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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0927; Airspace Docket No. 09–ASW–27]

Amendment of Class E Airspace; Graford, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Graford, TX, adding additional controlled airspace to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Possum Kingdom Airport, Graford, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: Effective 0901 UTC, April 8, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On November 9, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Graford, TX, reconfiguring controlled airspace at Possum Kingdom Airport (74 FR 57620) Docket No. FAA–2009–0927. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace for the Graford, TX area, adding additional controlled airspace extending upward from 700 feet above the surface to accommodate SIAPs at Possum Kingdom Airport. Adjustments to the geographic coordinates also will be made in accordance with the FAA's National Aeronautical Charting Office. This action is necessary for the safety and management of IFR operations at the airport.

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ASW TX E5 Graford, TX [Amended]

Possum Kingdom Airport, TX
(Lat. 32°55′24″ N., long. 98°26′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Possum Kingdom Airport and within 4 miles each side of the 031° bearing from the airport extending from the 6.3-mile radius to 10.8 miles northeast of the airport, and within 4 miles each side of the 210° bearing from the airport extending from the 6.3-mile radius to 10.8 miles southwest of the airport.

* * * * *

Issued in Fort Worth, Texas, on January 11, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–1367 Filed 1–28–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 660

[Docket No. 0907281183–91427–02]

RIN 0648–AX98

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Data Collection for the Trawl Rationalization Program

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

ACTION: Final rule.

SUMMARY: NMFS is collecting data to support implementation of a future trawl rationalization program under the Pacific Coast Groundfish Fishery Management Plan (FMP). NMFS will collect ownership information from all potential participants in the trawl rationalization program. In addition, NMFS is notifying potential participants that the agency intends to use the Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) database, NMFS' Northwest Fisheries Science Center's Pacific whiting observer data from NORPAC (a database of North Pacific fisheries and Pacific whiting information), and the NMFS, Northwest Region, Sustainable Fisheries Division trawl-endorsed groundfish limited entry permit database to determine initial allocation of quota share (QS) for the trawl rationalization program, if it is approved and implemented.

DATES: Effective March 1, 2010.

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115 0070; or by phone at 206–526–6150.

Written comments regarding the burden hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted to Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115 0070, or by e-mail to *DavidRostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, phone: 206–526–4656, fax: 206–526–6736, and e-mail *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the **Federal Register**'s Website at *http://www.gpoaccess.gov/fr/index.html*. Background information and documents are available at the Pacific Fishery Management Council's website at *http://www.pcouncil.org/* and at NMFS Northwest Region's website at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm.*

Background

On September 16, 2009, NMFS published a proposed rule (74 FR 47545) announcing our intent to collect ownership information from potential participants in the Pacific Coast groundfish trawl rationalization program and announcing the databases NMFS intends to use to determine initial allocations for the program. Since 2003, the Pacific Fishery Management Council (Council) has been developing a trawl rationalization program, which would affect the limited entry trawl fishery of the Pacific Coast groundfish fishery. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability for catch and bycatch.

The Council has developed the trawl rationalization program through two amendments to the Groundfish FMP: (1) Amendment 20, the trawl rationalization program; and (2) Amendment 21, intersector allocation. Amendment 20 would create the structure and management details of the trawl rationalization program, while Amendment 21 would allocate the groundfish stocks between trawl and non-trawl fisheries. The Groundfish FMP amendment approval process and implementation, if appropriate, are expected to occur in 2010.

The trawl rationalization program would be a limited access privilege program (LAPP) under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. §§ 1851–1891d, as reauthorized in 2007. It would consist of: (1) An individual fishing quota (IFQ) program for the shore-based trawl fleet; and (2) cooperative (co-op) programs for the at-sea trawl fleet. The MSA requires the Council or the Secretary of Commerce to ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program, and to establish a maximum share, expressed as a percentage, that each limited access privilege holder may hold, acquire, or use. For the trawl rationalization program, the Council has adopted limits on the amount of harvest privileges that can be held, acquired, or used by individuals and vessels (i.e., accumulation limits).

Collection of Ownership Information

Pursuant to section 402(a)(2) of the MSA, if the Secretary of Commerce determines that additional information is necessary for developing or implementing an FMP, the Secretary may, by regulation, implement an information collection program requiring submission of such additional information for the fishery. This rule provides for the collection of ownership information from the potential participants in the trawl rationalization program, including the at-sea fleet (whiting motherships, whiting mothership catcher vessels, and whiting catcher/processors), the shore-based fleet (whiting and non-whiting permit owners and holders) and the shore-based whiting processors. Ownership information would be collected through the Trawl Identification of Ownership Interest Form, and would support and facilitate the timely implementation of the potential future trawl rationalization program under the Groundfish FMP. Trawl Identification of Ownership Interest Forms will be mailed to potential participants and will be made available on NMFS website (see SUPPLEMENTARY INFORMATION, Electronic Access). All forms must be completed and returned to NMFS with a postmark no later than the deadline date of May 1, 2010.

Databases to be Used for Initial Allocation of Quota Share

Potential participants in the trawl rationalization program should be aware that the agency intends to use data from the Pacific States Marine Fisheries Commission's PacFIN database and NMFS' Northwest Fisheries Science Center's Pacific whiting observer data from NORPAC to determine initial allocations of QS for the trawl rationalization program. Landings data from state fish tickets, as provided by the states to the PacFIN database, will be used to determine initial allocation of IFQ QS for the shore-based whiting and nonwhiting harvesters and for the shore-based whiting processors. The first

receiver listed on the state fish ticket, as recorded in PacFIN, will be used to determine to whom whiting processing history should be attributed for whiting QS. Through NMFS' initial issuance and appeals process for QS, there will be an opportunity to reassign the whiting processing history. In addition, state logbook information from 2003 through 2006, as recorded in PacFIN, will be used to determine the area fished associated with individual permits (depth and latitudinal strata associated with permits). This information will be used in a formula to determine a permit's initial allocation of overfished species. Landings data from the NORPAC database will be used to determine initial allocation of at-sea QS for the whiting mothership catcher vessels. Information on trawl-endorsed groundfish limited entry permits or permit combinations will come from limited entry permit records at NMFS, Northwest Region, Sustainable Fisheries Division.

NMFS intends to "freeze" the databases for the purposes of initial allocation on the date the proposed rule for implementing Amendment 20 to the FMP is published in the **Federal Register**. "Freezing" the databases means that NMFS will extract a snapshot of the databases as of the proposed rule publication date, and it will use the "frozen" data for initial allocation of QS. Thus, it is important that participants ensure, as soon as possible and before NMFS "freezes" the databases, that their data are accurate.

If potential participants in the trawl rationalization program, including harvesters and shore-based whiting processors, have concerns over the accuracy of their data in the PacFIN database, it is important that they contact the state in which they landed those fish as soon as possible to correct any errors. Any revisions to an entity's fish tickets or logbooks will have to be approved by the state in order to be accepted. For logbooks, only existing logbook information in PacFIN may be corrected (i.e., only transcription errors); no new logbooks dating back to 2003 through 2006 will be accepted. State contacts are as follows: (1) Washington - Carol Turcotte (360–902–2253, *Carol.Turcotte@dfw.wa.gov*); (2) Oregon - Nadine Hurtado (503–947–6247, *Nadine.Hurtado@state.or.us*); and (3) California - Gerry Kobylinski (916–323–1456, *Gkobylin@dfg.ca.gov*). For concerns over the accuracy of NORPAC data, contact Janell Majewski (206–860–3293, *janell.majewski@noaa.gov*). Potential QS owners should go directly to the source where fisheries data is entered in the database to get it corrected before NMFS extracts the data for initial issuance of QS. For concerns over the accuracy of limited entry permit or permit combination data, check NMFS' website at *http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Permits/index.cfm* or contact Kevin Ford (206–526–6115, *kevin.ford@noaa.gov*).

Comments and Responses

NMFS received comments on the proposed rule from five members of the public, including three from fishing industry organizations and two from individuals. Comments relevant to this rulemaking are addressed here:

Comment 1: Four of the commenters suggested alternative requirements for reporting ownership accumulation limits. These comments focused on the practicality of collecting ownership information at the individual level for large companies, such as publicly-owned corporations (domestic or foreign), non-governmental organizations, and Community Development Quota (CDQ) groups. These groups may consist of thousands of individuals that could be considered shareholders. Suggestions from commenters included: (1)exempting these groups from listing individual shareholders; (2) requiring a signed affidavit provided to NMFS or the Maritime Administration (MARAD) stating that shareholders within the group are within accumulation limits, and that failure to report amounts exceeding accumulation limits would subject the company or its shareholders to enforcement action; and (3) setting a minimum threshold level where percent ownership for only those individual shareholders above that level need to be reported.

Response: NMFS considered the comments received on the proposed rule and input from the Groundfish Advisory Subpanel (GAP) at the November 2009 Pacific Fishery Management Council meeting. As stated in the proposed rule, the MSA requires NMFS to ensure that no one in the program acquires an excessive share of the resource, in this case, through accumulation limits. NMFS agrees with the commenters that collecting ownership information for all individual owners of large organizations with large numbers of small individual owners may be unduly burdensome. Further, collecting such information from individuals with a small ownership interest does not significantly contribute to achieving the statutory requirement that no shareholder be permitted to acquire an excessive share of the allocated quota. Therefore, after considering the options for limiting the burden while furthering the goals of the MSA, NMFS concluded that modifying the Trawl Identification of Ownership Interest Form to set a threshold limit of 2 percent ownership interest, below which individual owners need not be listed, is the most effective way to relieve the potential burden described above while implementing the requirements of the MSA. The rationale for this approach is described below.

NMFS considered and rejected the suggestion that it should exempt large corporations and other organizations from reporting individual ownership levels. A broad exemption is not necessary to alleviate the possible burden described above. Additionally, NMFS believes that in the context of the potential trawl rationalization program, in which accumulation limits are likely to be relatively small for some species, an ownership threshold for reporting would best further the intent of the MSA while reducing the reporting burden on entities with large numbers of small owners.

NMFS also considered and rejected the suggestion that business entities could comply with the data collection requirement by signing an affidavit stating that the business entity owning the permit, vessel, or processing plant, and any individuals with ownership interest in that business entity, are within the ownership interest accumulation limits. Requiring an affidavit would reduce NMFS' burden of monitoring accumulation limits. However, this option would not be as effective at achieving the goal of ensuring that the ownership of quota share is not inappropriately concentrated, particularly during the initial implementation of the trawl rationalization program. By requiring the reporting of ownership information prior to the issuance of quota shares, NMFS can ensure that accumulation limits are not exceeded before fishing under the program occurs, rather than after a violation has been identified and corrected.

Commenters proposed two alternative approaches to setting a minimum reporting threshold level. The minimum threshold could be set at levels appropriate to each fishery (at-sea mothership, at-sea mothership catcher vessels, and shoreside fleet), or it could be one number applicable to all fisheries (e.g., all individuals with greater than or equal to 10 percent ownership interest in a company must report). Public comments described an example of a fishery-specific minimum threshold for the mothership fishery: if there are only

six potential participants in the mothership fishery, and the accumulation limit for individuals is 45 percent, then it may be appropriate to set the reporting threshold level at greater than or equal to 10 percent ownership for individuals. While this approach makes sense, NMFS decided that the variable minimum threshold among sectors would add unnecessary complexity to an already complex program. One minimum threshold that is the same for participants in all fisheries would be easier for participants to understand, and for NMFS to implement.

NMFS next considered the level at which a minimum threshold should be set. Public comment suggested a 10 percent threshold, similar to the threshold for Alaska's crab rationalization program. NMFS decided the 10 percent minimum threshold may be too high for some sectors with accumulation limits of less than 10 percent, such as the IFQ fishery. At the November Council meeting, the GAP responded to NMFS' report (Agenda Item G.8.b, NMFS Report, November 2009), which outlined the public comments made on the proposed rule. The GAP report (Agenda Item G.8.c, Supplemental GAP Report, November 2009) suggested that ownership information from large companies (publicly-held corporations, environmental organizations, and CDQ groups, etc.) should be collected for individuals holding an ownership interest in those entities at a threshold that is slightly below the lowest accumulation limits (e.g., at 2 percent if the lowest accumulation limit is 2.5 percent). The GAP's rationale was that this formula will fulfill the requirement to monitor control of the resource without creating an undue administrative burden by collecting ownership information from every shareholder with any interest in the entity, no matter how small.

After reviewing the comments, NMFS decided the GAP recommended 2 percent minimum threshold for reporting ownership interest was reasonable, given the rationale that it is just below the lowest accumulation limit for the trawl rationalization program, and that it would reduce the reporting burden on potential participants with large numbers of individuals that have ownership interest in a permit or vessel. In order to be equitable, NMFS will apply the 2 percent minimum threshold to everyone owning a permit or vessel, not just large companies. Therefore, this final rule changes the proposed rule from requiring that ownership information for all individual owners be reported, even if the individual's ownership in the permit, vessel, or processor/first receiver is very small (e.g., 0.1 percent), to requiring that ownership interest on the individual level be reported for all individuals with greater than or equal to 2 percent ownership interest in a permit, vessel, or processor/first receiver. In addition, the Trawl Identification of Ownership Interest Form will be revised to reflect that the percentage of ownership of all shareholders reported may not equal 100 percent for entities with shareholders that own amounts smaller than 2 percent.

Comment 2: Some commenters were concerned about the confidentiality of the ownership information collected.

Response: NMFS addressed confidentiality in the supporting statement for the Paperwork Reduction Act (PRA) submission that accompanied the proposed rule. That submission stated that some of the information collected is considered or protected as confidential under section 402(b) of the MSA and NOAA Administrative Order 216–100, Protection of Confidential Fisheries Statistics. Accordingly, the names of individuals who have an ownership interest in an entity that owns a permit, vessel or processing plant and the actual percentage of ownership are considered business confidential and are not released to the public. The phone number, fax, email, TIN, and date of birth are also confidential. While the names and percent ownership of the individuals behind the entity are confidential, the name of the entity listed as owning the permit, vessel, or processing plant is public information, even if the owning entity is an individual. In addition, the business address for that entity is public information, even if the owning entity is an individual.

Comment 3: One commenter believes NMFS does not need to collect the following information, "tax identification number (TIN) for each entity; date of birth (DOB) for each individual; state in which each business entity is registered; business mailing address; physical address for processing plants; business phone number, fax number and email." In the event of confusion between entities or individuals, NMFS could request that information on a case-by-case basis.

Response: NMFS has determined that the TIN, DOB, state in which each business entity is registered; business mailing address; physical address for processing plants; business phone number are necessary for this information collection. The business mailing address and business phone numbers are necessary to ensure NMFS has accurate contact information on file for the potential participant in the trawl rationalization program. In addition, as described in the proposed rule, NMFS intends to mail pre-filled applications for the future trawl rationalization program. To do so, NMFS will need the contact information for potential participants. For established owner entities that have responded to this collection of information, they will only need to provide information for new shareholders or indicate if there are changes in ownership interest amounts for various shareholders.

Business entities are required to report the TIN for corporations or other business entities or the DOB for individuals in order to provide a unique identifier for Federal agencies to identify individuals and/or entities doing business with the government and, for the TIN, to verify that the business entity does not owe a delinquent debt to the government. The TIN is required to comply with Debt Collection Act of 1996. Specifically, 31 U.S.C. § 7701 (c)(1) states that, "the head of each Federal agency shall require each person doing business with that agency to furnish that agency such person's taxpayer identification number." Further, at 31 U.S.C. § 7701 (c)(2)(B), the Act provides that, "[f]or purposes of the subsection, a person shall be considered doing business with a Federal agency if the person is - an applicant for, or recipient of, a Federal license, permit, right away, grant or benefit payment administered by the agency ."

Moreover, the scope of information requested in this collection supports a number of important purposes for the Agency. This information will establish an initial baseline of contact information and unique identifiers for potential participants in the trawl rationalization program. First, NMFS must uniquely identify individuals to determine whether individuals or entities would exceed accumulation limits specified for the trawl rationalization program, if implemented. Unique identification of individuals and entities is important to ensuring that NMFS data is accurate and will reliably identify the proper recipient of harvest privileges. Second, it will help NMFS understand where ownership groups may have crossover into other parts of the groundfish fishery.

To reiterate for clarification purposes, NMFS intends to mail pre-filled applications for the future trawl rationalization program to potential

LAPP participants based on the information collected from the forms as part of the rulemaking. For permit owners, vessel owners, or processors/first receivers that have completed the Trawl Identification of Ownership Interest Forms as part of this rulemaking, subsequent forms will be mailed out if the future trawl rationalization program is implemented. These subsequent forms will be pre-filled, but would say "on file" in the TIN/DOB field of the forms. This is intended to protect the privacy of that information. The TIN/DOB field is only required to be filled out the first time the business entity or individual's information is collected by the NMFS, Northwest Region.

As explained in the preamble to the proposed rule, each business entity must be registered in a state before the initial allocation of harvest privileges, such as QS, to ensure compliance with the MSA. Business entities established under the laws of the United States or of any state would be required to provide proof of the establishment of their business and to verify that they are an active corporation. If an entity was not established under the laws of the United States or of any other state, this rule would not require the entity to become so established. However, an entity must be established under the laws of the United States or of any state in order to qualify for an initial allocation of QS, pursuant to section 303A(c)(1)(D) of the MSA. Providing the information at this stage will expedite the initial issuance process.

For processors or first receivers, the physical address for processing plants is necessary to distinguish multiple processing facilities that may be part of a larger parent company with the same name and same business mailing address. Those multiple processing facilities may have unique ownership interests and would be required to report their ownership interest.

Respondents are not required to complete the business fax number and business email fields on the form; they are optional.

Comment 4: One commenter noted that NMFS incorrectly referred to the mothership catcher vessel co-op shares as being allocated to the vessel, and that these quota shares are non-transferable amounts associated with the vessel.

Response: NMFS agrees the description in the proposed rule was not clear. The proposed rule stated, "QS for the at-sea mothership fleet (called "catch history assignments" in Council documents) would initially be allocated to the individual whiting catcher vessels associated with the mothership fishery, and would be non-transferable amounts associated with the vessel." What is not clear in this sentence is that the QS would be issued to individual catcher vessels in the mothership fishery as part of the limited entry permit. Once the QS is assigned to a specific limited entry permit based on the catch history of the vessel registered to that permit at the time of initial issuance, that QS is non-severable from the limited entry permit. While the QS cannot be split from the limited entry permit, the permit itself is transferable to another vessel or permit owner either permanently through a sale or temporarily through a lease arrangement.

Changes From the Proposed Rule

The proposed rule listed who potential participants in the trawl rationalization program should contact if they have concerns over the accuracy of their data in the PacFIN database or NORPAC databases. The Oregon contact has changed. The correct contact for Oregon is: Oregon - Nadine Hurtado (503–947–6247, *Nadine.Hurtado@state.or.us*). The contacts listed earlier in the preamble to this final rule have been updated with this change.

For reasons explained above in the response to comment 1, this final rule changes the reporting requirements listed in the proposed rule from requiring that all individuals report their level of ownership interest even if the ownership interest in the permit, vessel, or processor/first receiver is very small (e.g., 0.1 percent), to requiring that all individuals with greater than or equal to 2 percent ownership interest in a permit, vessel, or processor/first receiver must report their ownership interest to the individual level. The Trawl Identification of Ownership Interest Form will be revised to reflect this change. In addition, the Trawl Identification of Ownership Interest Form will be revised to reflect that the percentage of ownership of all shareholders reported may not equal 100 percent for entities with shareholders that own amounts smaller than 2 percent.

Non-substantive changes were made to paragraphs § 660.337 (a)(2)(i)(A) and (B), and to paragraph (a)(2)(ii)(C) to make them more clear.

An update was made to the chart at 15 CFR Part 902 tracking OMB control numbers assigned pursuant to the PRA.

Classification

Pursuant to section 402(a)(2) of the MSA, the NMFS Assistant Administrator, acting on behalf of the Secretary of Commerce, has determined that information collected under this final rule is necessary for developing and implementing the trawl rationalization program. The NMFS Assistant Administrator has also determined that this final rule is consistent with other provisions of the MSA and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, a FRFA was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, along with a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see ADDRESSES). A summary of the analysis follows:

This final rule allows NMFS to collect data to support implementation of a future trawl rationalization program, Amendment 20, to the Groundfish FMP. A separate Regulatory Impact Review/IRFA will be prepared for the full trawl rationalization program as part of the rulemaking for Amendment 20. This rule also announces that NMFS intends to use landings data from the PacFIN and NORPAC databases to determine initial allocations of QS for the trawl rationalization program. Section 402(a)(2) of the MSA gives the legal authority for the action. If the Secretary determines that additional information is necessary for developing or implementing an FMP, the Secretary may, by regulation, implement an information collection requiring submission of such additional information for the fishery.

