office (GAO) timeliness rules or Court of Federal Claims statutory jurisdiction. This rule is merely to make the process more transparent and help contractors to be apprised of possible future requirements that in the past were awarded on a sole source basis.

10. Comment: The commenter wants to know why the Government is waiting up to 14 days as this will not help protesters compete, and if a protest is lodged, could result in delays and additional cost to the Government.

Response: The intent is not to help protesters compete for the current requirement, but for the future. Section 844 of the FY08 NDAA, which this rule implements, states that the J&A must be made publicly available within 14 days after contract award.

Freedom of Information Act (FOIA):

11. Comment: One commenter stated FAR 6.305(c) requires contracting officers to be guided by FOIA exemptions. FOIA procedures address very specific mechanisms and timelines for review and release of information. Referencing FOIA procedures implies that the contracting officer should consult with the sole source contractor prior to release of information. The commenter questions whether such a step could be accomplished within the 14-day to 30-day requirement. Another commenter recommends that contractors be given the right to review J&A documents prior to release to ensure no proprietary information is included in the document, consistent with FOIA.

Response: These commenters are referring to the requirements of Executive Order 12600, that agencies establish procedures to notify submitters of records containing confidential commercial information, the disclosure of which the department or agency has reason to believe could reasonably be expected to cause substantial competitive harm, when those records are requested under the FOIA.

This executive order applies to the FOIA process that is used to determine financial information that might be exempt from public disclosure. Section 844 of the FY08 NDAA states only that the requirement to post J&As does not require the public availability of information that is exempt from public disclosure under FOIA. It does not mandate the FOIA process.

Additionally, FAR 5.102(a)(6) and 5.705(b) also require posting of J&As for brand name and the rationale for non-competitive awards in support of the Recovery Act, respectively. The FAR requires that these documents be redacted as necessary to preclude disclosure of proprietary information or information that would otherwise compromise national security. In these instances, the FOIA exemptions to public disclosure apply, but not the FOIA process.

Even though the FOIA process and, specifically, the submitter notification process in Executive Order 12600 do not apply, the Councils recognize there is an obligation to ensure that contractor proprietary information is not revealed. To ensure this does not happen, the Councils added language at FAR 6.305(e) that the contracting officer should provide the contractor an opportunity to review, but that this process must not delay posting within the established timelines.

12. Comment: Recommend FAR 6.305 be revised to clarify that contracting officers shall remove information from J&As that reveals sensitive or unclassified information such as Operations Security (OPSEC) that could harm the Government if released to the public.

Response: See Council's responses to comments 4 and 6.

13. Comment: Recommend removing names, titles, telephone numbers and email addresses of Government employees who develop, review, or approve the J&A, except for publicly known points of contact, such as buyers or contracting officers to protect key Government personnel from harm and to funnel queries from potential offerors to appropriate contracting personnel.

Response: Agencies have the flexibility to establish procedures whereby the actual J&A document includes only the names that the FAR requires for certification (FAR 6.303–2(a)(12) and (b)) and approval (FAR 6.304) purposes.

14. Comment: Recommend removing estimated values from the J&As that could reveal the Government's negotiating position on future buys.

Response: FAR 6.305(e) states that "(c)ontracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act…". Therefore, additional detail on information that is exempt from release, *e.g.*, estimated values, should not be in the FAR. Attempting to provide guidance in the FAR would most likely not list all possibilities, thereby creating the dangerous interpretation that, if it is not listed, it can be released. However, the contracting officer should consult as necessary with the local FOIA office and counsel to determine which information should be exempt from disclosure.

15. Comment: Recommend issuing implementing guidance on what to redact to promote consistency in understanding and application.

Response: See Council's response to comment number 14. The FAR is not the governing regulatory document for FOIA. Each agency's implementation of FOIA is located in its respective title of the Code of Federal Regulations. The interim rule amended the FOIA part of the FAR at 24.203(b) to add a reference to the excellent FOIA resources available from the Department of Justice.

16. Comment: A commenter asked how long a J&A posted on an agency website must remain available for public inspection.

Response: FedBizOpps requires a 30-day minimum posting requirement, although agencies are not precluded from posting the J&A for a longer period of time. The final rule revises FAR 6.305 to state J&As must remain posted for a minimum of 30 days.

17. Comment: The commenter recommends the Councils consider integrating the J&A documents into the database located at *www.usaspending.gov*.

Response: The law requires posting on the agency website and through a governmentwide website selected by the Administrator for Federal Procurement Policy. The Administrator for Federal Procurement Policy selected FedBizOpps as the governmentwide website.

Veterans:

18. Comment: This interim rule is an obstacle to veteran-owned small businesses obtaining Federal business opportunities on a sole source basis, which was the intent of Pub. L. 109–461. Contracting officers will see section 844 as reinforcing their position that soliciting on a competitive basis will provide a fair and reasonable price without having to prepare a J&A.

Response: This interim rule does not alter the criteria that must be satisfied before making a decision that an acquisition will be conducted on a sole-source basis. It also does not alter what documentation must be prepared to support that decision. This interim rule does not impact the authority the Department of Veterans Affairs was given under Pub. L. 109–461 to conduct noncompetitive sourcing under certain conditions or the procedures that the Department of Veterans Affairs puts in place to carry out noncompetitive sourcing. This interim rule merely states that, if a justification for other than full and open competition is issued pursuant to FAR 6.303–1 or 13.501, then that justification must be made publically available on the Government Point of Entry (GPE) website and the agency's website.

19. Comment: This interim rule is just another obstacle to the Department of Veterans Affairs determining how to implement Pub. L. 109–461.

Response: The interim rule implementing section 844 of the FY08 NDAA has no direct bearing on the implementation of Pub. L. 109–461.

Changes to the Interim rule. The final rule:

•Adds a new paragraph FAR 6.305(c) to require that, if the justification is a brand-name justification under FAR 6.302–1(c), then it must be posted with the solicitation;

•Requires that the justification remain posted for a minimum of 30 days;

•Adds a new paragraph FAR 6.305(f), to clarify that posting the justification does not apply if it would disclose the executive agency's needs and disclosure of such needs would compromise national security or create other security risks; and

•Establishes procedures at FAR 13.501 similar to procedures at FAR 6.305(b), 6.305(d), 6.305(e), and 6.305(f).

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal Federal agency procedures and will benefit small business entities by providing the opportunity for the review of J&A documents for contracts awarded noncompetitively, thereby increasing the opportunity for competition for future awards.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq*.

List of Subjects in 48 CFR Parts 5, 6, 13, and 24

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Accordingly, the interim rule published in the **Federal Register** at 74 FR 2731 on January 15, 2009, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 6 and 13 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 6—COMPETITION REQUIREMENTS

■ 2. Revise section 6.305 to read as follows:

6.305 Availability of the justification.

(a) The agency shall make publicly available the justification required by 6.303–1 as required by 10 U.S.C. 2304(l) and 41 U.S.C. 253(j). Except for the circumstances in paragraphs (b) and (c) of this section, the justification shall be made publicly available within 14 days after contract award.

(b) In the case of a contract award permitted under 6.302–2, the justification shall be posted within 30 days after contract award.

(c) In the case of a brand name justification under 6.302–1(c), the justification shall be posted with the solicitation (see 5.102(a)(6)).

(d) The justifications shall be made publicly available—

(1) At the Government Point of Entry (GPE) *www.fedbizopps.gov*;

(2) On the website of the agency, which may provide access to the justifications by linking to the GPE; and

(3) Must remain posted for a minimum of 30 days.

(e) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether the justification, or portions of it, are exempt from posting. Although the submitter notice process set out in EO 12600, entitled "Predisclosure Notification Procedures for Confidential Commercial Information," does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data, before making the justification available for public inspection, redacted as necessary. This process must not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (a) through (c).

(f) The requirements of paragraphs (a) through (d) do not apply if posting the justification would disclose the executive agency's needs and disclosure of such needs would compromise national security or create other security risks.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 3. Amend section 13.501 by—

■ a. Removing from paragraph (a)(1)(i) "section; and" and adding "section;" in its place;

■ b. Removing from paragraph (a)(1)(ii) "(41 U.S.C. 428a)." and adding "(41 U.S.C. 428a);" in its place; and

■ c. Adding paragraphs (a)(1)(iii) and (a)(1)(iv) to read as follows:

13.501 Special documentation requirements.

(a) * * *

(1) * * *

(iii) Make publicly available the justifications (excluding brand name) required by 6.305(a) within 14 days after contract award or in the case of unusual and compelling urgency within 30 days after contract award, in accordance with 6.305 procedures at paragraphs (b), (d), (e), and (f); and

(iv) Make publicly available brand name justifications with the solicitation, in accordance with 5.102(a)(6).

[FR Doc. 2010–14216 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 10, 44, and 52

[FAC 2005–42; FAR Case 2008–007; Item V; Docket 2010–0086, Sequence 1]

RIN 9000–AL50

Federal Acquisition Regulation; FAR Case 2008–007, Additional Requirements for Market Research

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 826 of the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA). Section 826 established additional requirements in subsection (c) of 10 U.S.C. 2377. As a matter of policy, these requirements are extended to all executive agencies. Specifically, the head of the agency must conduct market research before issuing an indefinite–delivery indefinite–quantity (ID/IQ) task or delivery order for a noncommercial item in excess of the simplified acquisition threshold. In addition, a prime contractor with a contract in excess of $5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold for or on behalf of the Government.

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

Applicability Date: The rule applies to any solicitations issued and contracts (to include any subcontracts issued under such contracts) awarded on or after the effective date.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 16, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–42, FAR Case 2008–007, by any of the following methods:

* Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008–007" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2008–007". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2008–007" on your attached document.

* Fax: 202–501–4067.

* Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–42, FAR Case 2008–007, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, at (202) 501–1900 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2008–007.