The trawl rationalization program would be a LAPP under the MSA. The MSA requires the Council or the Secretary of Commerce to ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program and to establish a maximum share, expressed as a percentage that each limited access privilege holder may hold, acquire, or use. For the trawl rationalization program, the Council has adopted limits on the amount of pounds a vessel can hold, acquire, or use (i.e., vessel limits), and limits on the amount of quota share that can be held, acquired, or used (i.e., control limits). In order to prepare for implementation of the accumulation limits in the trawl rationalization program, this rule will allow NMFS to begin collecting ownership information from potential participants in the program, including the at-sea fleet (whiting motherships,

whiting mothership catcher vessels, and whiting catcher/processors), the shore-based fleet (whiting and non-whiting permit owners and holders) and the whiting shore-based processors.

NMFS received no comments on the IRFA. However, there were comments recommending simplification of the reporting requirements. It is not clear how many of these comments were from "small" entities. Four of the commenters suggested alternative requirements for reporting ownership accumulation limits. These comments focused on the practicality of collecting ownership information at the individual level for large companies, such as publicly-owned corporations (domestic or foreign), non-governmental organization, and Community Development Quota (CDQ) groups. These groups may consist of thousands of individuals that could be considered shareholders and possibly small businesses.

The final rule changes the requirements listed in the proposed rule from requiring that all individuals report even if the ownership interest in the permit, vessel, or processor/first receiver is very small (e.g., 0.1 percent), to requiring that all individuals with greater than or equal to 2 percent ownership interest in a permit, vessel, or processor/first receiver must report their ownership interest to the individual level. The Trawl Identification of Ownership Interest Form will be revised to reflect this change. In addition, the Trawl Identification of Ownership Interest Form will be revised to reflect that the percentage of ownership of all shareholders reported may not equal 100 percent for entities with shareholders that own amounts smaller than 2 percent.

This final rule will collect ownership information from approximately 250 potential participants in the trawl rationalization program. Using Small Business Administration (SBA) standards (described in the IRFA), most of the estimated 250 entities are considered small businesses, except for some catcher vessels that also fish off Alaska, some shoreside processors and all catcher-processors and motherships (fewer than 30) that are affiliated with larger processing companies or large international seafood companies.

NMFS will send an ownership interest form to all potential participants in the trawl rationalization program, requiring the following information: type of entity; qualifying permit number; name of company or name of individuals owning the limited entry permit, vessel or processing plant; tax identification number (TIN) for each entity; date of birth (DOB) for each individual; state registered in for each business entity; business mailing address; physical address for processing plants, business phone number, fax number and email; authorized representative's name; name of each individual having ownership interest in the limited entry permit, vessel or processing plant; the individual's business addresses; percentage of ownership by each entity (if there are multiple entities given as an owner of the permit, vessel, or processing plant) and each individual shareholder in each entity; printed name of authorized representative, signature, and date. The total ownership interest of all shareholders in an entity or partnership must equal 100 percent, except for cases where some shareholders/partners in the business entity own less than 2% and are, therefore, not required to be reported. Only shareholders with greater than or equal to 2% ownership interest in the business entity are required to report their ownership interest. The form will require all owners to certify whether or not they are a small business according to SBA and Regulatory Flexibility Act standards. Typically, NMFS has assumed that shoreside harvest vessels are small entities while assuming that catch processors, mothership processors and several shoreside processors are large entities. However, NMFS does not currently have information to confirm this assumption is true. The information requested in Section C of the form will assist NMFS in better understanding the nature of these entities. The individual signing the form will certify under penalty of perjury that the information provided is true and correct, and the form will be required to be notarized by a notary public.

In addition to completing the mandatory ownership interest form, potential trawl rationalization program participants may be required to submit additional documentation. If the ownership interest in the permit, vessel, or potential quota share involves a business entity, then additional documentation will be required. If an authorized representative signs this form for a business entity, then a corporate resolution is required that authorizes the person signing to do so on behalf of the entity. Business entities established under the laws of the United States or any state will be required to provide proof that they had done so and to verify that they are an active corporation. If an entity was (is) not established under the laws of the United States or of any other State, they will not be required to do so by this rule. However, being an established entity under the laws of the United States or under the laws of any state is a requirement to qualify for an initial allocation of quota share, pursuant to section 304(c)(1)(D) of the MSA. Providing the information at this stage will expedite the initial issuance process.

Additional documentation that NMFS may request after review of the completed Trawl Ownership Interest Form include articles of incorporation, a contract, or any other credible documentation that substantiates those with ownership interest in the entity and the their percent ownership. NMFS may require a certified copy of the current vessel document (U.S. Coast Guard or state) as evidence of vessel ownership. NMFS may also request or consider any other relevant, credible evidence.

The ownership interest form will be mailed to respondents in early 2010, and respondents will have at least 60 days from the effective date of the **Federal Register** final rule to return the completed form. The form must be completed and returned to NMFS no later than May 1, 2010. This form does NOT prequalify these persons for QS nor guarantee that they will qualify for QS under the future trawl rationalization program.

The professional skills required to complete the Trawl Ownership Interest Form are no different than those currently employed by fishermen and businessmen to register their vessels and companies under U.S. and state laws.

NMFS does not believe that this one time reporting will have a significant economic impact on small entities, as the estimated reported burden is approximately 30 minutes per response, and cost approximately $19.15 per response (including the respondent's time ($8.51), mailing, photocopying, and notary fee), are amounts that even small businesses can bear without financial hardship. There is no fee for this form.

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 or group of rules. As part of this rulemaking process, a

letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northwest Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the fishery. The guide and this final rule will be available upon request.

This final rule contains a collection-of-information requirement subject to the PRA that has been approved by the Office of Management and Budget (OMB) under control number 0648–0599 (expires 12/31/12). The public reporting burden for the Trawl Identification of Ownership Interest Form is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. This form is estimated to cost approximately $19.15 per response (including the respondent's time ($8.51), mailing, photocopying, and notary fee). There is no fee for this form. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS, Northwest Region (see ADDRESSES) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

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

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, and Indian Fisheries.

Dated: January 25, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b), under "50 CFR", the entry "660.337" is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b)* * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
660.337	–0599
* * * *	*

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

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

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

■ 2. A new § 660.337 is added to read as follows:

§ 660.337 Trawl rationalization program - data collection requirements.

(a) Ownership reporting requirements - (1) In 2010, NMFS will send a Trawl Identification of Ownership Interest Form to the current address on record requesting information from participants in the trawl fishery. Receipt of this form does NOT prequalify these persons for quota share nor does it guarantee that they will qualify for quota share under a future trawl rationalization program. The following participants in the trawl fishery must complete and return the form to NMFS:

(i) Owners of each limited entry permit endorsed for trawl gear;

(ii) Owners of each vessel registered to a limited entry permit endorsed for trawl gear (i.e., permit holder) if not identical to the permit owner covered by paragraph (a)(1)(i) of this section;

(iii) Owners of each vessel registered to a Pacific whiting vessel license that are not covered by paragraphs (a)(1)(i) and (ii) above; and

(iv) First receivers issued current Pacific whiting first receiver exempted fishing permits.

(2) Supporting documentation.

(i) Business entities completing the Trawl Identification of Ownership Interest Form are required to submit the following:

(A) A corporate resolution or any other credible documentation as proof that the representative of the entity is authoirzed to act on behalf of the entity; and

(B) Proof that the business entity was established and is currently recognized as active under the laws of the United States or any state.

(ii) After review of the Trawl Identification of Ownership Interest Form, NMFS may require the following additional documentation:

(A) Articles of incorporation, a notarized contract, or any other credible documentation that identifies each person who owns an interest in the entity and their percentage of ownership;

(B) A certified copy of the current vessel document (United States Coast Guard or state) as evidence of vessel ownership; or

(C) Such other relevant, credible information as the applicant may submit, or as the SFD or the Regional Administrator may request or require.

(3) Deadline. Persons listed in paragraph (a)(1) will be provided at least 60 calendar days to submit completed forms. All forms must be completed and returned to NMFS with a postmark no later than the deadline date of May 1, 2010.

(b) [Reserved]

[FR Doc. 2010–1877 Filed 1–28–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375 and 385

[Docket No. RM01–5–000]

Electronic Tariff Filings

Issued January 21, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order establishing procedures relating to tariffs filed electronically.

SUMMARY: The adoption of electronic tariff filing necessitates changes in the Commission's processing of tariff filings. This order identifies the ways in which such changes affect aspects of Commission procedures, particularly the determination of statutory filings and statutory action dates, as well as changes in docketing procedures.

DATES: *Effective date:* This order is effective January 29, 2010. *Applicability date:* This order becomes applicable when tariff filings are submitted in electronic format.

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8525, *Keith.Pierce@ferc.gov.*

Anthony Barracchini (IT Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8940, *Anthony.Barracchini@ferc.gov.*

Andre Goodson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8560, *Andre.Goodson@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. In Order No. 714,[1] the Commission adopted regulations requiring that, starting April 1, 2010, all tariffs and tariff revisions filed with the Commission must be filed electronically according to a format developed through collaboration between Commission staff and the wholesale electric and gas quadrants of the North American Energy Standards Board, and representatives from the Association of Oil Pipelines. The adoption of electronic tariff filing provides the framework for a more efficient document processing system as well as providing a user-friendly interface from which the Commission, its staff, and the public may retrieve and review tariffs.

2. The adoption of electronic tariff filing necessitates changes in the business practices used by the Commission to process tariff filings. This order identifies ways in which such changes affect aspects of Commission procedures, particularly the determination of whether a filing is a statutory filing, and the statutory action date, as well as changes in docketing procedures.

Statutory Filings

3. As the Commission explained in Order No. 714, the electronic format developed through the collaborative process relies upon the use of metadata (or information) about the tariff filing, including such data elements as the type of filing that is being made, the proposed effective date of proposed tariff changes, and the version number of the effective tariff.[2] As the Commission explained, these data elements "are required to properly identify the nature of the tariff filing, organize the tariff database, and maintain the proper relationship of tariff provisions in relation to other provisions."[3]

4. The Commission will be using these data elements to establish statutory filing and other procedural dates.[4] The Commission will use the "Type of Filing" code (filing_type) together with the "Tariff Record Proposed Effective Date" (proposed_effective_date) to establish whether a filing is statutory and the applicable statutory timelines.

5. All filers making statutory filings must choose a statutory filing type and include a proposed effective date to have their filings treated as statutory filings upon which the Commission must act within statutorily-established time frames. That is, the filing type selected by the filer will determine the type of filing and whether the filing is to be treated as a statutory filing. Any discrepancy between the description of the filing in the transmittal letter (or other pleading) and the Type of Filing code chosen will be resolved in favor of the Type of Filing code.[5] Because the Commission is using the electronic metadata to establish statutory action dates throughout its electronic systems, the primacy of the Type of Filing code is necessary to ensure the integrity of Commission processes and to ensure Commission action on such filings within the time period provided under the appropriate statute.[6] While Commission staff will try, where possible, to notify a filer of discrepancies between its transmittal letter and the Type of Filing code it selected, the Type of Filing code selected will govern the appropriate filing type and thus whether and what actions dates may be applicable.[7]

6. Similarly, the Commission will be using the Tariff Record Proposed Effective Date code to establish the proposed effective date for any statutory filing.[8] As is current practice, the date established by the Tariff Record Proposed Effective Date, if that date is after the otherwise statutorily-established effective date, will establish the date on which, by statute, a tariff filing would go into effect by operation of law in the absence of Commission action.[9] In a tariff filing that contains different proposed effective dates for different proposed tariff changes, the earliest proposed effective date will establish the proposed effective date for determining the date on which the filing would go into effect in the absence of Commission action.[10] While the Commission will continue its current practice of considering requests in

[1] *Electronic Tariff Filings,* Order No. 714, 73 FR 57515 (Oct. 3, 2008), FERC Stats. & Regs ¶ 31,276 (2008).

[2] These data elements, or codes, are described in the *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filing* (Implementation Guide), found on the Commission's Web site, *http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf.*

[3] Order No. 714 at P 23. *See* The National Center for State Courts, *Standards for Electronic Filing Processes (Technical and Business Approaches),* Standard 1.1F (2003) (concluding that the responsibility for data entry needs to be assigned to the filer, since it has the greatest familiarity with the data to be entered), *http://www.ncsconline.org/d_tech/standards/Documents/pdfdocs/Recommended_%20Process_%20standards_02_26_03.pdf.*

[4] A statutory filing is a filing made pursuant to section 4 of the Natural Gas Act (NGA), section 205 of the Federal Power Act (FPA), or section 6 of the Interstate Commerce Act (ICA) to revise rates or terms and conditions of service.

[5] For example, if the transmittal letter states that a statutory FPA section 205 filing is contemplated, but the Type of Filing code selected represents a compliance filing, the Commission will treat the filing as a compliance filing, which is not subject to action within the period prescribed by FPA section 205.

[6] The Type of Filing code will be used in all of the Commission's electronic systems to establish the applicable statutory action dates, and so, notwithstanding a filing party's wish expressed in its transmittal letter or in other pleadings, the Commission may not review a filing that is incorrectly coded within the time period requested by a filing party in such pleadings.

[7] Commission staff's efforts in this regard are intended simply as a voluntary and informal aid to filers, and any action or failure on the part of Commission staff will not bind or otherwise affect how the Commission processes such filings. *See* 18 CFR 388.104(a) (2009); *accord, e.g.,* 18 CFR 154.8 (2009). It is, and remains, the filer's responsibility to ensure that it is selecting the appropriate Type of Filing code, as well as accurately providing any other metadata.

[8] In order to constitute a statutory tariff filing, the filer, therefore, must both select a statutory Type of Filing code and include a Tariff Record with a Tariff Record Proposed Effective Date.

[9] For example, if the Tariff Record Proposed Effective Date is after the otherwise applicable statutorily-established effective date, the statutory period will be extended until the Tariff Record Proposed Effective Date.

[10] As explained in the Implementation Guide, for statutory filings with indeterminate effective dates, for example, where the effective date is contingent on Commission approval, plant construction, or the closing of a plant sale, filers must still include a Tariff Record Proposed Effective Date, but should set that date to 12/31/9998. Implementation Guide, at 10, *http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf.*

transmittal letters or other pleadings for issuance of orders on an expedited basis, statements in transmittal letters or other pleadings will *not* establish statutory action dates for tariff filings.

7. Because of the importance of the Type of Filing code and the Tariff Record Proposed Effective Date, these metadata will be included in the electronic notices sent to the filers and posted on eLibrary.[11] Filers should check these sources carefully to verify that their tariff filings and proposed effective dates are what they intended.

8. Filers also need to be careful when making combined filings, *i.e.,* filings whose different parts would, if filed individually, have different Type of Filing codes.[12] Each filing can have only one Type of Filing code, and so the treatment of any combined filing will depend on the particular Type of Filing code chosen.[13]

Docketing Procedures

9. The Commission will use the metadata supplied with the tariff filing to help speed up its docketing and notice process. As far as possible, these data will permit docketing that closely parallels current practice. However, some of the docket prefixes previously used may not be assigned to electronic tariff filings and these filings will be assigned only a single docket number rather than multiple docket numbers as may have occurred in the past.

10. Procedures for identifying root and subsequent subdockets[14] will remain the same for the vast majority of compliance and other filings. However, in a few cases, parties will experience differences, particularly for compliance filings made in the context of complaint cases.

11. Subdockets for compliance filings will be established based on the metadata provided by the pipeline or utility making the filing. Each pipeline or utility is required to identify every filing using a discrete number, "Filing Identifier" (filing_id). When making filings related to or associated with a prior filing (such as a compliance filing), the pipeline or utility must include the Filing Identifier of the prior filing that is associated with its current filing. (The Filing Identifier of the initial filing will be included as the "Associated Filing Identifier" (associated_filing_id) in the subsequent filing). For example, if the pipeline or utility is making a compliance filing, it will include as the Associated Filing Identifier in the compliance filing, the Filing Identifier it assigned to the initial tariff filing giving rise to the compliance filing. That Associated Filing Identifier will permit the Commission to determine the relevant root docket number assigned to the initial tariff filing, so that a subdocket for the compliance filing can be assigned.

12. However, in those circumstances in which the pipeline or utility does not include (in a subsequent filing) the Filing Identifier of its initial filing, the root docket number for the initial proceeding will not be available. Accordingly, a new root docket number will be assigned to the compliance filing. The practice of assigning a new root docket parallels the Commission's typical practice with respect to compliance filings in rulemaking proceedings, in which each pipeline's or utility's individual filing to comply with the rule typically receives a new root docket number.

13. However, new root docket numbers may be assigned in situations in which subdockets traditionally had been assigned manually and new procedures need to be followed in these circumstances. A common situation in which this will occur will be during the implementation phase of electronic tariff filing. New root docket numbers will be assigned to compliance filings when companies have outstanding compliance obligations at the time they make their original, baseline tariff filings. Because the original tariff filing giving rise to the compliance obligation will not be part of the pipeline's or utility's electronic database, it will not have a Filing Identifier and therefore the pipeline or utility will not be able to include the Filing Identifier in the compliance filing, and the compliance filing will be assigned a new root docket number.

14. This situation also may occur on a limited scale on an ongoing basis. For example, in complaint cases, the filing initiating the complaint is not filed by the pipeline or utility, but rather by a third-party, typically a customer. In the process of resolving the complaint, the Commission may require the pipeline or utility to file a revision to its tariff. In such a circumstance, the pipeline or utility will not have an initial filing in its database with which to associate the compliance filing. Therefore, as described above, the compliance filing made through the electronic tariff filing portal will receive a new root docket, rather than a subdocket from the original complaint case. In other words, the compliance filing in a complaint proceeding will parallel the situation in which the pipeline or utility is complying with a rulemaking, and the compliance filing will receive a new root docket.[15]

15. In situations in which new root dockets are assigned to compliance filings, the pipeline or utility making the filing still is required to serve the compliance filing on all parties in the original docket.[16] For example, in a complaint case, the pipeline or utility will need to serve the compliance filing on all parties in the original complaint docket giving rise to the compliance obligation.

16. In order to establish a simple and uniform method for determining parties and service lists when a new root docket is established, the Commission will follow its existing practice with respect to the need to intervene. Currently, parties who have intervened in initial proceedings do not have to re-intervene in subdockets.[17] However, when the Commission establishes new root dockets (such as for compliance with rulemaking proceedings), intervention is required to become a party to the new root docket proceeding and to appear on the service list for that proceeding.[18] The same approach will be taken whenever a new root docket is assigned in a compliance proceeding: those wishing to become parties to a new root docket will have to intervene in that docket. A simple-to-apply rule will help

[11] An example of how eLibrary will display the metadata for an electronic tariff filing is posted at *http://www.ferc.gov/EventCalendar/Files/20091119114331-Example%20eTariff%20eLibrary%20Rendition.rtf.*

[12] The Commission's regulations and policies already prohibit combined filings in some situations. *See* 18 CFR 154.203 (2009) (compliance filings cannot be combined with any other type of filing); *Calpine Eastern Corporation,* 97 FERC ¶ 61,078, at 61,382 (2001) (cannot combine filings made in compliance with a prior Commission order with new FPA section 205 filings).

[13] Instead of combining filings, filers can make separate filings for each type of filing contemplated—each filing containing the portions relevant to the specific filing type.

[14] The Commission typically assigns a root docket number to an initial filing and then adds subdockets to later filings in the same proceeding. As an illustration, for Docket No. ER12–6789–000, the root docket number is "ER12–6789" and the subdocket is "000." When a subsequent compliance filing is made, the root docket is retained and the subdocket will be incremented, usually by 1, so that the new docket number will be ER12–6789–001.

[15] The complaint proceeding will determine whether the pipeline or utility is in violation of its tariff or whether the tariff is unjust and unreasonable. The compliance proceeding focuses on whether the filing by the pipeline or utility satisfies the Commission's determination in the complaint proceeding.

[16] If service is made electronically by including a link to the document in the Commission's eLibrary system, parties will be notified of the new root docket assigned to the compliance filing. 18 CFR 385.2010(f)(3) (2009) (providing for service through "the transmission of a link to that document in the Commission's eLibrary system").

[17] The Commission maintains one service list for root dockets and all subdockets, not individual service lists for each subdocket.

[18] 18 CFR 385.214 (requiring intervention to become a party).

ensure that the parties to proceedings are known to each other and to the Commission and that service of pleadings and orders is provided to all parties.

17. Moreover, to permit the easy identification of related filings for compliance filings receiving new root dockets,[19] pipelines and utilities are urged to include as part of their eFiling description an indication that they are making a compliance filing and the docket number to which they are complying. This filing description will appear in the Commission's notice and will aid in the identification of the relationship between the compliance filing and the original proceeding.

The Commission Orders

(A) The procedures described in the body of this order will apply to tariff filings that are submitted in electronic format.

(B) The Secretary shall publish a copy of this order in the **Federal Register.**

By the Commission. Commissioner Norris voting present.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1538 Filed 1–28–10; 8:45 am]

BILLING CODE 6717–01–P

[19] These will be filings without the Filing Identifier of a related filing.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2010–N–0002]

Implantation or Injectable Dosage Form New Animal Drugs; Ceftiofur Crystalline Free Acid

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The supplemental NADA provides for veterinarian prescription use of ceftiofur crystalline free acid injectable suspension for the treatment of lower respiratory tract infections in horses.

DATES: This rule is effective January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to NADA 141–209 for EXCEDE (ceftiofur crystalline free acid) Sterile Suspension. The supplemental NADA provides for veterinarian prescription use of ceftiofur crystalline free acid injectable suspension for the treatment of lower respiratory tract infections in horses caused by susceptible strains of *Streptococcus equi* ssp. *zooepidemicus*. The application is approved as of December 16, 2009, and the regulations are amended in 21 CFR 522.313a to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of the safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 522.313a, add paragraph (e)(3) to read as follows:

§ 522.313a Ceftiofur crystalline free acid.

* * * * *

(e) * * *

(3) *Horses*—(i) *Amount*. Two intramuscular injections, 4 days apart, at a dose of 3.0 mg/lb (6.6 mg/kg) body weight.

(ii) *Indications for use*. For the treatment of lower respiratory tract infections in horses caused by susceptible strains of *Streptococcus equi* ssp. *zooepidemicus*.

(iii) *Limitations*. Do not use in horses intended for human consumption.

Dated: January 22, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–1790 Filed 1–28–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2010–N–0002]

Ophthalmic and Topical Dosage Form New Animal Drugs; Miconazole, Polymixin B, and Prednisolone Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Janssen Pharmaceutica NV. The NADA provides for use of miconazole nitrate, polymixin B sulfate, and prednisolone acetate for the treatment of otitis externa in dogs.

DATES: This rule is effective January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Janssen Pharmaceutica NV, Turnhoutseweg 30, B–2340 Beerse, Belgium, filed NADA 141–298 that provides for veterinary prescription use of SUROLAN (miconazole nitrate, polymixin B sulfate, and prednisolone acetate) Otic Suspension in dogs for the treatment of otitis externa associated with

susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (*Staphylococcus pseudintermedius*). The NADA is approved as of November 23, 2009, and the regulations are amended in 21 CFR part 524 by adding new 21 CFR 524.1445 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Add § 524.1445 to read as follows:

§ 524.1445 Miconazole, polymixin B, and prednisolone suspension.

(a) *Specifications*. Each milliliter of suspension contains 23 milligrams (mg) miconazole nitrate, 0.5293 mg polymixin B sulfate, and 5 mg prednisolone acetate.

(b) *Sponsor*. See No. 012578 in 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount*. Instill five drops in the ear canal twice daily for 7 consecutive days.

(2) *Indications for use*. For the treatment of canine otitis externa associated with susceptible strains of yeast (*Malassezia pachydermatis*) and bacteria (*Staphylococcus pseudintermedius*).

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: January 22, 2010.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2010–1794 Filed 1–28–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–1129]

Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Senator Ted Hickey (Leon C. Simon) Bascule Bridge across the Inner Harbor Navigational Canal, mile 4.6, at New Orleans, LA. The deviation is necessary to ensure the safety of pedestrians as they bike across the bridge for the Ochsner Ironman 70.3 New Orleans event. This deviation allows the bridge to remain closed during the event.

DATES: This deviation is effective from 5 a.m. to 2 p.m. on April 18, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–1129 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1129 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lindsey Middleton, Bridge Administration Branch; telephone 504–671–2128, e-mail *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The bridge owner approved the request for the closure of the Senator Ted Hickey (Leon C. Simon) Bascule Bridge on Seabrook Highway crossing the Inner Harbor Navigational Canal, mile 4.6, in New Orleans, LA. In the closed-to-navigation position, the vertical clearance of the bridge is 45 feet above mean sea level. Currently, according to 33 CFR 117.458 (c), The draw of the Leon C. Simon Blvd. (Seabrook) bridge, mile 4.6, shall open on signal; except that, from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday, the draw need not be opened. This deviation allows the draw span of the bridge to remain closed to navigation between 5 a.m. and 2 p.m. on April 18, 2010 while the Ironman contenders travel across the bridge as part of the 56 mile bike course. Navigation on the waterway consists mainly of tugs with tows. As a result of coordination between the Coast Guard and the waterway users, it has been determined that this closure will not have a significant effect on these vessels. The Coast Guard will inform users through the Local and Broadcast Notice to Mariners of the closure period. There are alternate routes available to vessel traffic. Vessels that can pass under the bridge in the closed-to-navigation position can do so at any time. The bridge will not be able to open for emergencies.

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

Dated: January 19, 2010.

David M. Frank,

Bridge Administrator.

[FR Doc. 2010–1801 Filed 1–28–10; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–13 and CP2010–12; Order No. 365]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Inbound International Expedited International Services 3 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective January 29, 2010 and is applicable beginning December 22, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 65170 (December 9, 2009).

I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Inbound International Expedited Services 1 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request, but designates the new product as Inbound International Expedited Services 3.

II. Background

On November 20, 2009, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Inbound International Expedited Services 1 to the Competitive Product List.[1] The Postal Service asserts that Inbound International Expedited Services 1 is a competitive product within the meaning of 39 U.S.C. 3632(b)(3).

The Postal Service states that prices and classifications underlying these rates are supported by Governors' Decision No. 08–5.[2] *Id.* at 1–2. This Request has been assigned Docket No. MC2010–13.

The Postal Service states that Governors' Decision No. 08–5 establishes the prices for Inbound International Expedited Services 1 and the changes in classification "not of general applicability" necessary to implement those prices. *Id.* at 1.

The Postal Service contemporaneously filed notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, that it has entered into a contractual bilateral agreement (Agreement) governing bilateral rates for Express Mail Service (EMS) with China Post Group, the public postal operator in the People's Republic of China. The Postal Service states that the supporting financial materials included in this filing indicate that the inbound EMS rates comply with the requirements of 39 U.S.C. 3633(a). *Id.* at 2. The rates as established in the bilateral agreement are assigned Docket No. CP2010–12.

In support of its Request, the Postal Service filed the following materials: (1) An application for non-public treatment of pricing and supporting documents filed under seal;[3] (2) a redacted version of Governors' Decision No. 08–5 establishing prices and classifications for services offered under EMS bilateral/multilateral agreements; Mail Classification Schedule (MCS) language applicable to Inbound EMS bilateral/multilateral agreements; formulas for inbound prices under EMS bilateral/multilateral agreements; and an analysis of the formulas, certification of the Governors' vote, and certification of compliance with 39 U.S.C. 3633(3)(a);[4] (3) a redacted version of the China Post Group bilateral agreement;[5] (4) certification of prices for the bilateral agreement;[6] and (5) a Statement of Supporting Justification as required by 39 CFR 3020.32.[7]

On June 1, 2008, the Postal Service filed notice of Governors' Decision No. 08–5 in Docket Nos. CP2008–6 and CP2008–7.[8] These dockets gave notice of a competitive negotiated service agreement with China Post Group covering EMS prices.[9] In Order No. 84, the Commission added the China Post Agreement as a product not of general applicability to the competitive product list as Inbound International Expedited Services 1.[10] The Postal Service states the agreement became effective on July 15, 2008, and continued in effect until July 14, 2009. Request at 3. The Postal Service entered into a new agreement with the China Post Group on November 16, 2009. The Postal Service now requests to restore the Inbound International Expedited Services 1 product to the Competitive Product List. *Id.*

The bilateral agreement establishes alternative, negotiated rates to China Post Group for inbound EMS, instead of the EMS 2 product rates that would otherwise be applicable.[11] The Postal Service notes that the inbound portion of the bilateral agreement fits within the MCS language included as Attachment A to Governors' Decision No. 08–5. The agreement becomes effective upon completion of all necessary regulatory reviews, but in no case earlier than January 1, 2010. The agreement continues in effect until terminated, which may occur upon 30 days' notice by either party. The negotiated prices are subject to change based upon contingencies included in the agreement. *Id.* at 4. If rates change, the Postal Service will offer China Post Group EMS rates reflecting an adjusted rate. *Id.*

The Postal Service states that the new agreement is functionally equivalent to the prior contract reviewed by the Commission except for different rates that may be applicable to certain flows in the new agreement. *Id.* at 5. It notes the instant agreement exhibits the same cost and market characteristics as the previous agreement. The Postal Service describes minor changes in the instant agreement which include changes in standard clauses due to the Commission's confidentiality rules and other internal issues. *Id.*

In the Statement of Supporting Justification, Kang Zhang, General Manager, Business Development, Asia/Pacific, Global Business Development, asserts that "[t]he addition of [the Bilateral] Agreement as a competitive product will enable the Commission to verify that each contract covers its attributable costs and enables competitive products, as a whole, to make a positive contribution to coverage of institutional costs." He further states that as a result, "no issue of subsidization of competitive products by market dominant products arises." *Id.*, Attachment 5.

[1] Request to Add Inbound International Expedited Services 1 to the Competitive Product List, and Notice of United States Postal Service of Filing China Post Group-United States Postal Service Contractual Bilateral Agreement (Under Seal), November 20, 2009 (Request).

[2] Governors' Decision No. 08–5, April 1, 2008, established prices for the inbound services offered under Express Mail International bilateral/multilateral agreements.

[3] Attachment 1 to the Request.

[4] Attachment 2 to the Request.

[5] Attachment 3 to the Request.

[6] Attachment 4 to the Request.

[7] Attachment 5 to the Request.

[8] *See* Docket Nos. CP2008–6 and CP2008–7, Notice and Order Concerning Prices Under Express Mail International Bilateral/Multilateral Agreements, June 3, 2008. The Commission consolidated Docket No. CP2008–6 with Docket No. CP2008–7 in this Order.

[9] *See* Docket No. CP2008–7, Notice of United States Postal Service of Filing an Agreement for Inbound Express Mail International (EMS) Prices, May 20, 2008.

[10] Docket No. CP2008–7, Order Concerning the China Post Group Inbound EMS Agreement, June 27, 2008 (Order No. 84).

[11] The Postal Service states that in the absence of this negotiated agreement, EMS rates for calendar year 2010 as reviewed by the Commission in Docket No. CP2009–57 would apply. *Id.* at 4. *See* Docket No. CP2009–57, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 19, 2009.

Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.*, Attachment 4. He asserts that the prices for the China Post Group bilateral agreement "should cover its attributable costs and preclude the subsidization of competitive products by market dominant products." *Id.*

The Postal Service filed much of the supporting materials, including the specific bilateral agreement, under seal. Request at 5. In its Request, the Postal Service maintains that certain portions of the contract, the rates, descriptions of the rates, and related financial information should remain under seal. *Id.*, Attachment 1.

In Order No. 347, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[12]

III. Comments

Comments were filed by the Public Representative.[13] No other interested person submitted comments. The Public Representative states that the prices and classifications underlying the rates in the bilateral agreement are supported by Governor's Decision No. 08–5, which was originally filed in Docket Nos. CP2008–6 and CP2008–7. *Id.* at 2. He finds that the agreement appears to be in compliance with 39 CFR 3015.5, 3020.30 and 39 U.S.C. 3632, 3633(a) and 3642. *Id.*

He states that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. The Public Representative further states that based on review of the supporting data, the agreement satisfies the requirements of 39 U.S.C. 3633(a). *Id.* at 2.

The Public Representative concludes that the bilateral agreement comports with the provisions of title 39 and offers negotiated pricing, dispatch methods, and other negotiated provisions favorable both to the Postal Service and general public. *Id.* at 3.

IV. Commission Analysis

The Commission has reviewed the agreement, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning the Agreement to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign the Agreement to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment 5, para. (d). It also contends that it may not decrease quality or output without risking the loss of business to large competitors that offer similar expedited delivery services. *Id.* The Postal Service states that the bilateral agreement prices provide sufficient incentive for China Post Group and its customers to tender EMS volume to the Postal Service rather than a competitor. The Postal Service further states that raising its prices could risk losing its China Post Group volume to a private competitor in the international shipping industry. *Id.*

The Postal Service relates that the instant bilateral agreement's terms relate to the exchange between the Postal Service and China Post Group for Inbound EMS at negotiated prices which has been classified as competitive because of its exclusion from the letter monopoly and the level of competition in the relevant market. *Id.* It contends that even if the EMS tendered under the bilateral agreement might contain "letters" as defined in postal regulations, the EMS items at issue in the agreement fall outside the Private Express Statutes because all prices paid by China Post Group exceed six times the rate for the first ounce of a First-Class Mail letter. *Id.*, para. (e). Additionally, the Postal Service contends that many inbound EMS items may be expected to weigh more than 12.5 ounces. *Id.*

Finally, the Postal Service states that private consolidators, freight forwarders, and integrators offer international shipping services using EMS. It notes that delivery of EMS in the domestic service area of the United States requires a substantial infrastructure to support a national network and as a result large carriers serve this market. *Id.*, para. (f). The Postal Service mentions that it has no specific data on China Post Group's or its customers' view on the regulatory classification of this agreement. *Id.*, para. (g). However, it contends that presumably China Post Group and its end users find this type of product satisfactory since they have a choice of competitors providing similar services. *Id.* Finally, the Postal Service states that the market for expedited delivery services is highly competitive, and the bilateral agreement should not have a significant impact on small businesses. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.*, para. (h). It contends that the bilateral agreement gives China Post Group's small business customers another option for shipping articles to the United States resulting in a positive impact on small business. *Id.*

No commenter opposes the proposed classification of the Agreement as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that the Agreement is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that the Agreement covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that the new product, which, as noted below, is designated as

[12] PRC Order No. 347, Notice and Order Concerning Adding Inbound International Expedited Services 1 to the Competitive Product List and China Post Group Bilateral Agreement, November 25, 2009 (Order No. 347).

[13] *See* Public Representatives Comments in Response to United States Postal Service Request to Add Inbound International Expedited Services 1 to the Competitive Product List and China Post Bilateral Agreement, December 10, 2009 (Public Representative Comments).

International Expedited Services 3, should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed International Expedited Services 3 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. Inbound International Expedited Services 1 was added to the Competitive Product List in Docket No. CP2008–7. *See* Order No. 84, supra. That agreement terminated on July 15, 2009. Request at 3. The Postal Service seeks to restore the Inbound International Expedited Services 1 product on the Competitive Product List. *Id.* Given that the prior Inbound International Expedited Services 1 product agreement has ended and the Postal Service has negotiated a comparable new agreement with a different term and rates, the Commission will designate the Agreement as Inbound International Expedited Services 3. The Commission has followed this practice with other products which exhibited sufficient variation from the original agreement to warrant classification as a new product.[14]

The China Post Group agreement indicates that it becomes effective upon receipt of all necessary regulatory approvals. Request at 4. The Postal Service shall notify the Commission of the effective dates of the China Post Group agreement. The agreement states it is to remain in effect until terminated. The Postal Service shall inform the Commission of the termination date.

Conclusion. The Commission approves International Expedited Services 3 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

V. Ordering Paragraphs

It is ordered:

1. International Expedited Services 3 (MC2010–13 and CP2010–12) is added to the Competitive Product List as a new product under Express Mail Inbound International Expedited Services, as discussed in this order.

2. The Postal Service shall notify the Commission upon termination of the agreement as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020–Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List
- First-Class Mail
  - Single-Piece Letters/Postcards
  - Bulk Letters/Postcards
  - Flats
  - Parcels
  - Outbound Single-Piece First-Class Mail International
  - Inbound Single-Piece First-Class Mail International
- Standard Mail (Regular and Nonprofit)
  - High Density and Saturation Letters
  - High Density and Saturation Flats/Parcels
  - Carrier Route
  - Letters
  - Flats
  - Not Flat-Machinables (NFMs)/Parcels
- Periodicals
  - Within County Periodicals
  - Outside County Periodicals
- Package Services
  - Single-Piece Parcel Post
  - Inbound Surface Parcel Post (at UPU rates)
  - Bound Printed Matter Flats
  - Bound Printed Matter Parcels
  - Media Mail/Library Mail
- Special Services
  - Ancillary Services
  - International Ancillary Services
  - Address List Services
  - Caller Service
  - Change-of-Address Credit Card Authentication
  - Confirm
  - International Reply Coupon Service
  - International Business Reply Mail Service
  - Money Orders
  - Post Office Box Service
- Negotiated Service Agreements
  - HSBC North America Holdings Inc. Negotiated Service Agreement
  - Bookspan Negotiated Service Agreement
  - Bank of America Corporation Negotiated Service Agreement
  - The Bradford Group Negotiated Service Agreement
  - Inbound International
    - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions
- First-Class Mail
- [Reserved for Class Description]
  - Single-Piece Letters/Postcards
  - [Reserved for Product Description]
  - Bulk Letters/Postcards
  - [Reserved for Product Description]
  - Flats
  - [Reserved for Product Description]
  - Parcels
  - [Reserved for Product Description]
  - Outbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]
  - Inbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]
- Standard Mail (Regular and Nonprofit)
- [Reserved for Class Description]
  - High Density and Saturation Letters
  - [Reserved for Product Description]
  - High Density and Saturation Flats/Parcels
  - [Reserved for Product Description]
  - Carrier Route
  - [Reserved for Product Description]
  - Letters
  - [Reserved for Product Description]
  - Flats
  - [Reserved for Product Description]
  - Not Flat-Machinables (NFMs)/Parcels
  - [Reserved for Product Description]
- Periodicals
- [Reserved for Class Description]
  - Within County Periodicals
  - [Reserved for Product Description]
  - Outside County Periodicals
  - [Reserved for Product Description]
- Package Services
- [Reserved for Class Description]
  - Single-Piece Parcel Post
  - [Reserved for Product Description]
  - Inbound Surface Parcel Post (at UPU rates)
  - [Reserved for Product Description]
  - Bound Printed Matter Flats
  - [Reserved for Product Description]
  - Bound Printed Matter Parcels
  - [Reserved for Product Description]
  - Media Mail/Library Mail
  - [Reserved for Product Description]
- Special Services
- [Reserved for Class Description]
  - Ancillary Services
  - [Reserved for Product Description]
  - Address Correction Service
  - [Reserved for Product Description]
  - Applications and Mailing Permits
  - [Reserved for Product Description]
  - Business Reply Mail
  - [Reserved for Product Description]
  - Bulk Parcel Return Service
  - [Reserved for Product Description]

[14] *See* Docket No. CP2009–50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009.