SUPPLEMENTARY INFORMATION:

A. Background

Section 826 of Pub. L. 110–181, the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA), amended 10 U.S.C. 2377(c), "Preliminary Market Research", to require the head of an agency to conduct market research appropriate to the circumstances before awarding a task or delivery order in excess of the simplified acquisition threshold. Head of the agency for purposes of section 826 (10 U.S.C. 2377) is defined in 10 U.S.C. 2376 and means the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Aeronautics and Space Administration. In addition, section 826 requires the head of an agency to take appropriate steps to ensure that any contractor of a contract in an amount in excess of $5 million for the procurement of items other than commercial items engages in such market research as may be necessary to carry out the requirements of 10 U.S.C. 2377(b)(2) before making purchases for or on behalf of the DoD. The statute also imposes a requirement on the Secretary of Defense to develop training and market research tools to assist contracting officers and contractors in performing appropriate market research. Two continuous learning modules, CLC 030, "Essentials of Interagency Acquisition/Fair Opportunity," and CLC 004, "Market Research," are available at *http://www.dau.mil*; these provide training on the conduct of market research and identify market research tools.

The Councils agree that section 826 should apply in the FAR to all executive agencies, consistent with Governmentwide applications being sought in other competition matters by the Office of Federal Procurement Policy (OFPP). The Councils have determined that the rule will be applicable to solicitations and contracts (to include any subcontracts issued under such contracts) awarded on or after the effective date of this rule.

The requirement for agencies to perform market research is addressed by adding FAR 10.001(a)(2)(v). This change is captured by inserting language to direct the contracting officer to conduct market research before awarding an ID/IQ task or delivery order for noncommercial items in excess of the simplified acquisition threshold. FAR 10.001(a)(2)(vi) is amended to delete the beginning text ("Agencies shall conduct market research") to bring parallel structure to all the items outlined under FAR 10.001(a)(2). FAR 10.001(d) is added to direct the contracting officer to the requirement in FAR 44.402(a)(2) and FAR clause 52.244–6 (Alternate I) when requiring that a contractor perform market research in contracts in excess of $5 million for the procurement of items other than commercial items. FAR 10.002(b)(1) is amended to clarify that the contracting officer may use market research conducted within 18 months prior to the award of the ID/IQ contract or the award of any task or delivery order if the information is still current, accurate, and relevant. FAR subpart 44.3 is amended to require the review of market research efforts during Contractors' Purchasing Systems Reviews to determine that market research is being accomplished. FAR 44.400, Scope of subpart, is revised to reflect the addition of "Section 826 of Public Law 110–181," which governs the changes to FAR 44.402(a)(2) and FAR clause 52.244–6 (Alternate I). FAR 44.402(a)(2) and FAR clause 52.244–6 (Alternate I) are amended to satisfy 10 U.S.C. 2377(b)(2) as well as to reflect the requirement in 10 U.S.C. 2377(c)(4) that a contractor must perform market research when the contractor is acting as a purchasing agent for the Government with respect to a purchase that exceeds the simplified acquisition threshold under a contract in excess of $5 million for the procurement of other than

commercial items. FAR 44.403, Contract clause, is revised to renumber the original paragraph as (a) and insert a new paragraph (b) to instruct contracting officers when to use FAR 52.244–6 (Alternate I).

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the contract dollar threshold for the application of the rule is in excess of $5 million. The number of small businesses receiving such contract awards is estimated to be statistically insignificant. Based on FY07 and FY08 data in the Federal Procurement Data system (FPDS) for task and delivery orders where the base and all options are over $5 million, the total number of awards to small businesses in FY07 was 2,024 and in FY08 was 2,399. Additionally, the number of small businesses serving as subcontractors is also very low. Based on FY07 and FY08 data in the FPDS for task or delivery orders where the base and all options fell below $5 million, the total number of awards to small businesses was 684,658 in FY07 and 697,029 in FY08. Since the FPDS does not track subcontractor data, reasonable estimates of the total figures were established. Therefore, of the total FY07 and FY08 figures, it is estimated that only 20 percent of each will apply to subcontractors. That is representative of 136,932 for FY07 and 139,406 for FY08.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–42, FAR Case 2008–007) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the provisions of section 826 went into effect upon enactment on January 28, 2008. Additionally, it will reduce the number of questionable decisions made due to insufficient market research on contracts in excess of $5 million dollars and reduce dollars spent unnecessarily due to the lack of market research information obtained, thereby further eliminating violations of the statute. This interim rule is applicable to solicitations issued and contracts (to include any subcontracts issued under such contracts) awarded on or after the effective date of this rule. The Councils believe that the interim rule in the FAR will provide contracting officers and affected prime contractors the relevant regulatory guidance needed when addressing the statutory requirements outlined in this interim rule. However, pursuant to Pub. L. 98–577 and FAR 1.501-3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 10, 44, and 52

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 10, 44, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 10, 44, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 10—MARKET RESEARCH

■ 2. Amend section 10.001 by—

■ a. Removing from paragraph (a)(2)(iv) "and"

■ b. Redesignating paragraph (a)(2)(v) as paragraph (a)(2)(vi) and adding a new paragraph (a)(2)(v);

■ c. Revising newly redesignated paragraph (a)(2)(vi); and

■ d. Adding a new paragraph (d).

The revised and added text to read as follows:

10.001 Policy.

(a) * * *

(2) * * *

(v) Before awarding a task or delivery order under an indefinite–delivery–indefinite–quantity (ID/IQ) contract (*e.g.*, GWACs, MACs) for a noncommercial item in excess of the simplified acquisition threshold (10 U.S.C. 2377(c)); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. (See 26.205).

* * * * *

(d) See 44.402(a)(2) and 52.244–6 (Alternate I) for the requirement for a prime contractor to perform market research in contracts in excess of $5 million for the procurement of items other than commercial items.

■ 3. Amend section 10.002 by revising paragraph (b)(1) introductory text to read as follows:

10.002 Procedures.

* * * * *

(b) * * *

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant. Market research involves obtaining information specific to the item being acquired and should include—

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 4. Amend section 44.303 by redesignating paragraphs (a) through (i) as paragraphs (b) through (j), respectively, and adding a new paragraph (a) to read as follows:

44.303 Extent of review.

* * * * *

(a) The results of market research accomplished;

* * * * *

■ 5. Revise section 44.400 to read as follows:

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) of Public Law 103–355 and Section 826 of Public Law 110–181 (10 U.S.C. 2377(c)).

■ 6. Amend section 44.402 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and adding a new paragraph (b) to read as follows:

44.402 Policy requirements.

* * * * *

(b) Under a contract that is over $5 million for the procurement of items other than commercial items, and under which the contractor is acting as a purchasing agent for the Government with respect to a purchase that exceeds the simplified acquisition threshold, the contractor shall, to the maximum extent practicable, conduct market research to determine—

(1) If commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(i) Meet the agency's requirements;

(ii) Could be modified to meet the agency's requirements; or

(iii) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and

(2) The extent to which commercial items or nondevelopmental items could be incorporated at the component level.

* * * * *

■ 7. Revise section 44.403 to read as follows:

44.403 Contract clause.

(a) The contracting officer shall insert the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.

(b) The contracting officer shall use the clause with its Alternate I when the acquisition value is in excess of $5 million.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.244–6 by revising the introductory text and adding Alternate I to read as follows:

52.244–6 Subcontracts for Commercial Items.

As prescribed in 44.403(a), insert the following clause:

* * * * *

Alternate I (JUN 2010). As prescribed in 44.403(b), the Contracting Officer shall substitute the following paragraph (d) for paragraph (d) of the base clause, and add the following paragraph (e):

(d) The Contractor shall include the terms of this clause, including this paragraph (d), but not including paragraph (e), in subcontracts awarded under this contract.

(e) To the maximum extent practicable, when the Contractor acts as a purchasing agent for the Government with respect to a purchase that exceeds the simplified acquisition threshold, the Contractor shall conduct market research (10 U.S.C. 2377(c)) to—

(i) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent; and

(ii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level.

[FR Doc. 2010–14213 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 13, 14, 15, and 52

[FAC 2005–42; FAR Case 2009–011; Item VI; Docket 2009–0012, Sequence 1]

RIN 9000–AL20

Federal Acquisition Regulation; FAR Case 2009–011, American Recovery and Reinvestment Act of 2009 (Recovery Act)—GAO/IG Access

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement the American Recovery and Reinvestment Act of 2009 (Recovery Act) with respect to sections 902, 1514, and 1515.

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

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–011.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published an interim rule in the **Federal Register** at 74 FR 14646 on March 31, 2009, to implement the Recovery Act with respect to sections 902, 1514, and 1515. Technical amendments to the interim rule were published in the **Federal Register** at 74 FR 22810 on May 14, 2009. The interim rule added alternate clauses to FAR 52.214–26 "Audit and Records—Sealed Bidding", FAR 52.212–5 "Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items", and FAR 52.215–2 "Audit and Records—Negotiation".

Further, the interim rule amended FAR 12.504(a)(7) for contracts using Recovery Act funds to apply 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, to commercial item subcontracts which are otherwise exempt when subcontractors are not required to provide cost or pricing data.

Comments were received from 5 respondents. The Councils considered the comments received and concluded that the interim rule, as revised by the technical amendments, should be converted to a final rule with minor changes to the clause prescriptions.

The comments received are addressed as follows:

1. Scope of records that can be examined.

Comment: A respondent states that the language in FAR 52.212–5(d)(i) and FAR 52.212–5(d)(ii) is unnecessarily broad by not limiting the scope of records that can be examined by the

Inspector General (IG) to only those records related or funded with Recovery Act funds. The respondent made the same comment with regard to the scope of the IG examination of records in FAR 52.214–26(c)(2) Alternate I and 52.215–2(d)(1) Alternate I. Likewise, a respondent expressed concern that the interim rule is not clear whether it applies only to task orders that are funded with Recovery Act funds.

Response: Section 902 of the Recovery Act provides that each contract awarded using funds made available by the Recovery Act shall provide the Comptroller General, and his representatives, with the access specified in the statutory provision. Section 1515 provides that each contract awarded using covered funds shall provide the appropriate IG with the access specified in the statutory provision. The Councils have revised the clause prescriptions to clarify that "contract," as defined in FAR 2.101, may mean bilateral contract modification or an individual task or delivery order. In the case of a bilateral modification that will use funds appropriated or otherwise made available by the Recovery Act, the contracting officer shall specify the applicability of the Recovery Act to that modification. In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the Recovery Act, the contracting officer will specify the task or delivery orders to which the Recovery Act applies.

2. Advance notice.

Comment: A respondent states that they believe an IG must provide reasonable advance notice to contractors and their employees before a review of contractor transactions to include when and where the review and interviews will occur; the topics to be covered; the employees affected; and the total amount of time required to conduct the review.

Response : The Councils disagree. The purpose of this rule is to put contractors on notice that they may need to make their records and employees available in the event a review is requested. The FAR is an acquisition regulation and the exact review procedures that the Comptroller General or his authorized representatives use to execute such procedures are not required to be detailed in the FAR.

3. Rights of contractor employees.

Comment: A respondent is concerned that the rule is silent on the protection of the rights of employees subject to an interview. The respondent recommends clearly outlining the rights of contractor employees to include prescribing the right to have counsel present during the interviews and clearly spelling out the process that the Government Accountability Office (GAO)/IG will use in both notifying employees of the intent to interview and the process to be followed.

Response: The Councils disagree. The FAR does not prescribe GAO processes or grant legal rights to contractors regarding GAO/IG interview processes.

4. IG authority to interview subcontractor employees.

Comment: A respondent commented that while they generally support the rule, they feel that the rule failed to include an IG authority to interview subcontractor employees.

Response: The Councils disagree. The FAR rule follows the statute. The Councils do not find evidence that there was an inadvertent omission in the statute with reference to allowing an IG to interview subcontractor employees.

5. Technical amendments.

Comment: A respondent believes that there are overlapping changes between this case and the Whistleblower case, FAR 2009–012, with respect to FAR clause 52.212–5, Alternate II. This same comment was made by a second respondent recommending the inclusion of the Whistleblower case in FAR clause 52.212–5, Alternate II.

Response: The Councils agree. FAC 2005–032, Technical Amendments, reconciled this issue by adding the Whistleblower reference to Alternate II of FAR 52.212–5.

6. Outside scope of this case.

a. Comment: A respondent commented that the application of reporting requirements is overly broad and recommends exempting contracts at or below the simplified acquisition threshold, commercial item contracts, and Commercially available off-the-shelf (COTS) contracts from the reporting requirements.

Response: Reporting requirements are covered under FAR Case 2009–009.

b. Comment: A respondent commented that FAR 12.504(a)(7) incorrectly states that 41 U.S.C. 254(c) and 10 U.S.C. 2313(c) are required "when a subcontractor is not required to provide cost or pricing data".

Response: This comment does not address a change made by this rule. The comment may be taken under consideration for appropriateness as a future case.

c. Comment: A respondent notes that if FAR 52.203–15 is intended to be flowed down to commercial item subcontractors, then it should also be included in the list of clauses under FAR 52.244–6.

Response: This comment is not directed at changes made under this rule and does not require a change to FAR Case 2009–011.

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget (OMB) review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Applicability to Commercial Item contracts

Section 8003 of Pub. L. 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 430), governs the applicability of laws to commercial items, and is intended to limit the applicability of laws to commercial items. The FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for commercial items. The same applies for subcontracts for commercial items.

Therefore, given sections 902 and 1515 of the Recovery Act, which requires Comptroller General and agency inspector general access to contractor and subcontractor records, the FAR Council has determined that the rule should apply to commercial items, as defined at FAR 2.101, both at the prime and subcontract levels.

C. Applicability to commercially available off-the-shelf (COTS) item contracts

Section 4203 of Pub. L. 104–106, the Clinger-Cohen Act of 1996 (41 U.S.C. 431), governs the applicability of laws to the procurement of COTS items, and is intended to limit the applicability of laws to them. The Clinger-Cohen Act provides that if a provision of law contains criminal or civil penalties, or if the Administrator for Federal Procurement Policy makes a written determination that it is not in the best interest of the Federal Government to exempt COTS item contracts, the provision of law will apply.

Therefore, given sections 902 and 1515 of the Recovery Act, which requires Comptroller General and agency IG access to contractor and subcontractor records, the Administrator for Federal Procurement Policy, has determined that the rule

should apply to COTS item contracts, as defined at FAR 2.101.

D. Applicability to Contracts at or Below the Simplified Acquisition Threshold

Section 4101 of Pub. L. 103–355, the Federal Acquisition Streamlining Act (FASA) (41 U.S.C. 429), governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to them. The FASA provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council (FARC) makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the simplified acquisition threshold, the law will not apply to them. Therefore, given sections 902 and 1515 of the Recovery Act, which requires Comptroller General and agency IG access to contractor and subcontractor records, the FARC has determined that this rule should apply to contracts or subcontracts at or below the simplified acquisition threshold, as defined at FAR 2.101.

E. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely requires contractors to make available existing records of transactions covered by the Recovery Act. Contractors are not obligated to create additional records.

F. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the OMB under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 12, 13, 14, 15, and 52

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Accordingly, the interim rule published in the **Federal Register** at 74 FR 14646 on March 31, 2009, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 12, 13, 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 12.301 by revising paragraph (b)(4)(ii) to read as follows:

12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(b) * * *

(4) * * *

(ii)(A) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), the contracting officer shall use the clause with its Alternate II.

(B)(*1*) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate II to that modification.

(*2*) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate II applies.

(C) The contracting officer may not use Alternate I when Alternate II applies.

* * * * *

PART 14—SEALED BIDDING

■ 3. Amend section 14.201–7 by revising paragraph (a)(2) to read as follows:

14.201–7 Contract clauses.

(a) * * *

(2)(i) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, use the clause with its Alternate I in all solicitations and contracts.

(ii)(A) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate I to that modification.

(B) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate I applies.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

■ 4. Amend section 15.209 by revising paragraph (b)(2) to read as follows:

15.209 Solicitation provisions and contract clauses.

* * * * *

(b) * * *

(2)(i) When using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5)—

(A) The exceptions in paragraphs (b)(1)(i) through (b)(1)(iii) are not applicable; and

(B) Use the clause with its Alternate I.

(ii)(A) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate I to that modification.

(B) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate I applies.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214–26 [Amended]

■ 5. Amend section 52.214–26 in the introductory text by removing "14.201–7(a)" and adding "14.201–7(a)(1)" in its place; and removing from Alternate I introductory text "14.201–7(a)(2)" and adding "14.201–7(a)(2)," in its place.

[FR Doc. 2010–14170 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–42; FAR Case 2009–014; Item VII; Docket 2009—0027, Sequence 1]

RIN 9000–AL34

Federal Acquisition Regulation; FAR Case 2009–014, New Designated Country—Taiwan

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to add Taiwan (known in the World Trade Organization as "the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei))" as a designated country, due to the accession of Taiwan to membership in the World Trade Organization Agreement on Government Procurement.

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

FOR FURTHER INFORMATION CONTACT: Ms. Lori Sakalos, Procurement Analyst, at (202) 208–0498, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–014.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 74 FR 40461 on August 11, 2009. On July 15, 2009, Taiwan became a designated country based on its accession to the World Trade Organization Agreement on Government Procurement. The interim rule added Taiwan to the list of World Trade Organization Government Procurement Agreement countries in FAR sections 22.1503, 25.003, 52.222–19, 52.225–5, 52.225–11, and 52.225–23. No comments were received as a result of the interim rule.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because, although this rule opens up Government procurement to the goods and services of Taiwan, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside for small businesses are exempt.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; because the final rule affects the certification and information collection requirement in the provision at FAR 52.225–11 currently approved under OMB Control Number 9000–0141, Buy American Act—Construction. The impact, however, is negligible.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR parts 22, 25, and 52, which was published in the **Federal Register** at 74 FR 40461 on August 11, 2009, is adopted as a final rule without change.

[FR Doc. 2010–14173 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005–42; FAR Case 2009–013; Item VIII; Docket 2009–0026; Sequence 1]

RIN 9000–AL40

Federal Acquisition Regulation; FAR Case 2009–013, Nonavailable Articles

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to revise the list of articles determined to be domestically nonavailable.

DATES: Effective Date: July 16, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–013.

SUPPLEMENTARY INFORMATION:

A. Background

The Buy American Act does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

A domestic nonavailability determination has been made for the articles listed in FAR 25.104(a). As stated at FAR 25.103, this determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand. Before acquisition of an article on the list, the procuring agency is responsible for conducting market research appropriate to the circumstances, including seeking domestic sources.

The Councils published a proposed rule in the **Federal Register** at 74 FR 39597 on August 7, 2009. The Councils received no public comments. Therefore, the Councils are adding "Yeast, active dry and instant active dry.", and "Pineapple, canned.", to the list of nonavailable articles at 25.104(a). The list is further corrected to read "Modacrylic fiber" in lieu of "Modacrylic fur ruff", as explained in the proposed rule.

In addition, as required by FAR 25.104(b), the entire list of nonavailable articles was published for public comment. Because no public comments were received, there will be no further changes to the list at this time.

This is not a significant regulatory action and, therefore, was not subject to review under section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the Councils have not identified any domestic small businesses that can fulfill the Government's requirements for the added items.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR part 25

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

25.104 [Amended]

■ 2. Amend section 25.104 in paragraph (a) by removing the article "Modacrylic fur ruff." and adding "Modacrylic fiber." in its place; and adding, in alphabetical order, the articles "Pineapple, canned." and "Yeast, active dry and instant active dry.".

[FR Doc. 2010–14176 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005–42; FAR Case 2009–025; Item IX; Docket 2010–0087, Sequence 1]

RIN 9000–AL58

Federal Acquisition Regulation; FAR Case 2009–025, Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to align the FAR with the revised Cost Accounting Standards (CAS) Board clause, Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns.

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

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 16, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–42, FAR Case 2009–025, by any of the following methods:

* Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–025" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009–025". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–025" on your attached document.