Certified Mail
[Reserved for Product Description]
Certificate of Mailing
[Reserved for Product Description]
Collect on Delivery
[Reserved for Product Description]
Delivery Confirmation
[Reserved for Product Description]
Insurance
[Reserved for Product Description]
Merchandise Return Service
[Reserved for Product Description]
Parcel Airlift (PAL)
[Reserved for Product Description]
Registered Mail
[Reserved for Product Description]
Return Receipt
[Reserved for Product Description]
Return Receipt for Merchandise
[Reserved for Product Description]
Restricted Delivery
[Reserved for Product Description]
Shipper-Paid Forward
[Reserved for Product Description]
Signature Confirmation
[Reserved for Product Description]
Special Handling
[Reserved for Product Description]
Stamped Envelopes
[Reserved for Product Description]
Stamped Cards
[Reserved for Product Description]
Premium Stamped Stationery
[Reserved for Product Description]
Premium Stamped Cards
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
Address List Services
[Reserved for Product Description]
Caller Service
[Reserved for Product Description]
Change-of-Address Credit Card Authentication
[Reserved for Product Description]
Confirm
[Reserved for Product Description]
International Reply Coupon Service
[Reserved for Product Description]
International Business Reply Mail Service
[Reserved for Product Description]
Money Orders
[Reserved for Product Description]
Post Office Box Service
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Class Description]
HSBC North America Holdings Inc. Negotiated Service Agreement
[Reserved for Product Description]
Bookspan Negotiated Service Agreement
[Reserved for Product Description]
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement
Part B—Competitive Products
2000 Competitive Product List
Express Mail
Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
Inbound International Expedited Services 3 (MC2010–13 and CP2010–12)
Priority Mail
Priority Mail
Outbound Priority Mail International
Inbound Air Parcel Post (at non-UPU rates)
Royal Mail Group Inbound Air Parcel Post Agreement
Inbound Air Parcel Post (at UPU rates)
Parcel Select
Parcel Return Service
International
International Priority Airlift (IPA)
International Surface Airlift (ISAL)
International Direct Sacks—M—Bags
Global Customized Shipping Services
Inbound Surface Parcel Post (at non-UPU rates)
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
International Money Transfer Service
International Ancillary Services
Special Services
Premium Forwarding Service
Negotiated Service Agreements
Domestic
Express Mail Contract 1 (MC2008–5)
Express Mail Contract 2 (MC2009–3 and CP2009–4)
Express Mail Contract 3 (MC2009–15 and CP2009–21)
Express Mail Contract 4 (MC2009–34 and CP2009–45)
Express Mail Contract 5 (MC2010–5 and CP2010–5)
Express Mail Contract 6 (MC2010–6 and CP2010–6)
Express Mail Contract 7 (MC2010–7 and CP2010–7)
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Priority Mail Contract 11 (MC2009–27 and CP2009–37)
Priority Mail Contract 12 (MC2009–28 and CP2009–38)
Priority Mail Contract 13 (MC2009–29 and CP2009–39)
Priority Mail Contract 14 (MC2009–30 and CP2009–40)
Priority Mail Contract 15 (MC2009–35 and CP2009–54)
Priority Mail Contract 16 (MC2009–36 and CP2009–55)
Priority Mail Contract 17 (MC2009–37 and CP2009–56)
Priority Mail Contract 18 (MC2009–42 and CP2009–63)
Priority Mail Contract 19 (MC2010–1 and CP2010–1)
Priority Mail Contract 20 (MC2010–2 and CP2010–2)
Priority Mail Contract 21 (MC2010–3 and CP2010–3)
Priority Mail Contract 22 (MC2010–4 and CP2010–4)
Priority Mail Contract 23 (MC2010–9 and CP2010–9)
Outbound International
Direct Entry Parcels Contracts
Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)

Global Expedited Package Services 2 (CP2009–50)
Global Plus Contracts
Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
Inbound International
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)
Competitive Product Descriptions
Express Mail
[Reserved for Group Description]
Express Mail
[Reserved for Product Description]
Outbound International Expedited Services
[Reserved for Product Description]
Inbound International Expedited Services
[Reserved for Product Description]
Priority
[Reserved for Product Description]
Priority Mail
[Reserved for Product Description]
Outbound Priority Mail International
[Reserved for Product Description]
Inbound Air Parcel Post
[Reserved for Product Description]
Parcel Select
[Reserved for Group Description]
Parcel Return Service
[Reserved for Group Description]
International
[Reserved for Group Description]
International Priority Airlift (IPA)
[Reserved for Product Description]
International Surface Airlift (ISAL)
[Reserved for Product Description]
International Direct Sacks—M–Bags
[Reserved for Product Description]
Global Customized Shipping Services
[Reserved for Product Description]
International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]
Part C—Glossary of Terms and Conditions [Reserved]
Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2010–1804 Filed 1–28–10; 8:45 am]
BILLING CODE 7710–FW–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0198; FRL–9102–7]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana on January 16, 2009 and May 4, 2009. The revisions are to the Administrative Rules of Montana. Revisions include minor editorial and grammatical changes, updates to the citations and references to federal laws and regulations, and a clarification of agricultural activities exempt from control of emissions of airborne particulate matter. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on March 30, 2010 without further notice, unless EPA receives adverse comment by March 1, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0198, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: dolan.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2009–0198. 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 instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental

Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Summary of SIP Revisions
III. EPA's Review of the State of Montana's January 16, 2009 and May 4, 2009 Submittals
IV. Final Action
V. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

Describe any assumptions and provide any technical information and/or data that you used.

If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

Provide specific examples to illustrate your concerns, and suggest alternatives.

Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the comment period deadline identified.

II. Summary of SIP Revisions

A. On January 16, 2009 the State of Montana submitted formal revisions to its State Implementation Plan (SIP) (hereafter, the "2008 SIP revisions"). The 2008 SIP revisions contain amendments to the following sections of the Administrative Rules of Montana (ARM): 17.8.102, 17.8.301, 17.8.901, and 17.8.1007.

B. On May 4, 2009 the State of Montana submitted formal revisions to its State Implementation Plan (SIP) (hereafter, the "2009 SIP revisions"). The 2009 SIP revisions contain amendments to the following sections of the ARM: 17.8.308 and 17.8.744.

III. EPA's Review of the State of Montana's January 16, 2009 and May 4, 2009 Submittals

A. 2008 SIP Revisions

The 2008 SIP revisions are strictly administrative; they make minor editorial and grammatical changes, and update the citations and references to Federal laws and regulations. All of the revisions are approvable. Therefore, in this action we are approving ARM sections 17.8.102, 17.8.301, 17.8.901, and 17.8.1007.

B. 2009 SIP Revisions

Revision to ARM section 17.8.308 clarifies the agricultural sources of airborne particulate matter which are exempt from control measure provisions. The purpose of the revision is to align the ARM with language of the legislation upon which the regulation is based. The ARM as revised meets the requirement of the CAA section 110(l) and does not interfere with any applicable requirements concerning attainment. The revision adds definition to and as a result reduces the number of sources of airborne particulate matter which are exempt from emissions controls under provisions of the ARM. This provision is approvable.

The revision to ARM section 17.8.744 references the State's air quality permitting program. The State has several provisions pending relative to the State's air quality permitting program and these will be processed as one action at a later date.

IV. Final Action

The EPA is approving the 2008 revisions to ARM sections 17.8.102, 17.8.301, 17.8.901, and 17.8.1007 that the State submitted on January 16, 2009. The Montana Board of Environmental Review adopted these revisions on October 3, 2008 and they became effective on October 24, 2008.

The EPA is approving the 2009 revision to ARM section 17.8.308. The EPA is not taking action on the 2009 revision to ARM sections 17.8.744 and will take action at a later date. The Montana Board of Environmental Review adopted these revisions on January 23, 2009 and they became effective on February 13, 2009.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments; we are merely approving administrative and other minor changes to Montana's air rules. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective March 30, 2010 without further notice unless the Agency receives adverse comments by March 1, 2010. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the

remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 30, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 5, 2010.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart BB—Montana

■ 2. Section 52.1370 is amended by adding paragraph (c)(68) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(68) Revisions to the State Implementation Plan which were submitted by the State of Montana on January 16, 2009 and May 4, 2009. The revisions are to the Administrative Rules of Montana; they make minor editorial and grammatical changes, update the citations and references to Federal laws and regulations, and make other minor changes to conform to federal regulations.

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) sections 17.8.102 *Incorporation by Reference—Publication Dates,* 17.8.301 *Definitions,* 17.8.901 *Definitions,* and 17.8.1007 *Baseline for Determining Credit for Emissions and Air Quality Offsets,* effective October 24, 2008.

(B) Administrative Rules of Montana (ARM) section 17.8.308 *Particulate Matter, Airborne,* effective February 13, 2009.

[FR Doc. 2010–1748 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 10–18; FCC 10–4]

In the Matter of Procedural Amendments to Commission Part 1 Competitive Bidding Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission makes two procedural amendments to its competitive bidding rules. The Commission amends the rule specifying how to report potential violations of the prohibition on certain communications in order to reduce the risk that bidding-related information might be disseminated to auction applicants. The Commission also amends the rules specifying how quickly applicants must modify pending auction applications in order to enhance the usefulness of application information during the auction process and enable the Commission to respond promptly to changing circumstances if necessary.

DATES: Effective March 1, 2010.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* Sayuri Rajapakse at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Part 1 Procedural Amendments Order* adopted January 6, 2010, and released on January 7, 2010. The complete text of the *Part 1—Procedural Amendments Order* is available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Part 1—Procedural Amendments Order* may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com*. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 10–4. The *Part 1—Procedural Amendments Order* is also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions,* or by using the search function for WT Docket No. 10–18 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/*.

Introduction

1. The Commission makes two procedural amendments to its competitive bidding rules. First, the Commission amends the rule specifying how to report potential violations of 47 CFR 1.2105(c), which prohibits certain communications between auction applicants. The Commission provides that such reports shall be made as directed by public notice or, absent such direction, solely to the Auctions and Spectrum Access Division (Division) of the Wireless Telecommunications Bureau (Bureau) by the most expeditious means available. Currently, such reports are made both to the Division and to the Office of the Secretary of the Commission. This revised procedure will reduce the risk that bidding-related information might be disseminated to auction applicants, which would be contrary to the purpose of 47 CFR 1.2105(c). The Commission also amends the heading of 47 CFR 1.2105(c).

2. Second, the Commission amends the rules specifying how quickly applicants must modify pending auction applications. The Commission provides that such modifications shall be made within five business days after the reportable event occurs, or no more than five business days after the applicant becomes aware of the need to make an amendment or modification, whichever is later. This revision will enhance the usefulness of application information during the auction process and enable the Commission to respond promptly to changing circumstances if necessary.

Reporting Potential Violations of Section 1.2105(c)

3. Subject to specific exceptions, 47 CFR 1.2105(c) of the Commission's rules prohibits applicants from cooperating or collaborating with respect to, discussing with certain other applicants, or disclosing to such other applicants, the substance of any applicant's bids or bidding strategies, or discussing or negotiating settlement agreements. The rule's prohibitions begin at the deadline for filing short-form applications to participate in an auction and end at the post-auction down payment deadline. Applicants making or receiving prohibited communications must report such communications in writing to the Commission immediately. The current rule provides that such reports be filed with the Office of the Secretary, and that a copy be sent to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau.

4. The creation and filing of the required reports unavoidably creates a risk that information that the rule is intended to restrict may be disseminated inadvertently. The reports required under the rule themselves may constitute or contain information that applicants are otherwise barred from sharing. The Bureau has attempted to address this concern by advising applicants to request confidential treatment when filing reports. The Commission concludes that it can further minimize the risk of inadvertent dissemination by requiring parties to file only a single report and to file that report with Commission personnel expressly charged with administering the Commission's auctions. Accordingly, the Commission amends 47 CFR 1.2105(c)(6) of its rules to provide that reports required by that section shall be filed as directed in the public notices that describe the procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, such reports shall be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. The Commission delegates to the Bureau the authority to specify how such reports shall be made.

5. The current heading of 47 CFR 1.2105(c) of the Commission's rules is *Prohibition of collusion*. Given that collusion is a term used in many contexts, legal and economic, the Commission recognizes that using it to describe the prohibitions of this section may cause confusion. Accordingly, the Commission amends the heading of 47 CFR 1.2105(c) to read *Prohibition of certain communications*. This amendment makes no change to the substance of the rule, or to its interpretation or application.

Modifying Applications To Participate in Commission Auctions

6. 47 CFR 1.65(a) of the rules currently obligates an applicant to maintain the accuracy and completeness of information furnished in any application pending before the Commission and to notify the Commission as promptly as possible and in any event within 30 days of any substantial change that may be of decisional significance to that application. Failure to comply exposes an applicant to dismissal of its application and, potentially, enforcement action. 47 CFR 1.2105(b) contains additional rules specifically addressing the modification and

dismissal of short-form applications in competitive bidding proceedings.

7. The Commission finds that, in the context of competitive bidding for Commission construction permits and licenses, it is appropriate and reasonable to require that applicants furnish additional or corrected information more quickly than within 30 days. Most, if not all, information in auction applications is made available to the public and all auction participants during the auction. Auction participants may depend on ownership information in other participants' applications when determining whether contact with a third party regarding potential financing is permissible under 47 CFR 1.2105(c). In addition, if a change to an application could raise an issue as to the applicant's continued eligibility to participate, the Bureau needs the information as soon as possible in order to consider whether to take any action and minimize disruption of the auction. Accordingly, through its public notices, the practice of the Bureau has been to require reports or amendments to short-form applications within a shorter interval than 30 days. The Bureau also has long required that any change that causes a loss of or reduction in eligibility for a bidding credit be reported immediately.

8. The Commission amends 47 CFR 1.65(a) and 1.2105(b) of its rules to require applicants in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend their short-form applications no more than five days after the applicant becomes aware of the need for amendment. The Commission believes this change will facilitate the auction process, making the information available promptly to all participants and enabling the Bureau to act expeditiously on those changes when such action is necessary. Moreover, the Commission emphasizes that applicants can readily make and submit any changes to their short-form applications electronically using the FCC Auction System.

9. The rule amendments adopted in the Order involve rules of agency organization, procedure, or practice. The notice and comment and effective date provisions of the Administrative Procedure Act are therefore inapplicable.

Paperwork Reduction Act

10. The Order contains a change to previously approved information collection requirements with respect to 47 CFR 1.2105(c). The change is neither material nor substantive and, accordingly, is not subject to the Paperwork Reduction Act of 1995, Public Law 104–13. More specifically, the rule amendments will modify the provision specifying how parties make reports required pursuant to 47 CFR 1.2105(c)(6) so that parties shall make the reports as directed by public notice or only to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, rather than to the Chief and the Office of the Secretary of the Commission, as required prior to the modification. Given that this change is neither material nor substantive, this document does not contain any new or modified 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, 44 U.S.C. 3506(c)(4).

Congressional Review Act

11. The Commission will not send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because the amended rules are rules of agency organization, procedure or practice that do not substantially affect the rights or obligations of non-agency parties.

Ordering Clause

12. Accordingly, it is ordered, that pursuant to sections 4(i), 4(j), 5(c), 303(r), 47 U.S.C. 154(i), 154(j), 155(c), 303(r) of the Communications Act of 1934, as amended, 47 CFR part 1 is amended effective March 1, 2010.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Competitive bidding, Telecommunications.

Federal Communications Commission.

Alethea Lewis,

Federal Register Liaison.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority of part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(j), 160, 201, 225, and 303.

■ 2. Section 1.65 is amended by revising paragraph (a) to read as follows:

§ 1.65 Substantial and significant changes in information furnished by applicants to the Commission.

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application. Except as otherwise required by rules applicable to particular types of applications, whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate. Except as otherwise required by rules applicable to particular types of applications, whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, submit a statement furnishing such additional or corrected information as may be appropriate, which shall be served upon parties of record in accordance with § 1.47. Where the matter is before any court for review, statements and requests to amend shall in addition be served upon the Commission's General Counsel. For the purposes of this section, an application is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

* * * * *

■ 3. Section 1.2105 is amended by revising the section heading, adding paragraph (b)(4), and by revising paragraph (c)(6) to read as follows:

§ 1.2105 Prohibition of certain communications.

* * * * *

(b) * * *

(4) Applicants shall have a continuing obligation to make any amendments or modifications that are necessary to maintain the accuracy and completeness of information furnished in pending applications. Such amendments or modifications shall be made as promptly as possible, and in no case more than five business days after applicants become aware of the need to make any amendment or modification, or five business days after the reportable

event occurs, whichever is later. An applicant's obligation to make such amendments or modifications to a pending application continues until they are made.

(c) * * *

(6) Any applicant that makes or receives a communication of bids or bidding strategies prohibited under paragraph (c)(1) of this section shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made. Such reports shall be filed as directed in public notices detailing procedures for the bidding that was the subject of the reported communication. If no public notice provides direction, such notices shall be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available.

* * * * *

[FR Doc. 2010–1878 Filed 1–28–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA–2008–0036]

RIN 2130–AB90

Track Safety Standards; Continuous Welded Rail (CWR)

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

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: This document responds to a petition for reconsideration of FRA's final rule published on August 25, 2009, which revised the Track Safety Standards. FRA received one petition questioning the definitions of "adjusting/de-stressing" and "buckling-prone condition" as they are used with regard to continuous welded rail (CWR).

DATES: *Effective Date:* This final rule is effective on March 30, 2010.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* (202) 493–6236); or Sarah Grimmer Yurasko, Trial Attorney, Office of the Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (*telephone:* (202) 493–6390).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to (SAFETEA–LU), FRA published a final rule revising the Track Safety Standards on August 25, 2009 (74 FR 42988). FRA published a correcting amendment on October 21, 2009, which added compliance dates for railroads that had been inadvertently omitted from the final rule's compliance schedule. On September 25, 2009, FRA received a petition for reconsideration from the Association of American Railroads (AAR). This publication announces amendments to the final rule in response to the concerns expressed by the petitioner.

"*Buckling-Prone Condition*" *Definition*

In the petition, AAR stated that the definition of "buckling prone condition" included in the final rule at § 213.119(l) was not proposed by FRA in the notice of proposed rulemaking. As such, the petitioner did not have an opportunity until the review of the final rule to address the definition. The final rule provides that a "buckling-prone condition" exists "when the actual rail temperature is above the actual rail neutral temperature. This varies given the geographical composition of the track." Section 213.119(g)(2)(ii) requires remedial action to be taken whenever a buckling prone condition exists. AAR argues that, literally interpreted, the final rule requires remedial action whenever the rail neutral temperature is exceeded. AAR states that this is not what FRA intended, as the neutral temperature is supposed to be between the maximum and minimum temperatures the rail is subject to and thus the neutral temperature will commonly be exceeded. AAR suggested that "buckling-prone condition" be defined as follows:

> *Buckling-prone condition* means when track conditions may be insufficient to restrain the track laterally at the rail temperatures actually experienced at that location.

FRA reviewed the definition of "buckling-prone condition" and consulted with the Volpe Center to more narrowly define what is intended by this term. In the railroad industry, "track buckling" refers to the sudden lateral movement of the track due to thermally-generated longitudinal rail forces. As the temperature rises above the actual rail neutral temperature, longitudinal expansion in rail can occur once a critical rail temperature is reached that can cause lateral misalignment of the track. Therefore, FRA concluded that CWR cannot always be considered in a "buckling-prone condition" if the rail temperature is only above the rail neutral temperature, without reaching the critical temperature that can cause track misalignment. As a result, FRA has determined that the definition in the final rule could be misleading by stating "when the actual rail temperature is above the actual rail neutral temperature."

After consideration, FRA has determined that "buckling-prone condition" means a condition that can result in the track being laterally displaced due to high compressive forces caused by critical rail temperature combined with insufficient track strength and/or train dynamics.

"*Adjusting/De-Stressing*" *Definition*

The petition also noted an error in the definition of "adjusting/de-stressing." The final rule defines "adjusting/de-stressing" as a "procedure by which a rail's temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track." AAR points out that it is not the temperature of the rail that is adjusted, but rather the rail neutral temperature that is adjusted. AAR suggested that FRA replace "a rail's temperature" with "the rail neutral temperature" in the definition for "adjusting/de-stressing" in § 213.119(l). FRA has also noted this unintended omission in the definition and is amending the first sentence of the definition of "adjusting/de-stressing" to mean "a procedure by which a rail's neutral temperature is re-adjusted to the desired value."

Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action has been evaluated in accordance with existing policies and procedures, and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034, Feb. 26, 1979). The original final rule was determined to be non-significant. Furthermore, the amendments contained in this action are not considered significant because they generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule. These amendments, additions, and clarifications will have a minimal net effect on FRA's original analysis of the costs and benefits associated with the final rule.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA certifies that this action is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272. Because the amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations resulting from this action.

C. Paperwork Reduction Act

This action does not change the information collection requirements contained in the original final rule.

D. Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999). As discussed earlier in the preamble, these amendments to the final rule clarify definitions for compliance with the final rule governing CWR.

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

FRA has determined that this action would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this action would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this final rule has preemptive effect. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the local safety or security exception to Section 20106. The intent of Section 20106 is to promote national uniformity in railroad safety and security standards. 49 U.S.C. 20106(a)(1). Thus, subject to a limited exception for essentially local safety or security hazards, this final rule establishes a uniform Federal safety standard that must be met, and State requirements covering the same subject matter would be displaced, whether those State requirements are in the form of a State law, including common law, regulation, or order. Part 213 establishes Federal standards of care that preempt State standards of care, but this part does not preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part, including a plan or program required by this part. Provisions of a plan or program that exceed the requirements of this part are not included in the Federal standard of care.

In sum, FRA has analyzed this action in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this action has no federalism implications, other than the preemption of State laws covering the subject matter of this final rule, which occurs by operation of law under Section 20106 whenever FRA issues a rule or order. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this action is not required.