* Fax: 202–501–4067.

* Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–42, FAR Case 2009–025, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–025.

SUPPLEMENTARY INFORMATION:

A. Background

On March 26, 2008, the CAS Board published a final rule in the **Federal Register** at 73 FR 15939 to utilize the clause, Disclosure and Consistency of Cost Accounting Practices–Foreign Concerns, in CAS–covered contracts and subcontracts awarded to foreign concerns.

In order to maintain consistency between CAS and FAR in matters relating to the administration of CAS, the Councils are amending the FAR as follows:

1. FAR 30.201–4(c)(1) and (2), the prescription for use of FAR clause 52.230–4 is revised to reflect the amendments promulgated by the CAS Board on March 26, 2008.

2. FAR 30.201–4(d) is revised to include use of FAR clause 52.230–6, Administration of Cost Accounting Standards, in all contracts containing FAR clause 52.230–4 which is necessary based upon changes promulgated by the CAS Board on March 26, 2008.

3. FAR clause 52.230–4 is replaced in its entirety and re–titled "Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns" to reflect the amendments promulgated by the CAS Board on March 26, 2008.

4. FAR clause 52.230–6, Administration of Cost Accounting Standards, is revised to include reference to FAR clause 52.230–4 based on changes promulgated by the CAS Board on March 26, 2008.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from the application of the Cost Accounting Standards. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–42, FAR Case 2009–025) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements a final rule promulgated by the CAS Board which went into effect on April 25, 2008. Further, the CAS Board rule already went through the public rulemaking process. However, pursuant to Public Law 98–577 and FAR 1.501-3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 2. Amend section 30.201–4 by revising paragraph (c), and removing from paragraph (d)(1) "(b), or (e)" and adding "(b), (c), or (e)" in its place. The revised text to read as follows:

30.201–4 Contract clauses.

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.* (1) The contracting officer shall insert the clause at 52.230–4, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in negotiated contracts with foreign concerns, unless the contract is otherwise exempt from CAS (see 48 CFR 9903.201–1). Foreign concerns do not include foreign governments or their agents or instrumentalities.

(2) The clause at 52.230–4 requires the contractor to comply with 48 CFR 9904.401 and 48 CFR 9904.402 to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its disclosed and established cost accounting practices.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 52.230–4 to read as follows:

52.230–4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

As prescribed in 30.201–4(c), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES—FOREIGN CONCERNS (JUN 2010)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in 48 CFR 9904.

(2) (*Cost Accounting Standard (CAS)–covered Contracts Only*). If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202–1 through 48 CFR 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the U.S. Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the U.S. Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201–6(c) that the change is desirable and not detrimental to the interests of the U.S. Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the U.S. Government.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the U.S. Government. Such adjustment shall provide for recovery of the increased costs to the U.S. Government, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the U.S. Government was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in 48 CFR 9903 and 48 CFR 9904 and as to any cost adjustment demanded by the U.S. Government, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the U.S. Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause prescribed in FAR 30.201–4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of $650,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201–1.

(End of clause)

■ 4. Amend section 52.230–6 by revising the date of the clause; the second sentence of the introductory text of paragraph (b); the first sentence of paragraph (b)(3); the introductory text of paragraph (b)(4); paragraph (k)(1); the introductory text of paragraph (l); and paragraph (n) to read as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010)

* * * * *

(b) * * * If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230–2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices; paragraph (a)(4) of the clause at FAR 52.230–4, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns; or paragraph (a)(2) of the clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution.

* * * * *

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230–2 and FAR 52.230–5; or with paragraph (a)(3) of the clauses at FAR 52.230–3 and FAR 52.230–4, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. * * *

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230–2 and FAR 52.230–5; or by paragraph (a)(4) of the clauses at FAR 52.230–3 and FAR 52.230–4)—

* * * * *

(k) * * *

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230–2 and 52.230–5; or with paragraph (a)(3)(i) or (a)(4) of the clauses at FAR 52.230–3 and FAR 52.230–4; and

* * * * *

(l) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, 52.230–4, or 52.230–5—

* * * * *

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230–2, FAR 52.230–3, FAR 52.230–4, or FAR 52.230–5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

[FR Doc. 2010–14175 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–42; FAR Case 2009–026; Item X; Docket 2010–0088, Sequence 1]

RIN 9000–AL54

Federal Acquisition Regulation; FAR Case 2009–026, Compensation for Personal Services

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the FAR to align the FAR with the revised Cost Accounting Standards (CAS) Board standards 412, "Cost Accounting Standard for composition and measurement of pension cost;" and 415, "Accounting for the cost of deferred compensation."

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

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 16, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–42, FAR Case 2009–026, by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–026" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009–026". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–026" on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–42, FAR Case 2009–026, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–026.

SUPPLEMENTARY INFORMATION:

A. Background

The CAS Board published a final rule in the **Federal Register** at 73 FR 23961 on May 1, 2008, to amend CAS 412, "Cost Accounting Standard for composition and measurement of pension cost," and CAS 415, "Accounting for the cost of deferred compensation." The CAS Board specified that the accounting of Employee Stock Ownership Plan (ESOP) costs, regardless of type, would be covered by the provisions of CAS 415 only and not by CAS 412. The CAS Board also provided criteria in CAS 415 for measuring ESOP costs and assigning these costs to cost accounting periods.In order to maintain consistency between CAS and FAR in matters relating to the administration of CAS, the Councils are amending the FAR as follows:

1. FAR 31.205–6(q)(2)(i) is deleted in its entirety to reflect the amendments promulgated by the CAS Board on May 1, 2008.

2. FAR 31.205–6(q)(2)(ii) through (vi) are redesignated as paragraphs FAR 31.205–6(q)(2)(i) through (v) due to the deletion of the existing FAR 31.205–6(q)(2)(i).

3. Redesignated FAR 31.205–6(q)(2)(i) is revised to reflect the amendments promulgated by the CAS Board on May 1, 2008.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because affected small businesses are currently required to comply with CAS 412 and CAS 415. While small businesses are otherwise not subject to CAS, they are subject to selected standards for the purpose of determining allowability of costs under Government contracts. Among these standards are CAS 412 and CAS 415 as set forth in FAR 31.205–6(q). For small businesses currently using CAS 415, there will be no increase in cost or effort. For small businesses that must change from CAS 412 to CAS 415, the possible change from measuring costs in accordance with CAS 412 to CAS 415 would result, at most, in a negligible increase in administrative burden because of the similarities between CAS 412 and 415. The potential increase of administrative effort, albeit minor, will be offset by the uniformity and consistency in accounting for deferred compensation costs achieved by this rule that will benefit all entities by reducing their administrative burden. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in FAR part 31 affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–42, FAR Case 2009–026) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements a final rule promulgated by the CAS Board, which went into effect on June 2, 2008. Further, the CAS Board rule already gone through the public rulemaking process. However, pursuant to Public Law 98–577 and FAR 1.501-3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.205–6 by removing paragraph (q)(2)(i); redesignating paragraphs (q)(2)(ii) through (q)(2)(vi) as paragraphs (q)(2)(i) through (q)(2)(v), respectively; and revising the newly redesignated (q)(2)(i) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(q) * * *

(2) * * *

(i) The contractor measures, assigns, and allocates costs in accordance with 48 CFR 9904.415.

* * * * *

[FR Doc. 2010–14181 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 52 and 53

[FAC 2005–42; FAR Case 2009–018; Item XI; Docket 2010–0082, Sequence 1]

RIN 9000–AL53

Federal Acquisition Regulation; FAR Case 2009–018, Payrolls and Basic Records

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to revise the FAR clause, Payrolls and Basic Records. This revision implements a Department of Labor rule to protect the privacy of workers.

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

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 16, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–42, FAR Case 2009–018, by any of the following methods:

• Regulations.gov: *http://www.regulations.gov*.

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–018" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009–018". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–018" on your attached document.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–42, FAR Case 2009–018, in all correspondence related to this case. All comments received will be posted without change to *http://*

www.regulations.gov, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–42, FAR Case 2009–018.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule incorporates changes from the Department of Labor's (DOL) final rule, Protecting the Privacy of Workers: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, published in the **Federal Register** at 73 FR 77504 on December 19, 2008, that removed the requirement to submit complete social security numbers and home addresses of individual workers in weekly payroll submissions. The DOL concluded that such disclosure of personal information from the prime contractor was unnecessary and created an increased risk of privacy violations.

B. Discussion

As a result of the changes that DOL instituted regarding the submission of payroll data, the clause at FAR 52.222–8, Payrolls and Basic Records, is revised to delete the requirement for submission of full social security numbers and home addresses of individual workers from the prime contractor on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The information may be submitted in any form desired, but this rule provides a link to the DOL's Wage and Hour Division website where Optional Form WH–347 is available for the purpose of submitting payroll information. The rule requires contractors and subcontractors to maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting officer, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule provides relief for contractors from submitting more personal information than is necessary in the weekly payroll submissions and will not impose any measurable costs on contractors. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–42, FAR Case 2009–018) in all correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget (OMB) Control Number 1215–0149, assigned to the DOL. The interim rule affects the certification and information collection requirements in the provisions at FAR 52.222–8(b)(1) and 53.303–WH–347. The impact of this requirement will not impose any measurable costs on any private or public sector entity. As stated in the DOL rule, the Department believes that a reduction in the amount of information required on certified payrolls provided weekly under the Davis-Bacon Act is a reduction in regulatory compliance costs. While some contractors may have to slightly reconfigure their systems to produce the revised version, most have access to computerized systems that can easily be revised to remove data. Those contractors who currently use the Optional Form WH–347 will actually have an overall decrease of total administrative costs. The DOL published a notice in the **Federal Register** at 74 FR 2862 on January 16, 2009, announcing that the OMB approved the DOL information collection request titled "Protecting the Privacy of Workers: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, Effectiveness of Information Collection Requirements".

E. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the DOL has already published a final rule in the **Federal Register** at 73 FR 77504 on December 19, 2008, deleting the requirement for submission of full social security numbers and home addresses of employees as part of weekly payroll submissions for prime contractors. The effective date of the DOL rule was January 18, 2009. However, pursuant to Public Law 98–577 and FAR 1.501-3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 52 and 53

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 52 and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Amend section 52.222–8 by revising the date of the clause and paragraph (b)(1) to read as follows:

52.222–8 Payrolls and Basic Records.

* * * * *

PAYROLLS AND BASIC RECORDS (JUN 2010)

* * * * *

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph(a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an

individually identifying number for each employee (*e.g.*, the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at *http://www.dol.gov/whd/forms/wh347.pdf*. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.

* * * * *

PART 53—FORMS

■ 3. Amend section 53.303–WH–347 by revising the form to read as follows:

53.303–WH–347 Department of Labor Form WH–347, Payroll (For Contractor's Optional Use).

BILLING CODE 6820–EP–S

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/esa/whd/forms/wh347instr.htm)

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

U.S. Wage and Hour Division
Rev. Dec. 2008

OMB No.: 1215-0149
Expires: 12/31/2011

NAME OF CONTRACTOR ☐ OR SUBCONTRACTOR ☐ | ADDRESS

PAYROLL NO. | FOR WEEK ENDING | PROJECT AND LOCATION | PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT. OR ST.	(4) DAY AND DATE / HOURS WORKED EACH DAY							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS FICA	WITH-HOLDING TAX			OTHER	TOTAL DEDUCTIONS	(9) NET WAGES PAID FOR WEEK
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that is will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, ESA, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

(over)

Date _____

I, _____ _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____; that during the payroll period commencing on the
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____,

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Start. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

☐ – in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

☐ – Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

[FR Doc. 2010–14182 Filed 6–15–10; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31, 49 and 52

[FAC 2005–42; Item XII; Docket 2010–0078; Sequence 2]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

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

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1800 F Street, NW., Room 4041, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–42, Technical Amendments.

SUPPLEMENTARY INFORMATION: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

List of Subjects in 48 CFR Parts 31, 49, and 52

Government procurement.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 31, 49, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 31, 49, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–6 [Amended]

■ 2. Amend section 31.205–6 by removing paragraph (o)(6).

31.205–16 [Amended]

■ 3. Amend section 31.205–16 by removing the last sentence of paragraph (c).

PART 49—TERMINATION OF CONTRACTS

■ 4. Amend section 49.505 by revising paragraph (a) and the last sentence of paragraph (b) to read as follows:

49.505 Other termination clauses.

(a) *Personal service contracts*. The contracting officer shall insert the clause at 52.249–12, Termination (Personal Services), in solicitations and contracts for personal services (see Part 37).

(b) * * * The contracting officer shall also insert the clause in time-and-material contracts, and labor-hour contracts.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.222–34 [Amended]

■ 5. Amend section 52.222–34 by removing from paragraph (d) of Alternate I "provision" and adding "clause" in its place.

[FR Doc. 2010–14185 Filed 6–15–10; 8:45 am]
BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0077, Sequence 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–42; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of the summaries of the rules appearing in Federal Acquisition Circular (FAC) 2005–42 which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2005–42 which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–42 and the specific FAR case number. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

RULES LISTED IN FAC 2005–42

Item	Subject	FAR case	Analyst
I	American Recovery and Reinvestment Act (the RecoveryAct) of 2009—Whistleblower Protections	2009–012	Parnell.
II	Electronic Subcontracting Reporting System (eSRS)	2005–040	Cundiff.
III	American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions.	2009–010	Jackson.
IV	Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008.	2008–003	Woodson.
V	Additional Requirements for Market Research (Interim)	2008–007	Blankenship.
VI	American Recovery and Reinvestment Act of 2009 (Recovery Act)—GAO/IG Access	2009–011	Chambers.
VII	New Designated Country—Taiwan	2009–014	Sakalos.
VIII	Nonavailable Articles	2009–013	Davis.
IX	Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (Interim).	2009–025	Chambers.
X	Compensation for Personal Services (Interim)	2009–026	Chambers.
XI	Payrolls and Basic Records (Interim)	2009–018	Woodson.

RULES LISTED IN FAC 2005–42—Continued

Item	Subject	FAR case	Analyst
XII	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–42 amends the FAR as specified below:

Item I—American Recovery and Reinvestment Act (the Recovery Act) of 2009—Whistleblower Protections (FAR Case 2009–012)

This rule adopts as final, with changes, an interim rule published in the **Federal Register** at 74 FR 14633 on March 31, 2009, amending the FAR to implement the American Recovery and Reinvestment Act of 2009 (the Recovery Act) with respect to section 1553 of Division A, Protecting State and Local Government and Contractor Whistleblowers. This rule prohibits non-Federal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information.

Item II—Electronic Subcontracting Reporting System (eSRS)(FAR Case 2005–040)

This rule amends the Federal Acquisition Regulation (FAR) to adopt as final, with changes, an interim FAR rule published in the **Federal Register** at 73 FR 21779 on April 22, 2008, amending the FAR to implement the use of the Electronic Subcontracting Reporting System (eSRS) to fulfill small business subcontracting reporting requirements. The eSRS, a web-based system, replaces the Standard Forms 294 and 295 as the mechanism for submitting reports required by the small business subcontracting program. In addition, this rule adds a new Alternate III to FAR clause 52.219–9 to recognize that there is a circumstance under which contractors will need to use SF 294, rather than eSRS, to submit an Individual Subcontract Report. The contractor will use SF 294 if a contract is not reported in the Federal Procurement Data System because reporting it in that system may disclose information that would compromise national security.

Item III—American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Publicizing Contract Actions (FAR Case 2009–010)

This rule adopts as final, with minor changes, the interim rule published in the **Federal Register** at 74 FR 14636 on March 31, 2009. The interim rule amended the FAR to implement section 6.2 of the Office of Management and Budget (OMB) Memorandum M–09–10, dated February 18, 2009, entitled "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009" (the Recovery Act). Section 6.2 of the OMB guidance mandates accountability and transparency relative to publicizing contract actions. The OMB guidance requires that the FAR be amended to reflect—

1. Unique requirements for posting of pre-solicitation notices;

2. Unique requirements for announcing contract awards;

3. Unique requirements for entering awards into the Federal Procurement Data System (FPDS); and

4. Unique requirements for actions that are not fixed–price or competitive.

OMB Memorandum M–09–15, dated April 3, 2009, entitled "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009," supplements, amends, and clarifies the initial guidance in OMB Memorandum M–09–10. The final rule makes the following amendments:

• FAR 5.704(a)(2) to clarify that modifications of orders are not required to be publicized at the preaward stage.

• FAR 5.704(b) to require contracting officers to identify proposed contract actions, funded in whole or in part by the Recovery Act, by using the instructions that are at FAR 5.704(b) and available in the Recovery FAQs at the GPE *https://www.fedbizopps.gov*.

• FAR 5.704(c) and 5.705(a) to ensure that the description required by FAR 5.207(a)(16) clearly defines the elements of the requirement to the general public.

•FAR 5.705(b) to require contracting officers to include in the description of the contract action a statement specifically noting if the action was not awarded competitively, or was not fixed-price, or was neither competitive nor fixed-price.

Item IV—Public Disclosure of Justification and Approval Documents for Noncompetitive Contracts—Section 844 of the National Defense Authorization Act for Fiscal Year 2008 (FAR Case 2008–003)

This final rule adopts, with changes, an interim rule published in the **Federal Register** at 74 FR 2731 on January 15, 2009. The rule amends the FAR to implement the requirements of Section 844 of the National Defense Authorization Act for Fiscal Year 2008. The interim rule required the head of an executive agency to make certain justification and approval documents relating to the use of noncompetitive procedures in Federal contracting be posted on the website of an agency and through FedBizOpps. The final rule requires that if the justification is a brand name justification under FAR 6.302–1(c) then it must be posted with the solicitation. Justifications must remain posted for a minimum of 30 days. The final rule clarifies that posting the justification does not apply if it would disclose the executive agency's needs and disclosure of such needs would compromise national security or create other security risks. The final rule also establishes procedures at FAR 13.501 similar to procedures at FAR 6.305. The rule is intended to enhance competition in Federal contracting and provide greater transparency to the taxpayer.

Item V—Additional Requirements for Market Research (FAR Case 2008–007) (Interim)

This interim rule amends the FAR at parts 10, 44, and 52 by adding market research requirements. This change implements Section 826 of Pub. L. 110–181, the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA). As a matter of policy, this provision of law is applied to contracts awarded by all executive agencies. This rule requires that market research must be accomplished before an agency places an indefinite-delivery/indefinite-quantity (ID/IQ) task or delivery order in excess of the simplified acquisition threshold. In addition, a prime contractor with a contract in excess of $5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the

simplified acquisition threshold when the contractor is acting as a purchasing agent for the Government. This interim rule is applicable to any solicitations issued and contracts (to include any subcontracts issued under such contracts) awarded on or after the effective date of the rule.

Item VI—American Recovery and Reinvestment Act of 2009 (Recovery Act)—GAO/IG Access (FAR Case 2009–011)

This final rule adopts, with changes, the interim rule published in the **Federal Register** at 74 FR 14646 on March 31, 2009. This final rule amends the FAR to implement sections 902, 1514, and 1515 of the American Recovery and Reinvestment Act of 2009 (Recovery Act). Collectively, these sections provide for the audit and review of both contracts and subcontracts, and the ability to interview such contractor and subcontractor personnel under contracts containing Recovery Act funds.

These Recovery Act provisions are implemented in new alternate clauses to FAR 52.212–5 "Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items" and FAR 52.214–26 "Audit and Records—Sealed Bidding," and by amending FAR 52.215–2 "Audit and Records—Negotiation." For the Comptroller General, these alternate clauses provide specific authority to audit contracts and subcontracts and to interview contractor and subcontractor employees under contracts using Recovery Act funds. Agency Inspector Generals receive the same authorities, with the exception of interviewing subcontractor employees.