E. Environmental Impact

FRA has evaluated this action in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with sections 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this action is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) currently $141,300,000 in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. This action would not result in the expenditure, in the aggregate, of $141,300,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355, May 22,

2001. Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this action in accordance with Executive Order 13211. FRA has determined that this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

H. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

■ Accordingly, 49 CFR part 213 is amended by making the following correcting amendments:

PART 213—TRACK SAFETY STANDARDS

■ 1. The authority citation for part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. In § 213.119(l), revise the definitions for "adjusting/de-stressing" and "buckling-prone condition" to read as follows:

§ 213.119 Continuous welded rail (CWR); plan contents.

* * * * *

(l) * * *

Adjusting/de-stressing means a procedure by which a rail's neutral temperature is re-adjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

* * * * *

Buckling-prone condition means a track condition that can result in the track being laterally displaced due to high compression forces caused by critical rail temperature combined with insufficient track strength and/or train dynamics.

* * * * *

Issued in Washington, DC, on January 25, 2010.

Joseph C. Szabo,

Administrator.

[FR Doc. 2010–1873 Filed 1–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XU12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the Florida east coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., local time, February 4, 2010, through 12:01 a.m., local time, April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Susan.Gerhart@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, and, in the Gulf of Mexico only, dolphin and bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the Florida east coast subzone is 1,040,625 lb (472,020 kg) (50 CFR 622.42(c)(1)(i)(A)(*1*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 1,040,625 lb (472,000 kg) for Gulf group king mackerel in the Florida east coast subzone will be reached on February 4, 2010. Accordingly, the commercial fishery for king mackerel in the Florida east coast subzone is closed at 12:01 a.m., local time, February 4, 2010, through 12:01 a.m., local time, April 1, 2010.

From November 1 through March 31 the Florida east coast subzone of the Gulf group king mackerel is that part of the eastern zone north of 25°20.4′ N. lat. (a line directly east from the Miami-Dade/Monroe County, FL, boundary) to 29°25′N. lat. (a line directly east from the Flagler/Volusia County, FL, boundary). Beginning April 1, the boundary between Atlantic and Gulf groups of king mackerel shifts south and west to the Monroe/Collier County boundary on the west coast of Florida. From April 1 through October 31, king mackerel harvested along the east coast of Florida, including all of Monroe County, are considered to be Atlantic group king mackerel.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures

would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure.

Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: January 26, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–1879 Filed 1–26–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 19
Friday, January 29, 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 AGRICULTURE

Rural Housing Service

7 CFR Part 3565

RIN–0575–AC80

Continuous Construction-Permanent Loan Guarantees Under the Section 538 Guaranteed Rural Rental Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (an agency within the Rural Development mission area) is proposing an additional form of guarantee under the Guaranteed Rural Rental Housing Program regulation. This action is taken to enhance efficiency, flexibility, and effectiveness in managing the program. The Agency currently offers a guarantee on a permanent loan only and a guarantee on construction advances and the permanent financing phase of a project. In addition to the proposed form of guarantee, the Agency will continue to offer the two types of guarantees currently provided.

DATES: Written or e-mail comments must be received on or before March 30, 2010.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *E-Mail: comments@wdc.usda.gov.* Include "RIN No. 0575–AC80" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Tammy S. Daniels, Financial and Loan Analyst, USDA Rural Development Guaranteed Rural Rental Housing Program, Multi-Family Housing Guaranteed Loan Division, U.S. Department of Agriculture, South Agriculture Building, Room 1271, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781. E-mail: *tammy.daniels@wdc.usda.gov.* Telephone: (202) 720–0021. This number is not toll-free. Hearing or speech-impaired persons may access that number by calling the Federal Information Relay Service toll-free at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Classification

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule is adopted: (1) Unless otherwise specifically provided, all State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) the appeal procedures of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

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

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, § 1940.310(e)(3). Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required. Loan applications will be reviewed individually to determine compliance with NEPA.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect both small and large entities in the same manner. This rule has no significant changes in information collection or regulatory requirements that would have a negative impact on either small or large entities in an economic way.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.438.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, Subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. The Agency has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J (available in any Rural Development office).

Paperwork Reduction Act of 1995

The information collection requirements contained in this regulation have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0174 in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information unless it displays a valid OMB control number.

E-Government Act Compliance

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

Background Information

The Guaranteed Rural Rental Housing Program (GRRHP) currently offers two forms of guarantees: (1) A guaranty for permanent loans and (2) a guarantee which provides a limited duration guarantee for advances during the construction period with the limited duration provision being automatically removed if certain conditions are met. Under this proposed rule, the Agency proposes, for loans that meet certain criteria, to provide a single, continuous guarantee during the construction phase for construction advances and the permanent financing phase of the project. This third form of guarantee is being proposed in response to input from GRRHP stakeholders who believe that this option will allow the program to serve more borrowers thus making affordable housing available for more low to moderate income families.

In addition, the proposed rule makes several technical corrections and clarifications and eliminates the anachronistic requirement that lenders certify that their computer systems comply with year 2000 technology.

List of Subjects in 7 CFR Part 3565

Bankruptcy, Banks, Banking, civil rights, Conflict of interests, Credit, Environmental impact statements, Fair housing, Government procurement, Guaranteed loans, Hearing and appeal procedures, Housing standards, Lobbying, Low and moderate income housing, Manufactured homes, Mortgages, Real property acquisition, Surety bonding.

Accordingly, chapter XXXV, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 3565—GUARANTEED RURAL RENTAL HOUSING PROGRAM

1. The authority citation for part 3565 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—General Provisions

2. Section 3565.3 is amended by removing the definition for "combination construction and permanent loan" and by adding alphabetically a definition for "construction and permanent loan," "construction contingency reserve," "lease-up period," "lease-up reserve," "loan-to-cost ratio," and "operating and maintenance reserve," to read as follows:

§ 3565.3 Definitions.

* * * * *

Construction and permanent loan. A loan which provides advances during the construction period and remains in place as a permanent loan at the completion of construction.

Construction contingency reserve. A cash reserve of at least 2 percent of the construction contract, inclusive of the contractor's fee, and all hard and soft costs, that must be set up and fully funded by the closing of the construction loan. This reserve will be held by the lender and will only be disbursed for Agency and lender approved change order requests.

* * * * *

Lease-up period. The period of time that begins when the first unit in the project receives a certificate of occupancy until the time that occupancy of 90% of the units for a minimum of 90 consecutive days is achieved.

Lease-up reserve. A cash deposit which is available to a property to help pay operating costs and debt service at the initiation of operations while units are being leased to their initial occupants.

* * * * *

Loan-to-cost ratio. The amount of the loan divided by the total cost to develop the project.

* * * * *

Operating and maintenance reserve. A cash reserve required of all projects of at least 2 percent of the loan amount held by the lender that is used for the up-keep of the project.

* * * * *

Subpart B—Guarantee Requirements

3. Section 3565.51 is revised to read as follows:

§ 3565.51 Eligible loans and advances.

Upon approval of an application from an eligible or approved lender, the Agency will commit to providing a guarantee for a permanent loan or a construction and permanent loan, subject to the availability of funds.

4. Section 3565.52 is amended by revising paragraph (c) and adding a new paragraph (d) and (e) to read as follows:

§ 3565.52 Conditions of guarantee.

* * * * *

(c) *Types of guarantees.* The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency liability under any guarantee will decrease or increase, in proportion to any increase or decrease in the amount of the unpaid portion of the loan, up to the maximum amount specified in the Loan Note Guarantee. The Agency will not guarantee construction loans only. The Agency offers the following types of guarantees:

(1) *Option One.* The Agency may guarantee permanent loans subject to the conditions specified in § 3565.303(d). The maximum guarantee for a permanent loan will be 90 percent [unless the Agency established a different percent and announces this different percent through a Notice in the **Federal Register**] of the unpaid principal and interest up to default and accrued interest 90 calendar days from the date the liquidation plan is approved by the Agency, as defined in § 3565.452.

(2) *Option Two.* The Agency may provide a guarantee which will cover construction loan advances (advances) during construction. The maximum guarantee of construction advances related to a construction and permanent loan will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the **Federal Register**] of the amount of

principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default of the Loan. The Agency's guarantee will cover losses to the extent aforementioned once all sureties/insurances and or performance and payment bonds have fully performed their contractual obligations. A construction contingency reserve is required. This guarantee will be enforceable during the construction period, but will cease to be enforceable once construction is completed unless and until the requirements for the continuation of the guarantee contained in the Conditional Commitment and this part are completed and approved by the Agency by the date stated in the Conditional Commitment and any Agency approved extension(s). The Agency will provide written confirmation to the lender when all of the requirements for continuation of the guarantee to cover the permanent loan have been satisfied. Any losses sustained while the guarantee is unenforceable (after the end of the construction period and, if applicable, before the continuation of the guarantee) are not covered by the guarantee. For purposes of this guarantee, the construction period will end on the earlier of:

(i) 24 months from the closing of the construction loan, if the certificates of occupancy for all units in the project have not been issued by then, or

(ii) The date of the issuance of the last certificate of occupancy, if the certificates of occupancy for all units in the project are issued on or before 24 months from the closing of the construction loan.

(3) *Option Three.* The Agency may provide a single, continuous guarantee for construction and permanent loans. Only projects that have low loan-to-cost ratios, as specified by the Agency in a Notice published periodically in the **Federal Register**, are eligible for this type of guarantee. A construction contingency reserve is required. The Agency may require that a lease-up reserve, in an amount established by the Agency and announced through a Notice in the **Federal Register**, be set-aside prior to closing the construction loan. This lease-up reserve is an additional amount, over and above the required initial operating and maintenance contribution. The maximum guarantee of construction advances will not at any time exceed the lesser of 90 percent [or the percent established by the Agency and announced through a Notice in the **Federal Register**] of the amount of principal and interest up to default advanced for eligible uses of loan proceeds or 90 percent of the original principal amount and interest up to default.

(d) *Maximum loss payment.* The maximum loss payment to a lender or Holder is as follows:

(1) To any Holder, 100 percent of any loss sustained by the Holder on the guaranteed portion of the loan and on interest due on such portion.

(2) To the lender, the lesser of:

(i) Any loss sustained by the lender on the guaranteed portion, including principal, interest and accrued interest up to 90 days evidenced by the notes or assumption agreements and secured advances for protection and preservation of collateral made with the Agency's authorization; or

(ii) The guaranteed principal advanced to or assumed by the borrower and any interest and accrued interest up to 90 days due thereon.

(e) *Funding of reserves.* For each Option under paragraph (c) of this section, the lender must require an operating and maintenance reserve and provide the Agency adequate evidence of the funding of all required reserves.

(1) For Option 1 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve, must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(2) For Option 2 under paragraph (c) of this section, the funding schedule for the lease-up reserve and the operating and maintenance reserve must be included in the Agency-approved construction budget and be fully funded before the issuance of the permanent guarantee.

(3) For Option 3 under paragraph (c) of this section, the lease-up reserve, and the operating and maintenance reserve, must be fully funded before the issuance of the guarantee.

Subpart C—Lender Requirements

§ 3565.103 [Amended]

5. Section 3565.103 is amended by removing paragraph (d)(9).

§ 3565.106 [Amended]

6. Section 3565.106 is amended by removing the word "combination."

Subpart G—Processing Requirements

7. Section 3565.303 is amended by revising paragraphs (c) and (d) to read as follows:

§ 3565.303 Issuance of loan guarantee.

* * * * *

(c) *Guarantee during construction.* When requesting a guarantee on construction loan advances under § 3565.52(c)(2) and (c)(3), the Agency will only issue a guarantee to an approved lender that the Agency determines is eligible under § 3565.106 of this part.

(1) This guarantee will be subject to the limits contained in subpart B of this part and in the loan closing documentation.

(2) In all cases, the lender must obtain one of the following protections:

(i) Surety bonding or performance and payment bonding acceptable to the Agency;

(ii) An irrevocable letter of credit acceptable to the Agency; or

(iii) A pledge to the lender of collateral that is acceptable to the Agency.

(3) The lender must verify amounts expended prior to each payment for completed work and certify that an independent inspector has inspected the property and found it to be in conformance with Agency standards. The lender must provide verification that all subcontractors have been paid and no liens have been filed against the property.

(d) *Permanent loan guarantee.* The guarantee of a permanent loan provided under § 3565.52(c)(1) or (c)(2) will be issued once the following items have been submitted to and approved by the Agency:

(1) Certification from the lender stating that the lender or its qualified representative inspected the property and found that the construction meets the Government's requirements for the standards and conditions for housing and facilities in 7 CFR part 1924, subpart A and the standards for site development in 7 CFR part 1924, subpart C;

(2) Cash flow certification—lender certifies in writing the project's cash flow assumptions are still valid and depict compliance with the section 538 program's debt service coverage ratio requirement of at least 1.15, based on the lender's analysis of current market conditions and comparable properties in the project's market area;

(3) Documentation that either:

(i) The project has attained a minimum level of acceptable occupancy of 90% for 90 continuous days within the 120-day period immediately preceding the issuance of the permanent guarantee, or

(ii) Additional funds, supplementing the funds required under § 3565.303(d)(1) have been added to the lease-up reserve in an amount the

Agency determines is necessary to cover projected shortfalls.

(4) An appraisal of the project as built. Upon a lender's written request, the Agency may exempt a project from this requirement if requested by the lender and the project meets the following criteria:

(i) Original appraisal—an original appraisal that meets Agency's appraisal requirements with a valuation date no older than 36 months;

(ii) Valuation—the appraisal's lowest valuation regardless of valuation approach and rent restrictions considered, is greater than the section 538 guaranteed loan amount; and

(iii) Guaranteed loan balance—the Agency's guaranteed loan's principal balance does not exceed 50 percent [unless a different percent has been announced in a Notice published in the **Federal Register**] of the project's total development costs.

(5) A certificate of substantial completion;

(6) A certificate of occupancy or similar evidence of local approval;

(7) A final inspection conducted by a qualified Agency representative;

(8) A final cost certification in a form acceptable to the Agency;

(9) A submission to the Agency of the complete closing docket;

(10) A certification by the lender that the project has reached an acceptable minimum level occupancy;

(11) An executed regulatory agreement;

(12) The Lender certifies that it has approved the borrower's management plan and assures that the borrower is in compliance with Agency standards regarding property management, contained in subparts E and F of this part;

(13) Necessary information to complete an updated necessary assistance review by the Agency; and

(14) Compliance with all conditions contained in the conditional commitment for guarantee.

* * * * *

Subpart J—Assignment, Conveyance, and Claims

§ 3565.457 [Amended]

8. Section 3565.457 is amended in paragraph (c)(1) by revising the word "collectibility" to read "collectability."

Dated: January 21, 2010.

Tammye Treviño

Administrator, Rural Housing Service.

[FR Doc. 2010–1792 Filed 1–28–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes and A340–200, –300, –500, and –600 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: The revision 00 of the AIRBUS A330 ALS [Airworthiness Limitations Section] Part 3 was issued primarily to introduce two new CMR [Certification Maintenance Requirements] tasks, referenced 282400–G0001–1–C and 282400–P0001–1–C. ALS Part 3 Revision 01 introduces more restrictive requirements for aircraft configurations already in service. The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 15, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any

personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On February 22, 2007, we issued AD 2007–05–08, Amendment 39–14969 (72 FR 9658, March 5, 2007). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2007–05–08, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0138, dated July 23, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> The Certification Maintenance Requirements (CMR) were given in the AIRBUS A330 CMR Document up to revision 19, and referenced in the Airworthiness Limitations Section (ALS) Part 3 Revision 00. The content of the CMR Document has been recently transferred into the ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).
>
> The revision 00 of the AIRBUS A330 ALS Part 3 was issued primarily to introduce two new CMR tasks, referenced 282400–G0001–1–C and 282400–P0001–1–C. The compliance times associated to these two tasks are re-stated in the Record Of Revisions (ROR) of the ALS Part 3 Revision 01.
>
> ALS Part 3 Revision 01 introduces more restrictive requirements for aircraft configurations already in service.
>
> EASA AD 2006–0224 [which corresponds to FAA AD 2007–05–08 and includes Model A340 airplanes], mandating compliance with the requirements of the A330 CMR Document at issue 19, is therefore superseded by this AD.

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. The required actions also include deleting Airbus A330 CMR Task 272400–00001–1–C and adding new Task 272400–00003–1–C. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Airbus A330 ALS Part 3—Certification Maintenance Requirements (CMR), Revision 01, including Appendices 1 and 2, dated May 7, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 43 products of U.S. registry.

The actions that are required by AD 2007–05–08 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is $80 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $3,440, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14969 (72 FR 9658, March 5, 2007) and adding the following new AD:

Airbus: Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD.

Comments Due Date

(a) We must receive comments by March 15, 2010.

Affected ADs

(b) The proposed AD supersedes AD 2007–05–08, Amendment 39–14969.

Applicability

(c) This AD applies to all Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 series airplanes; Model A340–211, –212, –213, –311, –312, –313 series airplanes; and Model A340–541, and –642 series airplanes, certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 05.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The Certification Maintenance Requirements (CMR) were given in the AIRBUS A330 CMR Document up to revision 19, and referenced in the Airworthiness Limitations Section (ALS) Part 3 Revision 00. The content of the CMR Document has been recently transferred into the ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 00 of the AIRBUS A330 ALS Part 3 was issued primarily to introduce two new CMR tasks, referenced 282400–G0001–1–C and 282400–P0001–1–C. The compliance times associated to these two tasks are re-stated in the Record of Revisions (ROR) of the ALS Part 3 Revision 01.

ALS Part 3 Revision 01 introduces more restrictive requirements for aircraft configurations already in service.

EASA AD 2006–0224 [which corresponds to FAA AD 2007–05–08 and includes Model A340 airplanes], mandating compliance with the requirements of the A330 CMR Document at issue 19, is therefore superseded by this AD.

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. The required actions also include deleting Airbus A330 CMR Task 272400–00001–1–C and adding new Task 272400–00003–1–C.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Restatement of Requirements of AD 2007–05–08

Revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness

(f) Unless already done: Within 90 days after April 9, 2007 (the effective date of AD 2007–05–08), revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006 (for all Model A330 airplanes); or Airbus A340 Certification Maintenance Requirements, Document 955.3019/92, Issue 14, dated December 19, 2005 (for all Model A340 airplanes). Accomplish the actions specified in the applicable CMR at the times specified in the applicable CMR and in accordance with the applicable CMR, except as provided by paragraphs (f)(1), (f)(2), (f)(3), and (f)(4) of this AD.

(1) The associated interval for any new task is to be counted from April 9, 2007.

(2) The associated interval for any revised task is to be counted from the previous performance of the task.

(3) For Model A340 airplanes that have exceeded the more restrictive limitations of Airbus A340 Certification Maintenance Requirements, Document 955.3019/92, Issue 14, Maintenance Significant Items (MSI) 21.28.00 and 21.43.00: Do the task within 2,500 flight hours after the previous accomplishment. Repeat the task thereafter at the applicable interval in the Airbus A340 Certification Maintenance Requirements, Document 955.3019/92, Issue 14.

(4) For Model A340 airplanes that have accumulated more than 2,700 flight hours since the last maintenance done in accordance with Airbus A340 Certification Maintenance Requirements, Document 955.3019/92, Issue 14, MSI 28.24.00: Do the next task within 800 flight hours after April 9, 2007. Repeat the task thereafter at the applicable interval in the Airbus A340 Certification Maintenance Requirements, Document 955.3019/92, Issue 14.

New Requirements of This AD

Actions and Compliance

(g) Unless already done, for Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 series airplanes: Within 90 days of the effective date of this AD, revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness by incorporating Airbus A330 ALS, Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated May 7, 2008. Accomplish the actions specified in Airbus A330 Airworthiness Limitations Section (ALS), Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated May 7, 2008, at the times specified in the Airbus A330 ALS—Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated May 7, 2008, and in accordance with the Airbus A330 Airworthiness Limitations Section (ALS), Part 3—Certification Maintenance Requirements (CMR), Revision 01, dated May 7, 2008, except as provided by paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD. Doing this revision terminates the requirements of paragraph (f) of this AD for that airplane only.

(1) The associated interval for any new task is to be counted from the effective date of this AD.

(2) The associated interval for any revised task is to be counted from the previous performance of the task.

(3) Delete the Airbus A330 CMR Task 272400–00001–1–C "Remove Rudder Servo Controls for Workshop Check of Internal Seals."