The changes to the interim rule clarify its application to supplemental agreements, and orders under task- or delivery-order contracts, involving Recovery Act funds.

Item VII—New Designated Country—Taiwan (FAR Case 2009–014)

This final rule adopts as final, without change, an interim rule implementing the designation of Taiwan under the World Trade Organization Agreement on Government Procurement, which took effect on July 15, 2009. This FAR change allows contracting officers to purchase goods and services made in Taiwan without application of the Buy American Act if the acquisition is covered by the World Trade Organization Agreement on Government Procurement.

Item VIII—Nonavailable Articles (FAR Case 2009–013)

This final rule amends FAR 25.104(a) to add certain items to the list of articles not available from domestic sources in sufficient and reasonably available commercial quantities of a satisfactory quality. This case is based on extensive market research by the Defense Logistics Agency. Unless the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality, the Buy American Act does not apply to acquisition of these items as end products, and the contracting officer may treat foreign components of the same class or kind as domestic components.

Item IX—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009–025) (Interim)

This interim rule amends the FAR to align the existing FAR clause 52.230–4 with the changes made in Cost Accounting Standards (CAS) Board clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

On March 26, 2008, the CAS Board published, without change from the proposed rule (72 FR 32829, June 14, 2007), a final rule in the **Federal Register** at 73 FR 15939 to utilize the clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns. This rule is necessary in order to maintain consistency between CAS and FAR in matters relating to the administration of CAS.

Item X—Compensation for Personal Services (FAR Case 2009–026) (Interim)

This interim rule amends the FAR to align the existing FAR 31.205(q)(2)(i) and (ii) with the changes made in Cost Accounting Standards (CAS) Board Standards 412, "Cost Accounting Standard for composition and measurement of pension cost," and 415, "Accounting for the cost of deferred compensation." Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

Item XI—Payrolls and Basic Records (FAR Case 2009–018) (Interim)

This interim rule implements changes that the Department of Labor (DOL) instituted regarding the submission of payroll data in their final rule, Protecting the Privacy of Workers: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, published in the **Federal Register** at 73 FR 77504 on December 19, 2008. The rule revises FAR 52.222–8, Payrolls and Basic Records, to delete the requirement for submission of full social security numbers and home addresses of individual workers, prime contractor, on weekly payroll transmittals as required on covered construction contracts. The rule requires contractors and subcontractors to maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting officer, the contractor, or the Wage and Hour Division of the DOL for purposes of an investigation or audit of compliance with prevailing wage requirements. The rule recognizes DOL's finding that complete social security numbers and home addresses for individual workers is personal information to the worker and that any unnecessary disclosure and submittal of such information creates an exposure to identity theft and the invasion of privacy for workers.

Item XII—Technical Amendments

Editorial changes have been made at FAR 31.205–6, 31.205–16, 49.505, and 52.222–34.

Dated: June 2, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

[FR Doc. 2010–14186 Filed 6–15–10; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Wednesday,
June 16, 2010

Part V

Department of Education

34 CFR Part 371

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Final Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 371

[Docket ID ED–2009–OSERS–0008]

RIN 1820–AB63

Vocational Rehabilitation Service Projects for American Indians With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is adopting as final, without changes, interim final regulations for the American Indian Vocational Rehabilitation Services (AIVRS) program to permit a consortium of Indian tribes to establish a separate legal entity to apply for a grant under this program. These final regulations are needed to enable the Department to make grants to Indian tribes that choose to form a consortium and, rather than authorizing one of the Indian tribes of the consortium to serve as the grantee, create a separate legal entity that serves as the grantee on behalf of the consortium and that is responsible for using the grant funds to provide services to all the Indian tribes in the consortium.

DATES: These regulations are effective June 16, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 5147, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: 202–245–7343 or via the Internet: *tom.finch@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

On August 12, 2009, the Secretary published interim final regulations for the AIVRS program in the **Federal Register** (74 FR 40495). The interim final regulations became effective August 12, 2009. At the time the interim final regulations were published, the Secretary requested public comment on whether changes to the regulations were warranted. Pursuant to Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"), the Secretary specifically invited input from Indian tribal officials concerning the changes made in the interim final regulations.

In the interim final regulations, the Secretary amended the definition of the term *consortium* in § 371.4 to provide that a consortium means two or more eligible governing bodies of Indian Tribes that apply for an award under the AIVRS program by either: (1) Designating one governing body to apply for the grant; or (2) establishing and designating a separate legal entity to apply for the grant.

As explained in the preamble to the interim final regulations, the Secretary made this change to the definition of the term *consortium* because Indian Tribes have evolved in the ways that they have chosen to procure and deliver social services. Specifically, many Indian Tribes have found it more effective to join together and create one separate legal organization to apply for Federal funds on their behalf and to deliver services to the members of those Indian Tribes because they share the need for such services. This separate legal organization is generally a nonprofit association that provides health, social and welfare services (in this case, vocational rehabilitation services) to the members of the Indian Tribes that created this association.

Because the former definition of the term *consortium* did not permit a nonprofit organization to serve as the grantee for a consortium of Indian Tribes under the AIVRS program, the Secretary determined that it was essential to amend the regulatory definition of the term *consortium* so that a group of governing bodies of Indian Tribes may establish a separate legal entity to serve as the applicant and grantee on behalf of eligible Indian Tribes applying for a grant as part of a consortium.

There are no differences between the interim final regulations and these final regulations.

Public Comment: In response to our invitation in the interim final rule, one commenter submitted comments.

Generally we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes:

Comment: The commenter recommended that we revise the part of the new definition of *consortium* that provides for establishing and designating a separate legal entity to apply for the grant. Specifically, the commenter requested that the definition be revised to provide that the governing bodies of Indian Tribes may create, work with, or delegate to a separate legal entity the authority to apply for a grant under the AIVRS program. The commenter suggested that this change would clarify that consortia may partner with an entity currently in existence to apply for funds and deliver agreed upon services.

Discussion: The Department does not believe that the specific change proposed by the commenter is consistent with the control over the separate legal entity that is required by the consortium's establishment of that entity. Because section 121 of the Rehabilitation Act of 1973, as amended (the Rehabilitation Act), provides that grants may only be awarded to "the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies)," the governing bodies of the Indian tribes must have some control over any separate legal entity they establish to apply for the grant. Therefore, a separate legal entity that applies on behalf of a consortium of tribes under the AIVRS program must be controlled, sanctioned, or chartered by the tribes. It is not sufficient for the tribes to merely work with or delegate to a separate legal entity the authority to apply for and oversee an AIVRS grant, because the tribes would not have the requisite control over the management of that entity. Grantee tribes or consortia of such tribes are already permitted to contract with or otherwise enter into an agreement with another agency to assist in the implementation of the AIVRS program in accordance with 34 CFR 371.42(a). However, in order to be eligible to apply for and receive a grant under the AIVRS program, the separate legal entity must have a relationship with the tribes wherein the tribes have administrative control over the entity rather than merely working with or delegating authority to it to implement the program. It is the establishment of these entities within the control of the tribes and the tribes designating these entities to apply under the AIVRS program that makes the separate legal entities eligible applicants for a grant under the program.

While the separate legal entity can already exist and does not have to be established solely for the purpose of applying for an AIVRS grant, its application for the grant must be consistent with the purpose for which the entity was established by the tribes. For example, a nonprofit association of tribes is established by its member tribes

when all the tribes it serves are represented on the board and have been a part of its formation and administration, and its purpose, among others, is to apply for and administer social welfare programs, such as the AIVRS, on behalf of, and to benefit, its member tribes. On the other hand, we would most likely not view a tribal college, for example, as a separate legal entity established by the tribes because the tribes would not have control over all aspects of the tribal college's administration and programs, and application for social welfare programs, such as the AIVRS program, is not the purpose for which a tribal college is established.

Changes: None.

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement 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. Pursuant to the terms of the Executive order, it has been determined that this regulatory action is not a significant regulatory action subject to OMB review under section 3(f) of Executive Order 12866.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the interim final regulations at 74 FR 40495, 40497.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.250 AIVRS Program.)

List of Subjects in 34 CFR Part 371

Grant programs—Indians, Grant programs—social programs, Indians vocational rehabilitation.

Dated: June 9, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

■ For the reasons discussed in the preamble, the interim final regulations amending part 371 of title 34 of the Code of Federal Regulations that were published in the **Federal Register** on August 12, 2009 (74 FR 40495) are adopted as final.

[FR Doc. 2010–14407 Filed 6–15–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Vocational Rehabilitation Services Projects for American Indians With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.250G.

Dates: Applications Available: June 21, 2010.

Deadline for Transmittal of Applications: August 16, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to provide vocational rehabilitation (VR) services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 121(b)(4) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741).

Competitive Preference Priority: For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Continuation of Previously Funded Tribal Programs.

In making new awards under this program, we give priority consideration to applications for the continuation of VR service programs that have been funded under the Vocational Rehabilitation Services Projects for American Indians with Disabilities program.

Program Authority: 29 U.S.C. 741.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 369 and 371. (c) The Final Regulation under the Vocational Rehabilitation Service Projects for American Indians with Disabilities program published elsewhere in this issue of the **Federal Register**.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $13,000,000.

Estimated Range of Awards: $300,000–$600,000.

Estimated Average Size of Awards: $450,000.

Maximum Award: For applicants that are proposing to continue a program that is currently funded under the Vocational Rehabilitation Services Projects for American Indians with Disabilities program, the maximum award amount for the first project year is the greater of (a) $365,000 or (b) an amount equal to 103 percent of the applicant's approved budget for the applicant's FY 2009 grant (an increase of 3 percent). For applicants that are proposing to establish a new program under the Vocational Rehabilitation Services Projects for American Indians with Disabilities program, the maximum award amount for the first project year is $365,000.

In addition, the Secretary may limit any proposed increases in funding for project years two through five to the annual estimated percentage change in the Consumer Price Index for all Urban Consumers (CPIU).

Estimated Number of Awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* The governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

Note: The Department has published elsewhere in this issue of the **Federal Register** a final rule that changes the definition of the term "consortium." "Consortium" means two or more eligible governing bodies of Indian tribes that apply for an award under this program by either: (1) Designating one governing body to apply for the grant; or (2) establishing and designating a separate legal entity to apply for a grant.

2. *Cost Sharing or Matching:* See 34 CFR 371.40.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.250G.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: June 21, 2010.

Deadline for Transmittal of Applications: August 16, 2010.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This competition is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) You must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from DUN and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.250G),
LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.250G),
550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package. The selection criteria may total 100 points, plus the 10 competitive preference priority points (see section I. *Competitive Preference Priority*).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established three performance measures for the Vocational Rehabilitation Services Projects for American Indians with Disabilities program. The measures are (1) The percentage of individuals who leave the program with an employment outcome, (2) the percentage of projects that demonstrate an average annual cost per employment outcome of no more than $35,000, and (3) the percentage of projects that demonstrate an average annual cost per participant of no more than $10,000. Each grantee must annually report its performance on these measures through the Annual Progress Reporting Form (APR Form) for the American Indian Vocational Rehabilitation Services (AIVRS) program.

Job Training and Employment Common Measures. In addition, this program is part of the job training and employment common measures initiative. The common measures for job training and employment programs targeting adults are (1) Entered employment (percentage employed in the first quarter after program exit); (2) retention in employment (percentage of those employed in the first quarter after exit that were still employed in the second and third quarters after program exit); (3) average weekly earnings (average earnings of those participants who are employed in the first, second, and third quarters after the exit quarter); and (4) the annual cost per participant.

The AIVRS Annual Progress Reporting Form was revised in 2008 to collect data needed to assess the Vocational Rehabilitation Services Projects for American Indians with Disabilities program's performance on supplemental measures that are comparable to the job training and employment common measures. Each grantee will be required to collect and report data for these supplemental measures as part of the annual performance report requirement, including information on: (1) The number of individuals whose case record has not been closed, but have not received project services for 90 consecutive calendar days, (2) the number of eligible individuals who were employed three months after achieving an employment outcome, (3) the number of eligible individuals who were employed six months after achieving an employment outcome, (4) the average weekly earnings at entry, and (5) the average weekly earnings of the individuals whose employment outcomes resulted in earnings.

Note: For purposes of this section VI. 4., the term "employment outcome" has the meaning provided in 34 CFR 369.4.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: August Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 5088, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7410 or by e-mail: *august.martin@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–

7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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Dated: June 9, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–14411 Filed 6–15–10; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Wednesday,
June 16, 2010

Part VI

The President

Proclamation 8533—90th Anniversary of the Department of Labor Women's Bureau, 2010

Proclamation 8534—King Kamehameha Day, 2010

Proclamation 8535—Flag Day and National Flag Week, 2010

Proclamation 8536—To Implement Certain Provisions of the Dominican Republic-Central America-United States Free Trade Agreement With Respect to Costa Rica, and for Other Purposes

Notice of June 14, 2010—Continuation of the National Emergency With Respect to North Korea

Federal Register
Vol. 75, No. 115
Wednesday, June 16, 2010

Presidential Documents

Title 3—

The President

Proclamation 8533 of June 10, 2010

90th Anniversary of the Department of Labor Women's Bureau, 2010

By the President of the United States of America

A Proclamation

Throughout our history, American women have played a vital role in the growth and vitality of our Nation's economy. They have tirelessly balanced responsibilities to work, family, and community, strengthening our economic leadership and enriching our national life. Today, there are more women in America's workforce than ever before, yet they still face significant obstacles to equal economic opportunity and advancement.

Recognizing the challenges women confronted in the workforce, the Congress established the Women's Bureau in the Department of Labor on June 5, 1920, 2 months before women gained the right to vote. For the past 90 years, the Women's Bureau has been a champion for working women nationwide through its commitment to advancing employment opportunities, improving their working conditions, and helping them achieve economic security.

As women surged into the labor force, the Women's Bureau tackled the barriers to their economic advancement. Early in its history, the Women's Bureau advocated for the successful inclusion of women under the Fair Labor Standards Act of 1938, establishing minimum wages and maximum working hours. The Bureau also played an instrumental role in the passage of the Equal Pay Act of 1963. And the first law that I signed as President—the Lilly Ledbetter Fair Pay Restoration Act—builds upon these vital protections to ensure people subjected to discrimination have better access to a remedy.

Equal economic opportunity and wage parity are not simply women's issues—they are American issues. As a Nation, we must recommit to the enduring vision of the Women's Bureau and work to support all wage-earning women. With the hard-fought progress of the past as a foundation, we can build a better and brighter tomorrow, one in which our daughters have an equal right and opportunity to pursue the American Dream.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 11, 2010, as the 90th Anniversary of the Department of Labor Women's Bureau. I call upon all Americans to observe this anniversary with appropriate programs, ceremonies, and activities that honor the Bureau's history, accomplishments, and contributions to working women.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–14724
Filed 6–15–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8534 of June 10, 2010

King Kamehameha Day, 2010

By the President of the United States of America

A Proclamation

Two hundred years ago, King Kamehameha the Great brought the Hawaiian Islands together under a unified government. His courage and leadership earned him a legacy as the "Napoleon of the Pacific," and today his humanity is preserved in Ke Kanawai Mamalahoe, or "the Law of the Splintered Paddle." This law protects civilians in times of war and remains enshrined in Hawaii's constitution as "a unique and living symbol of the State's concern for public safety."

On this bicentennial King Kamehameha Day, we celebrate the history and heritage of the Aloha State, which has immeasurably enriched our national life and culture. The Hawaiian narrative is one of both profound triumph and, sadly, deep injustice. It is the story of Native Hawaiians oppressed by crippling disease, aborted treaties, and the eventual conquest of their sovereign kingdom. These grim milestones remind us of an unjust time in our history, as well as the many pitfalls in our Nation's long and difficult journey to perfect itself. Yet, through the peaks and valleys of our American story, Hawaii's steadfast sense of community and mutual support shows the progress that results when we are united in a spirit of limitless possibility.

In the decades since their persecution, Native Hawaiians have remained resilient. They are part of the diverse people of Hawaii who, as children of pioneers and immigrants from around the world, carry on the unique cultures and traditions of their forebears. As Americans, we can all admire these traits, as well as the raw natural beauty of the islands themselves. Truly, the Aloha Spirit of Hawaii echoes the American Spirit, representing the opportunities we all have to grow and learn from one another as we carry our Nation toward a brighter day.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 11, 2010, as King Kamehameha Day. I call upon all Americans to celebrate the rich heritage of Hawaii with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of June, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–14725
Filed 6–15–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8535 of June 11, 2010

Flag Day and National Flag Week, 2010

By the President of the United States of America

A Proclamation

When the Second Continental Congress adopted the American flag on June 14, 1777, the thirteen stripes alternating red and white, and thirteen white stars in a blue field, represented "a new constellation." On Flag Day, and throughout National Flag Week, we celebrate its lasting luminosity, and the enduring American story that it represents.

Although the configuration of stars and stripes has changed over the years it has been flown, its significance and symbolism have not wavered. The flag that once helped unite a new Nation to confront tyranny and oppression still flies today as an unequivocal emblem of freedom and liberty. The same flag that has been raised on beaches and battlefields still adorns the uniforms of our heroic sons and daughters serving in America's Armed Forces, including our troops serving in harm's way in Iraq and Afghanistan.

This past year, that same flag has continued to soar. When our American Olympic and Paralympics athletes were positioned triumphantly on the podiums of the Vancouver 2010 Olympic and Paralympic Winter Games, our majestic flag flew high above them. From homes to classrooms, civic gatherings to private memorials, we gathered to salute our flag, and in doing so, renewed the eternal promise of this glorious Nation.

More than 220 years after Old Glory was first embraced by our Founders, the Stars and Stripes remain the symbol of our Nation's pride. On Flag Day and during National Flag Week we recognize the American flag as a symbol of hope and inspiration to people at home and around the world—as a constellation which grows brighter with every achievement earned and sacrifice borne by one of our citizens.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as "Flag Day" and requested that the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President annually issue a proclamation designating the week in which June 14 occurs as "National Flag Week" and call upon citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim June 14, 2010, as Flag Day and the week beginning June 13, 2010, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by displaying the flag. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of June, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–14726
Filed 6–15–10; 11:15 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8536 of June 12, 2010

To Implement Certain Provisions of the Dominican Republic-Central America-United States Free Trade Agreement With Respect to Costa Rica, and for Other Purposes

By the President of the United States of America

A Proclamation

1. On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement (the "Agreement") with Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua. The Agreement was approved by the Congress in section 101(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the "CAFTA–DR Act") (Public Law 109–53, 119 Stat. 462) (19 U.S.C. 4011(a)).

2. Section 201(a) of the CAFTA–DR Act (19 U.S.C. 4031(a)) authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Article 3.3 and Annex 3.3 (which includes the schedule of United States duty reductions with respect to originating goods) of the Agreement.

3. Presidential Proclamation 8331 of December 23, 2008, modified the Harmonized Tariff Schedule of the United States (HTS) to provide for the preferential tariff treatment being accorded under the Agreement for certain goods of Costa Rica, including tariff-rate quotas for certain goods.

4. Presidential Proclamation 8405 of August 31, 2009, modified certain rules of origin of the North American Free Trade Agreement (NAFTA). Three technical errors were made in the modifications of general note 12 to the HTS as provided in Annex I of Publication 4095 of the United States International Trade Commission entitled "Modifications to the Harmonized Tariff Schedule of the United States to Adjust Rules of Origin Under the North American Free Trade Agreement," which was incorporated by reference into Proclamation 8405.

5. I have determined that technical corrections to general note 12 to the HTS are necessary to provide the tariff and certain other treatment accorded under the NAFTA to originating goods.