(4) Add the new Airbus A330 CMR Task 272400–00003–1–C "Functional Check of Rudder Individual Servo Controls." This task must be accomplished before the airplane accumulates 50,000 total flight hours, or within 90 days after the effective date of this AD, whichever occurs later.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–05–08, Amendment 39–14969, are approved as AMOCs for the corresponding requirements of this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to EASA Airworthiness Directives 2006–0224, dated July 27, 2006, and 2008–0138, dated July 23, 2008; Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006; Airbus A340 Certification Maintenance Requirements, Document 955.3019/92, Issue 14, dated December 19, 2005; and Airbus A330 ALS, Part 3—Certification Maintenance Requirements (CMR), including Appendices 1 and 2, Revision 01, dated May 7, 2008; for related information.

Issued in Renton, Washington, on January 22, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–1924 Filed 1–28–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–61414; File No. S7–04–10]

RIN 3235–AH37

Purchases of Certain Equity Securities by the Issuer and Others

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is proposing amendments to Rule 10b–18 under the Securities Exchange Act of 1934 ("Exchange Act"), which provides issuers with a "safe harbor" from liability for manipulation when they repurchase their common stock in the market in accordance with the Rule's manner, timing, price, and volume conditions. The proposed amendments are intended to clarify and modernize the safe harbor provisions in light of market developments since Rule 10b–18's adoption in 1982.

DATES: Comments should be received on or before March 1, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/proposed.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–04–10 on the subject line; or
- Use the Federal eRulemaking Portal *(http://www.regulations.gov).* Follow the instructions for submitting comments.

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 S7–04–10. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml).* Comments are also available for public inspection and copying 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Josephine Tao, Assistant Director, Elizabeth Sandoe, Branch Chief, Joan Collopy, Special Counsel, Jeffrey Dinwoodie, Staff Attorney, Office of Trading Practices and Processing, Division of Trading and Markets, at (202) 551–5720, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to Rule 10b–18 (the safe harbor rule for issuer repurchases) [17 CFR 240.10b–18] under the Exchange Act.

I. Introduction

Issuers repurchase their securities for many legitimate business reasons. For example, issuers may repurchase their stock in order to have shares available for dividend reinvestment, stock option and employee stock ownership plans, or to reduce the outstanding capital stock following the cash sale of operating divisions or subsidiaries.[1] Issuers may believe that a repurchase program is preferable to paying dividends as a way of returning capital to shareholders.[2] Issuer repurchases also provide liquidity in the marketplace, which benefits shareholders.[3]

At the same time, an issuer has a strong interest in the market performance of its securities. Among other things, an issuer's securities may be the consideration in an acquisition, or serve as collateral for financing. Since the market price determines the price of offerings of additional securities, an issuer may have an incentive to manipulate the price of its securities.[4] One way that an issuer can positively affect the price of its securities is to purchase the securities in the open market.[5] Because issuer repurchases could affect the market price of an issuer's stock, an issuer may be exposed to claims that the repurchases were made in a manipulative manner even when the repurchases were not intended to move market prices.

Rule 10b–18 addresses this concern. In 1982, the Commission adopted Rule 10b–18,[6] which provides issuers[7] with a safe harbor from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b–5 under the Exchange Act, when they repurchase their common stock in the market in accordance with the Rule's manner, timing, price, and volume conditions.[8] Rule 10b–18's safe

[1] Securities Exchange Act Release No. 19244 (Nov. 17, 1982), 47 FR 53333, 53334 (Nov. 26, 1982) ("1982 Adopting Release"). *See also* Gustavo Grullon and David L. Ikenberry, "What Do We Know About Stock Repurchases?," 13 *Journal of Applied Corporate Finance,* pp. 31–51 (2000) (noting issuers repurchase their stock for several reasons, including to convey management's expectation of future increases in earnings and cash flow).

[2] *See* Securities Exchange Act Release No. 46980 (Dec. 10, 2002), 67 FR 77594 (Dec. 18, 2002) ("2002 Proposing Release").

[3] *See id.*

[4] *Id.*

[5] *Id.*

[6] 1982 Adopting Release, 47 FR 53333. Since 1967, the Commission has considered on several occasions the issue of whether to regulate an issuer's market purchases of its own securities. The Commission first proposed Rule 10b–10 to govern issuer repurchases in connection with proposed legislation that became the Williams Act Amendments of 1968. Public Law 90–439, 82 Stat. 454 (July 29, 1968), reprinted in Hearings on S. 510 before Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 214–216 (1967). The Commission then published for public comment proposed Rule 13e–2 in 1970, 1973, and 1980. Rule 13e–2, which was later withdrawn with the adoption of Rule 10b–18, would have been a prescriptive rule with mandatory disclosure requirements, substantive purchasing limitations, and general anti-fraud liability. Securities Exchange Act Release Nos. 8930 (July 13, 1970), 35 FR 11410 (July 16, 1970); 10539 (Dec. 6, 1973), 38 FR 34341 (Dec. 13, 1973); and 17222 (Oct. 17, 1980), 45 FR 70890 (Oct. 27, 1980) ("1980 Proposing Release").

[7] The safe harbor is also available for "affiliated purchasers" of the issuer. In this Release, the term "issuer" includes affiliated purchasers. *See* 17 CFR 240.10b–18(a)(3), (a)(13) and (b).

[8] In other words, an issuer will not be deemed to have violated Sections 9(a)(2) and 10(b) of the Exchange Act or Rule 10b–5 under the Exchange Act, *solely* by reason of the timing, price, volume, or manner of its repurchases, if the repurchases are made within the limitations of the rule. However, some repurchase activity that meets the safe harbor

Continued

harbor conditions are designed to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer.[9]

The safe harbor conditions are intended to offer issuers guidance when repurchasing their common stock in the open market. Rule 10b–18, however, is not the exclusive means of making non-manipulative issuer repurchases.[10] As the Rule states, there is no presumption that an issuer's bids or purchases outside of the safe harbor violate Sections 9(a)(2) or 10(b) of the Exchange Act, or Rule 10b–5 under the Exchange Act.[11] Given the widely varying market characteristics for the stock of different issuers, it is possible for issuer repurchases to be made outside of the safe harbor conditions and not be manipulative.[12]

Since Rule 10b–18's adoption in 1982, there have been significant market changes with respect to trading strategies and developments in automated trading systems and technology that have increased the speed of trading and changed the profile of how issuer repurchases are effected. We understand that the increased speed of today's market activity, as evidenced by flickering quotes, has made it increasingly difficult for issuers to ensure that every purchase of its common stock during the day will meet the Rule's current price condition. As discussed below, currently, failure to meet any one of the four conditions under the Rule with respect to any of the issuer's repurchases during the day will disqualify all of the issuer's other Rule 10b–18 purchases from the safe harbor for that day. Moreover, the opportunity for issuers to effect repurchases using alternative trading strategies or pricing mechanisms, such as repurchases effected on a volume-weighted average price ("VWAP") basis (*i.e.,* where a security's price is generally derived from adding up the dollar amounts traded for each transaction in the security (price multiplied by shares traded) and then dividing by the total number of shares traded for the day), has increased significantly. However, because such transactions may be priced without reference to the quoted price of the stock at the time of execution and, thus, possibly above Rule 10b–18's current price limitation, many issuers that repurchase their shares using such trading strategies must forego the protections of the safe harbor for such purchases.

In connection with the 2003 amendments to Rule 10b–18,[13] the Commission sought comment as to whether Rule 10b–18's price condition should apply where the issuer has no control, directly or indirectly, over the price at which a Rule 10b–18 purchase will be effected, for example, "passive" or independently-derived pricing, such as the VWAP.[14] While the Commission did not adopt an exception for VWAP transactions at that time, it stated that it would take into account commenters' recommendations, as well as current market practices involving VWAP transactions, in considering whether any future changes to Rule 10b–18 were appropriate.[15] Since that time, we understand from the industry that VWAP has become one of the most widely recognized and accepted pricing mechanisms and trading benchmarks.[16]

Based on our experience with the operation of Rule 10b–18 and to respond to these market developments, we propose to revise Rule 10b–18 as described below. The proposed amendments are intended to clarify and modernize the safe harbor provisions. In particular, our proposal to modify the price condition would provide issuers with greater flexibility to conduct their issuer repurchase programs within the safe harbor under conditions designed to reduce the potential for abuse. Our proposal to limit the general disqualification provision would also provide issuers with additional flexibility to conduct their share repurchase programs in fast moving markets. At the same time, our proposals to modify the timing condition and the "merger exclusion" provision[17] under the Rule are intended to maintain reasonable limits on the safe harbor consistent with the objectives of the Rule to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer, and to promote safe harbor availability only during normal market conditions for an issuer.[18]

II. Overview of Current Rule 10b–18 Conditions

Rule 10b–18 provides a safe harbor for an issuer's purchases of shares of its common stock on a given day. To come within the safe harbor for that day, an issuer must satisfy the Rule's manner, timing, price, and volume conditions when purchasing its own common stock in the market.[19] The current Rule provides that failure to meet any one of the four conditions removes (or disqualifies) *all* of an issuer's purchases from the safe harbor for that day.[20]

A. Manner of Purchase Condition

The manner of purchase condition requires an issuer to use a single broker or dealer per day to bid for or purchase its common stock.[21] This requirement is intended to avoid the appearance of widespread trading in a security that could result if an issuer used many brokers or dealers to repurchase its stock.[22] The "single broker or dealer" condition, however, applies only to Rule 10b–18 purchases that are "solicited" by or on behalf of an issuer.[23]

conditions may still violate the anti-fraud provisions of the Exchange Act. For example, as the Commission noted in 1982 when adopting Rule 10b–18, "Rule 10b–18 confers no immunity from possible Rule 10b–5 liability where the issuer engages in repurchases while in possession of favorable, material nonpublic information concerning its securities." 1982 Adopting Release, 47 FR at 53334. *See also* Securities Exchange Act Release No. 48766 (Nov. 10, 2003), 68 FR 64952 (Nov. 17, 2003) at n. 5 ("2003 Adopting Release").

[9] *See, e.g.,* 2003 Adopting Release, 68 FR at 64953.

[10] *See* 1982 Adopting Release, 47 FR at 53334.

[11] *See* 17 CFR 240.10b–18(d). The safe harbor is available for repurchases of an issuer's common stock (or an equivalent interest including a unit of beneficial interest in a trust or a limited partnership or a depository share). *See* 17 CFR 240.10b–18(a)(13). *See also* 2003 Adopting Release, 68 FR at 64954. However, the safe harbor is not intended to define the appropriate limits to be observed by those persons not covered by the safe harbor nor the appropriate limits to be observed when repurchasing securities other than common stock.

[12] *See* 1982 Adopting Release, 47 FR at 53334.

[13] *See* 2003 Adopting Release, 68 FR 64952.

[14] *See* 2002 Proposing Release, 67 FR at 77594.

[15] *See id.,* 67 FR at 77599. *See also* Comment letters from William A. Lupien, Director, and William W. Uchimoto, Executive Vice President and General Counsel, Vie Financial Group, Inc., dated June 26, 2003, and William W. Uchimoto, Executive Vice President and General Counsel, Vie Financial Group, Inc., dated Mar. 3, 2003 (suggesting that the Commission provide an exception from the Rule's pricing condition for issuers' VWAP transactions that meet certain specific VWAP calculation standards) ("Uchimoto Letter").

[16] *See, e.g.,* Uchimoto Letter (noting that VWAP is the most widely recognized and accepted trading benchmark). *See also* Securities Exchange Act Release No. 54003 (June 16, 2006), 71 FR 36141, 36142 (SR–NASD–2006–056) (noting that VWAP is a benchmark often used by institutional investors to determine whether they received a good price for a large trade).

[17] *See* 17 CFR 240.10b–18(a)(13)(iv). As discussed below, the "merger exclusion" precludes issuer repurchases effected during the period from the time of public announcement of a merger, acquisition, or similar transaction involving a recapitalization, until the earlier of the completion of such transaction or the completion of the vote by the target shareholders, including any period where the market price of a security will be a factor in determining the consideration to be paid pursuant to a merger, acquisition, or similar transaction. *See also* 2003 Adopting Release, 68 FR at 64955.

[18] *See* 2003 Adopting Release, 68 FR at 64953.

[19] 17 CFR 240.10b–18(b)(1)–(4).

[20] *See* Preliminary Note 1 to 17 CFR 240.10b–18.

[21] 17 CFR 240.10b–18(b)(1).

[22] *See* 1980 Proposing Release, 45 FR at 70891.

[23] 17 CFR 240.10b–18(b)(1)(i).

Accordingly, an issuer may purchase shares from more than one broker-dealer if the issuer does not solicit the transactions. An issuer must evaluate whether a transaction is "solicited" based on the facts and circumstances of each case.[24]

B. Timing Condition

The timing condition restricts the periods during which an issuer may bid for or purchase its common stock.[25] Market activity at the open and close of trading is considered to be a significant indicator of the direction of trading, the strength of demand, and the current market value of the security.[26] Accordingly, the timing condition precludes an issuer from being the opening (regular way) purchase reported in the consolidated system.[27] The timing condition also excludes from the safe harbor purchases effected during the last half hour (or during the last ten minutes for actively-traded securities) before the scheduled close of the primary trading session in the principal market for the security and in the market where the purchase is effected.[28] Rule 10b–18's limitation on bids and purchases near the close of trading for purposes of qualifying for the safe harbor is to prevent the issuer from creating or sustaining a high bid or transaction price at or near the close of trading. Where there is no independent opening transaction on a given day, an issuer is precluded from making purchases under the safe harbor for that day.[29]

C. Price Condition

The Rule's price condition specifies the highest price an issuer may bid or pay for its common stock.[30] The price condition is intended to prevent an issuer from leading the market for the security through its repurchases by limiting the issuer to bidding for or buying its security at a purchase price that is no higher than the highest independent bid or last independent transaction price, whichever is higher, quoted or reported in the consolidated system.[31] As such, the price condition uses an independent reference price that has not been set by an issuer.[32]

For those securities that are not quoted or reported in the consolidated system, the issuer must look to the highest independent bid or the last independent transaction price, whichever is higher, that is displayed and disseminated on any national securities exchange or on any inter-dealer quotation system, as defined in Exchange Act Rule 15c2–11(e)(2), that displays at least two independent priced quotations for the security.[33] For all other securities, the issuer must look to the highest independent bid obtained from three independent dealers.[34]

D. Volume Condition

The volume condition limits the amount of securities an issuer may repurchase in the market in a single day.[35] The volume condition is designed to prevent an issuer from dominating the market for its securities through substantial purchasing activity.[36] An issuer dominating the market for its securities in this way can mislead investors about the integrity of the securities market as an independent pricing mechanism. Under the current volume condition, an issuer may effect daily purchases in an amount up to 25 percent of the ADTV in its shares, as calculated under the Rule (the "25% volume limitation").[37] Alternatively, once each week an issuer may purchase one block of its common stock *in lieu of* purchasing under the 25% volume limitation for that day.[38] The "one block per week" exception to the volume condition is intended to provide issuers with moderate or low ADTV greater flexibility in carrying out their repurchase programs.[39]

III. Proposed Amendments to Rule 10b–18

In this release, we are proposing revisions to the safe harbor rule. In particular, we propose to:

- Modify the timing condition to preclude Rule 10b–18 purchases as the opening purchase in the principal market for the security and in the market where the purchase is effected (in addition to the current prohibition against effecting Rule 10b–18 purchases as the opening purchase reported in the consolidated system);
- Relax the price condition for certain VWAP transactions;
- Limit the disqualification provision in fast moving markets under certain specific conditions;
- Modify the "merger exclusion" provision to extend the time in which the safe harbor is unavailable in connection with an acquisition by a special purpose acquisition company ("SPAC"); and
- Update certain definitional provisions consistent with the current Rule.

We solicit any comment on our approach and the specific proposals. We also encourage commenters to present data in support of their positions.

A. Discussion of Amendments to the Purchasing Conditions

1. Time of Purchases

We propose to modify Rule 10b–18's timing condition to preclude Rule 10b–18 purchases as the opening purchase in the principal market for the security and in the market where the purchase is effected.[40] Currently, to qualify for the safe harbor, an issuer's purchase may not be the opening regular way purchase reported in the consolidated system.[41] Under the current rule, an issuer's purchase, however, may be the opening purchase in the principal market for its security and the opening purchase in the market where the purchase is

[24] Although Rule 10b–18 does not define "solicitation," the issuer's disclosure and announcement of a repurchase program would not necessarily cause a subsequent purchase to be deemed "solicited" by or on behalf of an issuer. *See* 1982 Adopting Release, 47 FR at 53337.

[25] 17 CFR 240.10b–18(b)(2).

[26] 2003 Adopting Release, 68 FR 64953.

[27] 17 CFR 240.10b–18(b)(2)(i). For purposes of Rule 10b–18's timing and price conditions, Rule 10b–18(a)(6) defines "consolidated system" to mean "a consolidated transaction or quotation reporting system that collects and publicly disseminates on a current and continuous basis transaction or quotation information in common equity securities pursuant to an effective transaction reporting plan or an effective national market system plan (as those terms are defined in § 242.600)."

[28] 17 CFR 240.10b–18(b)(2). Reliance on the safe harbor under Rule 10b–18 is precluded if a purchase is effected during the 10 minutes before the scheduled close of the primary trading session in the principal market for the security, and the 10 minutes before the scheduled close of the primary trading session in the market where the purchase is effected, for a security that has an average daily trading volume ("ADTV") value of $1 million or more and a public float value of $150 million or more; and purchases during the 30 minutes before the scheduled close of the primary trading session in the principal market for the security, and the 30 minutes before the scheduled close of the primary trading session in the market where the purchase is effected, for all other securities. 17 CFR 240.10b–18(b)(2)(ii) and (b)(2)(iii).

[29] *See* 2003 Adopting Release, 68 FR at 64954.

[30] 17 CFR 240.10b–18(b)(3).

[31] *See* 2003 Adopting Release, 68 FR at 64954.

[32] 17 CFR 240.10b–18(b)(3).

[33] 17 CFR 10b–18(b)(3)(ii).

[34] 17 CFR 240.10b–18(b)(3)(iii).

[35] 17 CFR 240.10b–18(b)(4).

[36] *See* 2003 Adopting Release, 68 FR at 64954.

[37] 17 CFR 240.10b–18(a)(1) (defining ADTV for purposes of the safe harbor). *See also supra* note 28 (noting that "ADTV" means a security's average daily trading volume).

[38] *See* 17 CFR 240.10b–18(a)(5) (defining "block"). However, shares purchased by the issuer relying on the "one block per week" exception may not be included when calculating a security's four-week ADTV under the Rule. *See* 2003 Adopting Release, 68 FR at 64960; 17 CFR 240.10b–18(b)(4)(ii).

[39] *See* 2003 Adopting Release, 68 FR at 64960.

[40] The proposed amendment would continue to limit an issuer from effecting a Rule 10b–18 purchase as the opening purchase reported in the consolidated system.

[41] *See* 17 CFR 240.10b–18(b)(2)(i).

effected, provided there is already an opening purchase reported in the consolidated system that day.[42]

However, similar to transactions in the principal market for a security at the end of a trading day,[43] the opening transaction in the principal market for a security and in the market where the repurchase is effected, can be a significant indicator of the direction of trading, the strength of demand, and the current market value of a security.[44] This is particularly true considering the large trading volume that can occur at the principal market's open as the result of the increased use of electronic opening crosses and opening auctions to establish a security's official opening price for the day. However, we understand from industry sources that the dissemination of market data from these larger opening crosses has led to some confusion as to which opening transaction Rule 10b–18's opening purchase limitation applies when there is a delayed opening in the principal market for a stock.[45] For example, when a small number of an issuer's shares prints as a regional exchange's opening transaction in the consolidated system and then immediately thereafter, a substantially larger number of the issuer's shares prints in the consolidated system as the official opening transaction in the principal market for the issuer's securities, we understand that some issuers are unsure as to which transaction is the relevant opening transaction for purposes of Rule 10b–18's opening purchase limitation.[46] Moreover, because the principal market's official opening price has become a widely-recognized benchmark within the industry, we are concerned that this much larger official opening transaction in the principal market may be a more significant indicator of the direction of trading, the strength of demand, and the current market value of a security than the smaller regional exchange's opening purchase reported in the consolidated system that day.[47]

To address these developments, we propose to amend the Rule's opening purchase limitation. Specifically, the proposed amendment would continue to limit an issuer from effecting a Rule 10b–18 purchase as the opening purchase reported in the consolidated system. However, consistent with the limitations placed on purchases at the end of the trading day,[48] the proposal would amend paragraph (b)(2)(i) of the Rule to also preclude the issuer from being the opening purchase in both the principal market for the security and in the market where the purchase is effected.