6. Presidential Proclamation 8214 of December 27, 2007, modified the rules of origin set out in Annexes 3A and 3B of the United States-Singapore Free Trade Agreement (USSFTA). Two technical errors were made in Annex II to that proclamation modifying general note 25 to the HTS.

7. I have determined that technical corrections to general note 25 to the HTS are necessary to provide the tariff and certain other treatment accorded under the USSFTA to originating goods.

8. Proclamation 8214 also modified the rules of origin set out in Annex 4.1 to the United States-Chile Free Trade Agreement (USCFTA). Two technical errors were made in Annex I to that proclamation modifying general note 26 to the HTS.

9. I have determined that technical corrections to general note 26 are necessary to provide the tariff and certain other treatment accorded under the USCFTA to originating goods.

10. Section 604 of the Trade Act of 1974 (the "1974 Act") (19 U.S.C. 2483), as amended, authorizes the President to embody in the HTS the substance of relevant provisions of that Act, and of other Acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 201(a) of the CAFTA–DR Act and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide for the preferential tariff treatment being accorded under the Agreement for certain sugar and sugar-containing goods of Costa Rica and to provide a tariff-rate quota for such goods of Costa Rica, the HTS is modified as set forth in Annex I to this proclamation.

(2) The amendments to the HTS set forth in Annex I of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after June 15, 2010.

(3) In order to make technical corrections to general note 12 to the HTS, the HTS is modified as provided in section A of Annex II to this proclamation. The modifications to the HTS set forth in section A of Annex II shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after October 3, 2009.

(4) In order to make technical corrections to general note 25 to the HTS, the HTS is modified as provided in section B of Annex II to this proclamation.

(5) In order to make technical corrections to general note 26 to the HTS, the HTS is modified as provided in section C of Annex II to this proclamation.

(6) The modifications to the HTS set forth in sections B and C of Annex II to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after February 8, 2009.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of June, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

Billing code 3195–W0–P

ANNEX I
MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods of a party to the Agreement specified in general note 29(a) to the Harmonized Tariff Schedule of the United States (HTS) that are entered, or withdrawn from warehouse for consumption, on or after June 15, 2010, subchapter XXII of chapter 98 of the HTS is modified as provided herein, with bracketed material included to assist in the understanding of proclaimed modifications. The following supersedes matter now in the HTS.

(1) U.S. note 24 is modified by adding (a) after the word "subchapter" the expression "that may be", and (b) after the expression "in calendar year 2009" the expression "or in any subsequent calendar year".

(2) U.S. note 25 is modified by deleting subdivision (a) and by inserting in lieu thereof the following:

"(a) During the periods specified below, the aggregate quantity of goods described in U.S. note 23 to this subchapter of each party to the Agreement as defined in general note 29(a) that may be entered under subheading 9822.05.20 shall be limited to the aggregate quantity (set forth in metric tons) specified below for the country listed:

Period	Country	Metric tons
March 24, 2006-December 31, 2006	El Salvador	24,000
April 1, 2006-December 31, 2006	Honduras	8,000
April 1, 2006-December 31, 2006	Nicaragua	22,000
July 1, 2006-December 31, 2006	Guatemala	32,000
March 1, 2007-December 31, 2007	Dominican Republic	0
January 1, 2009-December 31, 2009	Costa Rica	11,660
June 15, 2010-December 31, 2010	Costa Rica	11,880"

(3) U.S. note 25(b)(ii) is modified:

(a) by deleting "subdivision (a)" and by inserting in lieu thereof "subdivision (b) (ii)";

(b) by inserting in alphabetical sequence in the table in such subdivision the following country and its associated quantities set forth herein for each of the years specified in such subdivision:

	2011	2012	2013	2014	2015	2016
			(metric tons)			
"Costa Rica	12,100	12,320	12,540	12,760	12,980	13,200"

	2017	2018	2019	2020	2021
			(metric tons)		
"Costa Rica	13,420	13,640	13,860	14,080	14,300"

(c) by inserting in alphabetical sequence in the table in the final sentence of such subdivision the following country and associated quantity therefor:

	Quantity (metric tons)
"Costa Rica	220"

ANNEX II
MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Section A: Technical corrections to general note 12 (North American Free Trade Agreement)

1. TCR 35 for chapter 29 is deleted and the following new TCR is inserted:

"35A. A change to subheading 2916.11 through 2916.39 from any other subheading, including another subheading within that group.

35B. A change to subheading 2917.11 through 2917.33 from any other subheading, including another subheading within that group.

35C (A) A change to dibutyl orthophthalates of subheading 2917.34 from any other good of subheading 2917.34 or any other subheading; or

(B) A change to any other good of subheading 2917.34 from dibutyl orthophthalates of subheading 2917.34 or any other subheading.

35D. A change to subheading 2917.35 through 2917.39 from any other subheading, including another subheading within that group."

2. TCR 36A for chapter 29 is deleted and the following new TCR is inserted:

"36A. A change to subheading 2918.18 from phenylglycolic acid (mandelic acid), its salts or esters of subheading 2918.19 from any other good of subheading 2918.19, or any other subheading."

3. The following new TCR is inserted immediately following TCR 19 for chapter 87:

"19A. A change to mounted brake linings of subheading 8708.30 from any other heading; or

A change to mounted brake linings of subheading 8708.30 from parts of mounted brake linings, brakes or servo-brakes of subheading 8708.30 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

A change to any other good of subheading 8708.30 from any other heading; or

A change to any other good of subheading 8708.30 from mounted brake linings or parts of brakes or servo-brakes of subheading 8708.30, or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method."

Section B: Technical corrections to general note 25 (United States-Singapore Free Trade Agreement)

1. TCRs 80 and 81 for chapter 84 are deleted and the following new TCRs are inserted:

"80. A change to subheading 8442.30 from any other subheading.

81. A change to subheading 8442.40 from any other heading."

2. TCR 59 for chapter 85 is deleted and the following new TCRs is inserted:

"59. A change to subheading 8528.59 from any other subheading, except from subheadings 7011.20, 8528.49, 8540.11 or 8540.91."

Section C: Technical corrections to general note 26 (United States-Chile Free Trade Agreement)

1. TCR 90C for chapter 84 is deleted and the following new TCRs is inserted:

"90C. A change to subheading 8443.39 from any other subheading."

2. TCR 90E for chapter 84 is deleted and the following new TCRs is inserted:

"90E. A change to subheading 8443.99 from any other heading."

[FR Doc. 2010–14728
Filed 6–15–10; 11:15 am]
Billing code 7020–02–P

Presidential Documents

Notice of June 14, 2010

Continuation of the National Emergency With Respect to North Korea

On June 26, 2008, by Executive Order 13466, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the current existence and risk of the proliferation of weapons-usable fissile material on the Korean Peninsula. The President also found that it was necessary to maintain certain restrictions with respect to North Korea that would otherwise have been lifted pursuant to Proclamation 8271 of June 26, 2008, which terminated the exercise of authorities under the Trading With the Enemy Act (50 U.S.C. App. 1–44) with respect to North Korea.

Because the existence and the risk of proliferation of weapons-usable fissile material on the Korean Peninsula continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on June 26, 2008, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 26, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13466.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
June 14, 2010.

[FR Doc. 2010–14729
Filed 6–15–10; 11:15 am]
Billing code 3195–W0–P

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LIST OF PUBLIC LAWS

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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2711/P.L. 111–178
Special Agent Samuel Hicks Families of Fallen Heroes Act (June 9, 2010; 124 Stat. 1262)

H.R. 3250/P.L. 111–179
To designate the facility of the United States Postal Service located at 1210 West Main Street in Riverhead, New York, as the "Private First Class Garfield M. Langhorn Post Office Building". (June 9, 2010; 124 Stat. 1264)

H.R. 3634/P.L. 111–180
To designate the facility of the United States Postal Service located at 109 Main Street in Swifton, Arkansas, as the "George Kell Post Office". (June 9, 2010; 124 Stat. 1265)

H.R. 3892/P.L. 111–181
To designate the facility of the United States Postal Service located at 101 West Highway 64 Bypass in Roper, North Carolina, as the "E.V. Wilkins Post Office". (June 9, 2010; 124 Stat. 1266)

H.R. 4017/P.L. 111–182
To designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the "Ann Marie Blute Post Office". (June 9, 2010; 124 Stat. 1267)

H.R. 4095/P.L. 111–183
To designate the facility of the United States Postal Service located at 9727 Antioch Road in Overland Park, Kansas, as the "Congresswoman Jan Meyers Post Office Building". (June 9, 2010; 124 Stat. 1268)

H.R. 4139/P.L. 111–184
To designate the facility of the United States Postal Service located at 7464 Highway 503 in Hickory, Mississippi, as the "Sergeant Matthew L. Ingram Post Office". (June 9, 2010; 124 Stat. 1269)

H.R. 4214/P.L. 111–185
To designate the facility of the United States Postal Service located at 45300 Portola Avenue in Palm Desert, California, as the "Roy Wilson Post Office". (June 9, 2010; 124 Stat. 1270)

H.R. 4238/P.L. 111–186
To designate the facility of the United States Postal Service located at 930 39th Avenue in Greeley, Colorado, as the "W.D. Farr Post Office Building". (June 9, 2010; 124 Stat. 1271)

H.R. 4425/P.L. 111–187
To designate the facility of the United States Postal Service located at 2-116th Street in North Troy, New York, as the "Martin G. 'Marty' Mahar Post Office". (June 9, 2010; 124 Stat. 1272)

H.R. 4547/P.L. 111–188
To designate the facility of the United States Postal Service located at 119 Station Road in Cheyney, Pennsylvania, as the "Captain Luther H. Smith, U.S. Army Air Forces Post Office". (June 9, 2010; 124 Stat. 1273)

H.R. 4628/P.L. 111–189
To designate the facility of the United States Postal Service located at 216 Westwood Avenue in Westwood, New Jersey, as the "Sergeant Christopher R. Hrbek Post Office Building". (June 9, 2010; 124 Stat. 1274)

H.R. 5330/P.L. 111–190

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes. (June 9, 2010; 124 Stat. 1275)

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