As discussed above, similar to transactions at the end of a trading day, the opening transaction in the principal market for the security and in the market where the repurchase is effected can be a significant indicator of the direction of trading, the strength of demand, and the current market value of a security. Thus, the proposed modification to the timing condition is designed to maintain reasonable limits on the safe harbor consistent with the objectives of the Rule to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer. The amendment also would allow issuers to carry out their repurchase programs more effectively by providing issuers with guidance in complying with Rule 10b–18 in the situation described above where the principal market has a delayed opening in a stock and another exchange's smaller opening transaction is reported in the consolidated system first. In such situation, the proposed amendments would require the issuer to wait until both of these opening transactions were reported in the consolidated system (rather than just the first transaction) before it could effect a Rule 10b–18 purchase within the safe harbor that day.

Q. Is the proposed opening purchase limitation appropriate? If not, why not? Are there other aspects of the limitation that the Commission should consider revising? If so, please explain in what way.

Q. Are there aspects of the Rule's end of the day timing limitation that the Commission should consider revising? If so, please explain in what way. For example, for securities that have an ADTV value of $1 million or more and a public float value of $150 million or more, Rule 10b–18 currently excludes from the safe harbor purchases of such securities effected during the 10 minutes (rather than 30 minutes) before the scheduled close of the primary trading session in the principal market for the security, and the 10 minutes before the scheduled close of the primary trading session in the market where the purchase is effected.[49] Should eligibility for the current end of the day timing limitation, *i.e.,* 10 minutes before the scheduled close of trading, continue to be based on a security's ADTV and an issuer's public float? Should the current ADTV and public float value qualifying thresholds be raised to adjust for inflation? Are there alternative tests we should consider? For example, should the 10 minutes before the scheduled close of trading limitation be based on the securities offering reform standard?[50] Further, does the 10 minute limitation adequately protect against an issuer affecting the closing price of its security? Please explain. Is a shorter or longer period warranted for an issuer whose security meets the applicable ADTV and public float thresholds? If so, please identify what time limitation would be appropriate and provide data and a detailed rationale supporting the suggested alternative, including how it will promote securities prices based on independent market forces without undue issuer influence.

Q. Currently, repurchases of OTC Bulletin Board ("OTCBB") and Pink Sheet securities do not have an opening purchase timing restriction under the safe harbor. Should Rule 10b–18's timing condition be amended to apply to repurchases effected in markets where there is no official opening of trading, such as on the OTCBB and Pink Sheets? If so, what opening timing limitation should be applied to such securities? Should such a limitation be based on normal market hours or such market's regular hours of operation

[42] For example, if the principal market has a delayed opening in the issuer's stock and, therefore, is not the opening purchase reported in the consolidated system that day, the issuer would be able to effect a Rule 10b–18 purchase as the opening purchase in the principal market for its security that day.

[43] *See supra* note 28.

[44] *See, e.g.,* James Ramage, "Primary Market Still Guides Open," *Traders Magazine* (June 2008) ("Primary Market"); Raymond M. Brooks and Jonathan Moulton, "The Interaction between Opening Call Auctions and Ongoing Trade: Evidence from the NYSE," 13 *Review of Financial Economics,* pp. 341–356 (2004); Michael J. Barclay and Terrence Henderschott, "A Comparison of Trading and Non-trading Mechanisms for Price Discovery," *Journal of Empirical Finance* 15, 839–849 (2008).

[45] *See, e.g.,* Security Traders Association, "Special Report: STA's Perspective on U.S. Market Structure," at p. 10 (May 2008) (noting that competing venues can open the same stock using different processes and different order flows, which can create confusion for investors if the first reported price is different from the primary market's opening price) ("STA Special Report").

[46] *See, e.g., id. See also* NYSE Trader "Opening Trades Update—15 Sept. 2008" (noting that different vendors will process trades marked with "OPD" (indicating an out-of-sequence, opening trade) differently for purposes of their VWAP calculations) at *http://traderupdates.nyse.com/2008/09/as_previously_reported_the_con.html.*

[47] *See, e.g.,* STA Special Report, *supra* note 45 at pp. 10–11. *See also* Primary Market, *supra* note 44.

[48] *See* 17 CFR 240.10b–18(b)(2)(ii) and (b)(2)(iii).

[49] 17 CFR 240.10b–18(b)(2)(ii).

[50] *See* Securities Offering Reform, Securities Exchange Act Release No. 52056 (July 19, 2005), 70 FR 44722, 44731 at n. 88 (Aug. 3, 2005) (setting a public float threshold of $700 million and noting that those issuers had $52 million ADTV).

rather than the opening of trading? Should the current end of the day timing limitation be modified in any way with respect to OTCBB and Pink Sheets securities? If so, how? If not, why not? Please explain. In what way could market activity at the end of the trading day be considered a significant indicator of the direction of trading, the strength of demand, and the current market value of an OTCBB or a Pink Sheets security?

2. Price of Purchases

a. VWAP Transactions

Rule 10b–18 limits an issuer to bidding for or buying its security at a purchase price that is no higher than the highest independent bid or last independent transaction price, whichever is higher, quoted or reported in the consolidated system at the time the purchase is effected.[51] We understand that issuers would like to be able to repurchase their securities on a VWAP basis knowing that such purchases are within the safe harbor. However, because VWAP transactions are priced on the basis of individual trades that are executed and reported throughout the trading day, there may be instances where the execution price of an issuer's VWAP purchase effected at the end of that trading day (after the security's VWAP has been calculated and assigned to the transaction) exceeds the highest independent bid or last independent transaction price quoted or reported in the consolidated system for that security and, therefore, will be outside of the safe harbor's current price condition.

In order to provide issuers with additional flexibility to conduct repurchase programs using VWAP within the safe harbor, we propose to except from the Rule 10b–18's price condition Rule 10b–18 purchases effected on a VWAP basis, provided certain criteria are met. Specifically, the proposal would amend paragraph (b)(3) of the Rule to except those Rule 10b–18 VWAP purchases that satisfy the criteria set forth in proposed paragraph (a)(14) of the Rule.[52]

To qualify for the proposed exception, the VWAP purchase must be for a security that qualifies as an actively-traded security (as defined under Rule 101(c)(1) of Regulation M).[53] Similar to the Rule 10b–18's timing condition, the proposed exception would incorporate Regulation M's standards and methods of calculating ADTV and public float value. Under Regulation M, issuers with a security that has an ADTV value of $1 million or more and a public float value of $150 million or more are excluded from Rule 101 of Regulation M under its "actively-traded securities" exception.[54] The securities of issuers that have an ADTV value of at least $1 million and a public float value at or above $150 million are considered to have a sufficient market presence to make them less likely to be manipulated.[55] Moreover, the public float value test is intended in part to exclude issuers from the "actively-traded securities" category where a high trading volume level is an aberration.[56]

Additionally, the VWAP purchase must be entered into or matched before the regular trading session opens, and the execution price of the VWAP matched trade must be determined based on a full trading day's volume.[57] We believe that requiring the VWAP calculation to be based on a full day of trading would be the method of calculation that is the least susceptible to manipulation, because it would take into account the greatest volume of transactions occurring during regular trading hours.

To qualify for the exception, the issuer's VWAP purchase also must not exceed 10% of the ADTV in the security[58] and must not be effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security.[59] These conditions are similar to the conditions contained in the exemptive relief from former Rule 10a–1 granted for VWAP short sale transactions.[60] We believe that such conditions would similarly work well in restricting the exemptive relief to situations that generally would not raise the harms that Rule 10b–18 is designed to prevent. Additionally, the VWAP must be calculated by first calculating the values for every regular way trade reported in the consolidated system (except those trades that are expressly excluded under proposed paragraph (a)(14)(iii) of the Rule, as described below), by multiplying each such price by the total number of shares traded at that price; then compiling an aggregate sum of all values; and then dividing this aggregate sum by the total number of trade reported shares for that day in the security that represent regular way trades effected in accordance with the conditions of paragraphs (b)(2) and (b)(3) of Rule 10b–18 that are reported in the consolidated system during the primary trading session for the security.[61] This method of calculating VWAP is consistent with the method of calculation contained in the exemptive relief from former Rule 10a–1 granted for VWAP short sale transactions, and it is consistent with industry practices for calculating VWAP for purposes of the Rule 10b–18 safe harbor. In addition, the VWAP assigned to the purchase must be based on trades effected in accordance with the Rule's timing and price conditions and, therefore, must not include trades effected as the opening purchase reported in the consolidated system (including the opening purchase in the principal market for the security and in the market where the purchase is effected) or during the last 10 minutes before the scheduled close of the primary trading session in the principal market for the security, and in the market where the purchase is effected. Moreover, the VWAP assigned to the purchase must not include trades effected at a price that exceeds the highest independent bid or the last independent transaction price, whichever is higher, quoted or

[51] 17 CFR 240.10b–18(b)(3).

[52] Proposed Rule 10b–18(b)(3)(i)(a). The proposed amendment would except issuers' VWAP Rule 10b–18 purchases from only the pricing condition of the safe harbor. Issuers would remain responsible for compliance with all other conditions of Rule 10b–18 to secure the protections of the safe harbor.

[53] Proposed Rule 10b–18(a)(14)(i). *See also* 17 CFR 242.101(c)(1).

[54] *See* 17 CFR 242.101(c)(1).

[55] *See* Securities Exchange Act Release No. 38067 (Dec. 20, 1996), 62 FR 520 (Jan. 3, 1997).

[56] *Id.*

[57] Proposed Rules 10b–18(a)(14)(ii) and (iii). Specifically, under proposed paragraph (a)(14)(iii) of Rule 10b–18 would require the execution price of the VWAP matched trade must be determined based on all regular way trades effected in accordance with the Rule's timing and price conditions that are reported in the consolidated system during the primary trading session for the security. *See* Proposed Rule 10b–18(a)(14)(iii).

The proposed criteria are similar to the criteria contained in VWAP exemptive relief from former Rule 10a–1 under the Exchange Act. *See, e.g.,* Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Edith Hallahan, Counsel, Phlx, dated Mar. 24, 1999; letter Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Soo J. Yim, Wilmer, Cutler & Pickering, dated Dec. 7, 2000 ("Wilmer, Cutler & Pickering"); letter from James Brigagliano, Assistant Director, Division of Market Regulation, SEC, to William W. Uchimoto, Esq., Vie Institutional Services, dated Feb. 12, 2003.

[58] The VWAP exemptive relief from former Rule 10a–1 VWAP included the condition that a broker or dealer will act as principal on the contra-side to fill customer short sale orders only if the broker-dealer's position in the subject security, as committed by the broker-dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security's relevant average daily trading volume, as defined in Regulation M. *See, e.g.,* Wilmer, Cutler & Pickering, *id.*

[59] Proposed Rule 10b–18(a)(14)(iv) and (v).

[60] *See* text accompanying *supra* note 57.

[61] Proposed Rule 10b–18(a)(14)(vi).

reported in the consolidated system at the time such trade is effected.[62]

In addition, the VWAP purchase also must be reported using a special VWAP (*e.g.,* a ".W") trade modifier[63] in order to indicate to the market that such purchases are unrelated to the current or closing price of the security. The special trade modifier requirement is intended to prevent the issuer's Rule 10b–18 VWAP purchase from providing any price discovery information or influencing the pricing direction of the security.

The proposed VWAP exception from the Rule's price condition is intended to provide issuers and their brokers with greater certainty and flexibility in effecting qualifying VWAP transactions within the safe harbor. We believe that VWAP transactions meeting the above criteria would present little potential for manipulative abuse and, therefore, should be exempt from the Rule's price condition.[64] In using VWAP as a pricing mechanism to effect repurchases, issuers relinquish control over the pricing of their executions, thereby reducing the risk of potential manipulation. In addition, the nature of the pricing is objective since VWAP is a commonly used benchmark that is based on independent market forces and is identifiable to all market participants.

Q. Should the proposed VWAP exception be modified in any way? If so, please explain. Are all of the proposed criteria for the VWAP exception appropriate, or should any be eliminated or modified? What, if any, additional or alternative criteria should the Commission consider including in the proposed definition of a VWAP Rule 10b–18 purchases in order to prevent any potential manipulative abuse?

Q. Should a "full day" of trading be defined to permit VWAP purchases to be entered into or matched between 9:30 a.m. EST and 10 a.m. EST (rather than requiring the VWAP purchase to be entered into or matched before the regular trading session opens)? Please explain.

Q. Should we consider excepting VWAP purchases that are based on an intra-day VWAP (or a time-weighted average price, or "TWAP"), such as a particular time interval from 9:30 a.m. EST through 1 p.m. EST, rather than on a full-day's trading volume? If so, please describe, in light of the objectives of the safe harbor, which time intervals would be appropriate.

Q. Similar to the conditions contained in the exemptive relief from former Rule 10a–1 granted for VWAP short sale transactions, the proposed definition of a VWAP Rule 10b–18 purchase uses an "actively-traded" standard. Should the proposed definition also include securities that also comprise the S&P Index, similar to the conditions contained in the exemptive relief from former Rule 10a–1 granted for VWAP short sale transactions? Should we consider requiring the securities offering reform thresholds,[65] instead of the proposed "actively traded" standard? Should a different standard be used?

Q. The proposed definition of a VWAP Rule 10b–18 purchase is based on all regular way trades reported in the consolidated system. Should the proposed definition also permit an issuer in listed securities to calculate the VWAP based only on trades occurring in the principal market for the security? Please explain. Would permitting issuers to use either a consolidated or a principal market calculation for their VWAP purchases be consistent with securities information vendor standards used in the dissemination of VWAP calculations to market participants?

Q. Should the proposed exception distinguish between manually executed VWAP purchases and VWAP purchases executed through automated trading systems? If so, how?

Q. Should we require an issuer to establish and maintain written policies and procedures reasonably designed to assure that the issuer's VWAP purchase was effected in accordance with the proposed criteria and that it has supervisory systems in place to produce records that enable the issuer to accurately and readily reconstruct, in a time-sequenced manner, all orders effected in reliance on the exception? If no, why not? Please explain. How long would it take to update systems and procedures in a manner that ensured compliance with the proposed exception? Please explain. What technological challenges, if any, would be encountered?

Q. What types of costs, if any, would be associated with implementing the proposed exception? We seek specific comment as to what length of implementation period, if any, would be necessary and appropriate and, why, such that issuers would be able to meet the conditions of the proposed exception.

Q. Do VWAP transactions create improper incentives for broker-dealers, such that an exception should not be granted? If the proposed exception is adopted, are there ways to detect and limit the effects of such incentives?

Q. How would trading systems and strategies used in today's marketplace be impacted by the proposed exception? How might market participants alter their trading systems and strategies in response to the proposed amendments? Please provide an estimate of costs if possible.

b. Other Alternative Passive Pricing Systems

We are considering whether to except other passive pricing mechanisms from the Rule's price condition. We understand that some issuers may effect repurchases through electronic trading systems that use passive or independently-derived pricing mechanisms, such as the mid-point of the national best bid and offer ("NBBO") or "mid-peg" orders. Under Rule 10b–18, matches to a mid-peg order involving an issuer repurchase will necessarily be above the highest bid and may also occur at a price above the last sale price and, therefore, would fall outside of the Rule's price condition, absent an exception. Thus, we seek comment regarding the appropriateness of expanding the proposed exception to include issuer repurchases effected through certain electronic trading systems that match and execute trades at various times and at independently-derived prices, such as at the mid-point of the NBBO. We believe it may be appropriate to expand the safe harbor to permit an issuer to submit a buy order that is "pegged" to the mid-point of the NBBO at the time of execution (a "mid-peg" order) where the issuer's mid-peg order is matched and executed against a sell order that also is pegged to the mid-point of the NBBO at the time of execution, provided certain criteria are met, as discussed below. In the past, the Commission has granted limited exemptive relief in connection with these systems under former Rule 10a–1 under the Exchange Act because matches could potentially occur at a price below the last sale price.[66]

[62] Proposed Rule 10b–18(a)(14)(iii).

[63] Proposed Rule 10b–18(a)(14)(vii). For example, FINRA rules require VWAP transaction reports to be identified with a special modifier to indicate to the market that such transaction reports are unrelated to the current or closing price of the security. *See* FINRA Rule 6380A(a)(5)(E).

[64] The staff has previously recognized the limited potential to influence the price of transactions effected pursuant to passive pricing mechanisms, such as the VWAP, by exempting such transactions from the former Rule 10a–1 under the Exchange Act. *See, e.g., supra* note 57.

[65] *See supra* note 50.

[66] *See, e.g.,* Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Andre E. Owens, Schiff Hardin & Waite, dated Apr. 23, 2003 (granting exemptive relief from former Rule 10a–1 for trades executed through an alternative trading system that matches buying and selling interest among institutional investors and broker-dealers at various set times during the day).

Thus we are considering whether to except from Rule 10b–18's price condition purchases that are effected in an electronic trading system that matches buying and selling interest at various times throughout the day if, for example: (i) Matches occur at an externally derived price within the existing market and above the current national best bid; (ii) sellers and purchasers are not assured of receiving a matching order; (iii) sellers and purchasers do not know when a match will occur; (iv) persons relying on the exception are not represented in the primary market offer or otherwise influence the primary market bid or offer at the time of the transaction; (v) transactions in the electronic trading system are not made for the purpose of creating actual, or apparent, active trading in, or depressing or otherwise manipulating the price of, any security; (vi) the covered security qualifies as an "actively-traded security" (as defined in Rule 101(c)(1) of Regulation M); and (vii) during the period of time in which the electronic trading system may match buying and selling interest, there is no solicitation of customer orders, or any communication with customers that the match has not yet occurred.

These conditions parallel the conditions provided in the exemptive relief granted under former Rule 10a–1.[67] Consistent with the relief granted under former Rule 10a–1 and the rationales provided in granting such relief, we believe it may be appropriate to expand the proposed VWAP exception to Rule 10b–18's price condition for purchases effected through these electronic trading systems due to the passive nature of pricing and the lack of price discovery. As such, we believe issuer repurchases effected through these passive pricing systems generally do not appear to involve the types of abuses that the Rule 10b–18 is designed to prevent.

Although purchases effected using mid-point NBBO pricing algorithms may be passively priced, such purchases are not reported using any special trade modifier to indicate to the market that they are priced according to a special formula and, therefore, may be away from the quoted price of the stock at the time of execution. We, therefore, are concerned that a sizable purchase or series of purchases effected at the mid-point of the NBBO may result in the issuer leading the market for its security through its repurchases, which could undermine the purpose of the price condition. Thus, we seek comment below on what additional safeguards could be imposed to address the concern that such orders are not reported using any special trade modifier to indicate to the market that such transactions are priced at the mid-point of the NBBO.

Q. Should the safe harbor's price condition be modified to except electronic trading systems that effect issuer repurchases at the mid-point of the NBBO? For example, should the safe harbor permit an issuer to submit a buy mid-peg order that is "pegged" to the mid-point of the NBBO at the time of execution where the issuer's mid-peg order can only be matched and executed against a sell order that also is pegged to the mid-point of the NBBO at the time of execution? If so, should the exception be limited to repurchases of actively-traded securities effected through an electronic trading system that automatically matches and executes trades at random times, within specific time intervals, at an independently-derived mid-point of the NBBO price?

Q. If such an exception were adopted, what other conditions should apply? For instance, should we require that sellers and purchasers must not be assured of receiving a matching order or know when a match will occur? Should we require that persons relying on the exception not be represented in the primary market offer or otherwise influence the primary market bid or offer at the time of the transaction, and that during the period of time in which the electronic trading system may match buying and selling interest, there is no solicitation of customer orders, or any communication with customers that the match has not yet occurred? What, if any, other criteria would be appropriate?

Q. What, if any, additional safeguards could be imposed to address the concern that such orders are not reported using any special trade modifier to indicate to the market that such transactions are priced at the mid-point of the NBBO? Should we require mid-point priced trades to be reported with a special trade modifier? What technological challenges would be encountered as a result? How long would it take to update systems and procedures in order to mark such trades with a special trade modifier? Please explain.

Q. What types of costs, if any, would be associated with requiring mid-point priced trades to be reported to the market with a special trade modifier? Please explain what length of implementation period, if any, would be necessary and appropriate to comply with such a requirement and why.

Q. Are there other benchmark/derivatively priced transactions that should be excepted from Rule 10b–18's price condition? For example, should we consider excepting benchmark/derivatively priced purchases that qualify for the trade through exception in Rule 611(b)(7) of Regulation NMS? If so, please provide specific examples of transactions (and specific supporting criteria) where modifying the Rule's price condition would be appropriate. We also seek comment concerning the potential for manipulative abuse that permitting such transactions may present.

3. Volume of Purchases

Under the current volume condition, an issuer may effect daily purchases in an amount up to 25 percent of the ADTV in its shares, as calculated under the Rule.[68] Alternatively, once each week an issuer may purchase one block of its common stock *in lieu of* purchasing under the 25% volume limitation for that day (the "one block per week" exception).[69] Rule 10b–18(a)(5) currently defines a "block" as a quantity of stock that either: (i) Has a purchase price of $200,000 or more; or (ii) is at least 5,000 shares and has a purchase price of at least $50,000; or (iii) is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate.[70] When we adopted the "one block per week" exception in connection with the 2003 amendments to Rule 10b–18, we had retained the former Rule's "block" definition, including paragraph (iii) which references "trading volume" rather than "ADTV." However, Rule 10b–18, as amended in 2003, uses the term "ADTV" instead of the former term "trading volume." We therefore propose a non-substantive conforming change to Rule 10b–18 that would amend paragraph (a)(5)(iii) of the "block" definition to reference "ADTV" instead of "trading volume" in order to make the definition consistent with the current Rule. We also request and encourage comment on the following:

[67] *See, e.g., id.*

[68] 17 CFR 240.10b–18(b)(4). *See* 17 CFR 240.10b–18(a)(1) (defining ADTV for purposes of the safe harbor).

[69] 17 CFR 240.10b–18(b)(4). *See* text accompanying *supra* note 38 (regarding "block" purchases under Rule 10b–18).

[70] *See* 17 CFR 240.10b–18(a)(5).

Q. We seek specific comment concerning the proposal to amend the definition of a "block" to reference "ADTV" instead of "trading volume" in paragraph (a)(5)(iii) of Rule 10b–18.

Q. Is a volume limitation based on an ADTV calculation feasible with respect to Rule 10b–18 purchases of thinly traded securities? Should we raise (or lower) the volume limit for these securities? Would this increase the potential for manipulative activity in such securities?

Q. Should we retain the current 25% volume limitation? Is the 25% a reasonable limitation that furthers the objectives of the Rule or should the volume limitation be reduced?

Q. Should we retain the current "one block per week" exception? What, if any, modifications should be made to the definition of a "block" purchase for purposes of this exception? For example, should we retain the current "one block per week exception" but increase the amount of shares constituting a block (for instance, should the amount of shares constituting a block conform to the markets' definition of a block trade,[71] that is, typically at least 10,000 shares)?

Q. Does the current "one block per week" exception enable issuers of thinly or moderately traded securities to avail themselves of the Rule 10b–18 safe harbor? If not, why not?

Q. Should we modify the volume condition to allow issuers, for example, once a week to purchase up to a daily aggregate amount of 500 shares, as an alternative to the 25% volume limitation? Would this allow issuers of thinly traded securities to carry out their repurchase programs more effectively? Please provide specific examples of where modifying the Rule's current volume condition with respect to thinly traded securities would be appropriate. We also seek comment concerning the potential for manipulative abuse that such transactions may present.

Q. We encourage commenters to submit data regarding what percentage of individual issuer repurchase trading volume over the past three years has been effected in reliance on the current "one block per week" exception. The Commission requests data and analysis on what effect limiting the former block exception has had on such issuer's repurchasing activity.

[71] *See, e.g.,* NYSE Rule 97.10 (defining a "block" as consisting of at least 10,000 shares, or a quantity of securities that has a current market value of at least $200,000).

B. Amendments Concerning Scope of the Safe Harbor

1. "Flickering Quotes"

Rule 10b–18 provides a safe harbor for purchases on a given day. To come within the safe harbor on a particular day, an issuer must satisfy the Rule's manner, timing, price, and volume conditions when purchasing its own common stock in the market.[72] Moreover, the Rule provides that failure to meet any one of the four conditions with respect to any of the issuer's repurchases during the day will disqualify *all* of the issuer's Rule 10b–18 purchases from the safe harbor for that day (the "disqualification provision").[73] However, as noted above, we understand that the increased speed of today's markets, as evidenced by flickering quotes,[74] has made it increasingly difficult for an issuer to ensure that every purchase of its common stock during the day will meet the Rule's current price condition. Accordingly, even if an issuer inadvertently effects a Rule 10b–18 purchase outside of the Rule's price condition [75] due to flickering bid quotes in a market, the Rule's general disqualification provision would cause the issuer to forfeit the safe harbor for *all* of its Rule 10b–18 compliant purchases that day.

In order to accommodate the increasing occurrence of flickering price quotations in today's markets, we propose to limit the general disqualification provision in Rule 10b–18. Specifically, we propose to amend Preliminary Note 1 to Rule 10b–18 and paragraph (d) of the Rule to limit the Rule's disqualification provision in instances where an issuer's repurchase order is entered in accordance with the Rule's four conditions but is, immediately thereafter, executed outside of the price condition solely due to flickering quotes.[76] In these instances, only the non-compliant purchase, rather than all of the issuer's other Rule 10b–18 purchases for that day, would be disqualified from the safe harbor.[77] In this way, if an issuer's repurchase fails to meet the price condition due to flickering quotes, the issuer would not forfeit the safe harbor for all of its compliant purchases that day. This proposed limitation to the general disqualification provision would allow an issuer in fast moving markets to effect one otherwise compliant Rule 10b–18 purchase that was inadvertently purchased outside of the safe harbor, due to flickering quotes, without disqualifying all of the issuer's other purchases from the safe harbor for that day.

While we recognize that today's fast moving markets may still present challenges to issuers attempting to repurchase their securities within the safe harbor, Rule 10b–18(b)(3) would also continue to retain the "last independent transaction price" alternative (in addition to the highest independent bid), which should provide issuers with additional flexibility and a reliable mechanism in which to comply with the safe harbor's price condition in the event of flickering bid quotes.[78]

Q. Do flickering bid quotes make the Rule's "highest independent bid" alternative difficult to satisfy? Does the "last independent transaction price" alternative help issuers comply with Rule's price condition when there are flickering bid quotes? If not, why not? Please provide specific examples concerning the impact of quote flickering with respect to the Rule's price condition, including specific alternatives to address these concerns.

Q. Should we condition reliance on the disqualification limitation on issuers executing their otherwise compliant purchase within a certain period of time (*i.e.,* a second) after being entered? If so, how much time would be appropriate? Please explain.

Q. Should we require issuers wishing to rely on the disqualification limitation to have specific data management

[72] 17 CFR 240.10b–18(b)(1)–(4).

[73] *See* Preliminary Note 1 to 17 CFR 240.10b–18.

[74] "Flickering quotes" occur when there are rapid and repeated changes in the current national best bid during the period between identification of the current national best bid and the execution or display of the Rule 10b–18 bid or purchase. In many active NMS stocks, the price of a trading center's best displayed quotations can change multiple times in a single second. *See, e.g.,* Securities Exchange Act Release No. 51808 (June 9, 2005), 71 FR 37496, 37522–23 (June 29, 2005) (providing an exception in Rule 611 of Regulation NMS for flickering quotations).

[75] As discussed above, Rule 10b–18(b)(3) limits an issuer to bidding for or buying its security at a purchase price that is no higher than the highest independent bid or last independent transaction price, whichever is higher, quoted or reported in the consolidated system at the time the purchase is effected. 17 CFR 240.10b–18(b)(3). *See also* 17 CFR 240.10b–18(b)(3)(iii) (price limits for securities for which bids and transaction prices not reported in the consolidated system).

[76] *See* Proposed Preliminary Note No. 1 to Rule 10b–18.

[77] The disqualified non-compliant purchase would still count toward an issuer's daily volume limitation and would still have to satisfy the Rule's "single broker or dealer" and timing conditions, in order for the issuer's remaining purchases during that day to still qualify for the safe harbor.

[78] We note, however, that trade prices also may flicker quickly, which can complicate compliance with Rule 10b–18's price condition because the last trade price printed to the Tape may not necessarily be the last trade price in terms of the actual order of trades.

strategies to retain and recall order and trade history to demonstrate compliance with the safe harbor's price condition at the time of order entry? We understand that most broker-dealers already retain the appropriate market data, order status, and execution report elements to provide a "snap shot" of the market conditions at time of order entry versus execution. In order to rely on the safe harbor, what, if any, specific procedures should be established and enforced that would help issuers develop the necessary protocols to deal with the various market centers when flickering quotes appear or fast-moving markets occur in order to help reduce any unnecessary or undue reliance on the proposed limitation? How long would it take to develop these protocols, including updating systems and procedures in a manner that would help reduce any unnecessary or undue reliance on the proposed limitation? Please explain. What technological challenges, if any, would be encountered? What types of costs, if any, would be associated with implementing the necessary protocols?

Q. We seek specific comment as to what length of implementation period, if any, would be necessary and appropriate and, why, such that issuers would be able to reduce any unnecessary or undue reliance on the proposed limitation.

Q. Should we limit the number of times that an issuer may rely on the disqualification limitation, for example, once per day?

Q. Should we specify the volume of purchases that are eligible to rely on the disqualification limitation to, for example, 1%, 2%, or 5% of ADTV?

Q. Should we restrict use of the disqualification limitation during certain times of the day in order to maintain reasonable limits on the safe harbor consistent with the objectives of the Rule to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer? For example, should the limitation not be available for purchases effected immediately after the opening or just before the last half hour of trading?

Q. What effect, if any, would the proposed disqualification limitation have on Rule 10b–18 purchases effected in reliance on the proposed VWAP exception? Similarly, what effect, if any, would the proposed VWAP exception have on issuers' ability to effect Rule 10b–18 purchases in instances where there may be flickering quotes? Please explain.

2. "Merger Exclusion" Provision

The proposed amendments also would add a provision that extends the time in which the safe harbor is unavailable in connection with a SPAC[79] acquisition until the completion of the vote by the SPAC shareholders. Rule 10b–18 assumes normal market conditions.[80] Accordingly, the definition of a "Rule 10b–18 purchase" excludes issuer bids and purchases made during certain corporate events because of the heightened incentive of an issuer to facilitate a corporate action, such as a merger. We do not believe that it is appropriate to make the safe harbor available when an issuer is under pressure to complete a merger or similar corporate action and may attempt to bring about a successful conclusion to the corporate action with issuer repurchases. Currently, paragraph (a)(13)(iv) of Rule 10b–18, which defines a Rule 10b–18 purchase, precludes purchases effected during the period from the time of public announcement of a merger, acquisition, or similar transaction involving a recapitalization, until the earlier of the completion of such transaction or the completion of the vote by the target shareholders (the "merger exclusion").[81] Thus, ordinarily, it is the target shareholder vote that determines the completion of the merger exclusion period for purposes of Rule 10b–18.

Paragraph (a)(13)(iv) illustrates the modernization of the safe harbor in 2003. The Commission adopted the amended merger exclusion in recognition of issuers' incentives to facilitate corporate actions with issuer purchases. The Commission adopted this modified provision of Rule 10b–18 out of concern for issuer activity designed to facilitate a merger, which had been highlighted by news articles suggesting that banks repurchased their respective securities in order to boost their stock price to enhance the value of their competing merger proposals.[82] At that time, the concern about issuers facilitating corporate actions was on raising the market price of an issuer's stock in order to facilitate the merger or acquisition in a contested takeover. The exclusion advanced the goal of making the safe harbor available to an issuer only during those times when there is no special event that may impact an issuer's purchasing activity. Since 2003, securities markets and capital raising have evolved significantly, and we once again believe it is appropriate to modify the merger exclusion with respect to issuer purchases aimed at facilitating corporate actions. This proposal is triggered by the rapid growth of SPAC capital raising, and its objective is to maintain the integrity of the safe harbor by narrowing its use during corporate actions that can impact an issuer's purchasing activity.[83]

SPAC acquisitions can present unique conflicts of interest and significant financial incentives for SPAC management. For instance, a SPAC generally must complete its acquisition within 18 to 24 months,[84] which can put SPAC management under severe time pressure to identify an appropriate target and complete the acquisition. Typically, if an acquisition target is identified during this timeframe, both the SPAC shareholders and target shareholders are given the opportunity to vote on whether or not to approve the proposed acquisition. However, because of the special incentives and deferred compensation involved with a SPAC,[85] if SPAC management believes that SPAC holders will vote against an acquisition, or to otherwise ensure that the acquisition will be approved, they may attempt to rely on Rule 10b–18 to repurchase a substantial percentage of shares of the SPAC's common stock in the open market,[86] thereby reducing the

[79] SPACs are shell, developmental stage, or blank-check companies that raise capital in initial public offerings ("IPOs") generally for the purpose of acquiring or merging with an unidentified company or companies, or other entity, that will be identified at a future date (a "target"). *See generally* 17 CFR 230.419 (defining blank-check companies).

[80] 2002 Proposing Release, 67 FR at 77595.

[81] 17 CFR 240.10b–18(a)(13)(iv). This would include any period where the market price of a security will be a factor in determining the consideration to be paid pursuant to a merger, acquisition, or similar transaction. *See* 2008 Adopting Release, 68 FR at 64955.

[82] *See* 2003 Adopting Release, 68 FR at 64955 n. 29.

[83] *See* FINRA Regulatory Notice 08–54: *Guidance on Special Purpose Acquisition Companies.* (stating that 22% of all IPOS in 2007 were SPAC IPOs totaling $12 billion in raised capital).

[84] This 18- to 24-month deadline is designed to help investors by forcing a timely return of most of their capital (previously held in an escrow or trust account) if an acquisition is not completed within this timeframe and the SPAC must liquidate. *See id.*

[85] SPAC managers, as well as underwriters, often have significant financial incentives that may conflict with their investors' interests and may cause them to effect an acquisition regardless of the merit of the target or the potential for future success of the entity as a public company. For instances, the SPAC underwriters may be paid a portion of their fee, usually half, following the IPO, but the remainder is only paid upon the closing of an acquisition. In addition, SPAC managers may not be paid a salary but will receive an equity stake, roughly 20%, in the company post-acquisition.

[86] *See, e.g.,* Douglas S. Ellenoff, "Facilitating a Business Combination: The Valuation and Economics of a Proposed SPAC Don't Determine a Successful Outcome," *Equities Magazine* (Sept. 2009) (stating that SPAC sponsors and affiliates consider additional purchases of open market

Continued

possibility that the acquisition will be disapproved.[87] These open market repurchases can also have the effect of supporting and/or raising the market price of the SPAC shares, and cause other investors to buy up shares in the SPAC in the open market when they might not otherwise have done so.[88] Moreover, because the SPAC shareholder vote typically occurs much later than the vote by the target shareholders, this allows the SPAC management an even longer period of time in which to engage in substantial open market repurchases of the SPAC's stock in order to secure "yes" votes in favor of the proposed merger or acquisition. In view of this heightened incentive, we do not believe it is appropriate to provide a safe harbor for purchases made in connection with an acquisition by a SPAC during this period and, therefore, believe a longer exclusionary period is warranted.

Thus, we propose to add a provision that would increase the time in which the safe harbor is unavailable in connection with an acquisition by a SPAC until the completion of the vote by the SPAC's shareholders. Specifically, the proposal would amend the language of paragraph (a)(13)(iv) to provide that, in connection with a SPAC, Rule 10b–18's "merger exclusion" would apply to purchases that are effected during the period from the time of public announcement of a merger, acquisition, or similar transaction until the earlier of such transaction or the completion of the vote by both the target shareholders and the SPAC shareholders.[89] By extending the "merger exclusion" to the time of the vote by the shareholders of the SPAC (and not just the vote by the target shareholders), the proposal would maintain reasonable limits on the safe harbor and prevent it from being used in contexts where there is a heightened incentive to engage in substantial repurchase activity solely in order to facilitate a corporate action. The benefit of a safe harbor is only appropriate during "normal" market conditions.[90]

We note, however, that SPACs would still have the ability to make safe harbor repurchases following an announcement of a merger or covered transaction (subject to Regulation M's restricted period and any other applicable restriction) so long as the total amount of the issuer's Rule 10b–18 purchases effected on any single day does not exceed the lesser of 25% of the security's four-week ADTV or the issuer's average daily Rule 10b–18 purchases during the three full calendar months preceding the date of the announcement of the merger or other covered transaction.[91] Moreover, the issuer may effect block purchases pursuant to paragraph (b)(4) of the Rule (subject to Regulation M's restricted period and any other applicable restrictions) provided that the issuer does not exceed the average size and frequency of block purchases effected pursuant to paragraph (b)(4) of the Rule during the three full calendar months preceding the date of the announcement of such transaction.[92]

Q. Given the significant financial incentives on the part of SPAC managers and underwriters to engage in repurchase activity solely to facilitate an acquisition, should the safe harbor in general continue to apply to issuer repurchases of SPAC securities? If so, should the Commission consider other modifications, either in addition to or instead of, the safe harbor conditions proposed here in the case of issuer repurchases of SPAC securities? If not, what specific types of costs or burdens, if any, would be associated with making the safe harbor in general unavailable to issuer repurchases of SPAC securities? Please explain. Please provide detailed comment regarding excepting all issuer repurchases of SPAC securities from the definition of a Rule 10b–18 purchase. Are there other types of securities for which the safe harbor should not apply? We also seek specific comment concerning the potential for manipulative abuse that transactions in such securities may present.

3. Preliminary Note to Rule 10b–18

We also propose a non-substantive amendment that would update Preliminary Note No. 2 to Rule 10b–18 to reference "Item 16E" (instead of "Item 15(e)") of Form 20–F. Preliminary Note No. 2 currently states, "[r]egardless of whether the repurchases are effected in accordance with § 240.10b–18, reporting issuers must report their repurchasing activity as required by Item 703 of Regulations S–K and S–B (17 CFR 229.703 and 228.703) and Item 15(e) of Form 20–F (17 CFR 249.220f) (regarding foreign private issuers), and closed-end management investment companies that are registered under the Investment Company Act of 1940 must report their repurchasing activity as required by Item 8 of Form N–CSR (17 CFR 249.331; 17 CFR 274.128)."[93] The proposed amendment would update this note by changing "Item 15(e)" to "Item 16E" consistent with the current Form 20–F.

4. Additional Request for Comments Regarding Scope of Safe Harbor

Q. Should the safe harbor in general continue to apply to less liquid, less transparent securities, such as OTCBB and Pink Sheet securities? If so, should these securities be subject to more restrictive limitations in order to minimize the risk of manipulation by an issuer making market repurchases in these less liquid, less transparent securities?

Q. Should the Rule 10b–18 safe harbor be available for issuer repurchases during periods when an issuer's insiders are selling their own shares of the issuer's stock? If not, please provide specific suggestions regarding what, if any, limitations should be placed on the availability of the safe harbor during such periods.

Q. Should the Rule require that an issuer have current financial disclosures as a prerequisite to receiving the protection of the safe harbor? For example, should it be available to companies that do not make public filings of financial information, or are not current in required filings? If so, how should we require the issuer to demonstrate such compliance? Should such information be required to be made available on the issuer's website for the

shares in order to implement a favorable approval process); Frederick D. Lipman, "International and US IPO Planning: A Business Strategy Guide," at p. 218 and 223 (2008) ("Lipman") (stating that business combinations that trade below the Trust's per share amount after announcement require the SPAC's sponsors or the target's owners to enter into agreements to incentivize the SPAC's public stockholders or potential investors to support the transaction" and that "SPAC sponsors may commit to spend funds to buy stock in the open market that can be targeted during the proxy process").

[87] *See, e.g.,* Lipman, *id.* at p. 217 (noting that getting the SPAC's stockholder vote and limiting exercises of conversions is by for the most difficult and uncertain part of the process and that this uncertainty affects the extent to which concessions will be made by the SPAC sponsors to complete the transaction—the greater the percentage of arbitrageurs holding the SPAC's stock and the less favorable the transaction is perceived, the greater the concessions that will have to be made). "In most [SPAC] transactions, negotiations and deals need to occur during the proxy process because at the time of the IPO, it is not possible to foresee all the variables involved in the business combination that will affect how much stock will need to be turned over from no votes to yes votes." *Id.* at p. 218 (emphasis added)

[88] *See, e.g., id.* (stating that SPAC sponsors may enter into Rule 10b5–1 trading plans which require them to purchase up to a specified number of shares or dollar amount of shares at the prevailing market prices, and that these purchases are intended to support the market price of the stock during the proxy process and provide potential sellers the ability to dispose of their shares and achieve the same or greater return than if they were to vote against the transaction and exercise their conversion rights).

[89] Proposed Rule 10b–18(a)(13)(iv).

[90] *See supra* note 80. *See infra* note 106.

[91] *See* 17 CFR 240.10b–18(a)(13)(iv)(B)(*1*).

[92] *See* 17 CFR 240.10b–18(a)(13)(iv)(B)(*2*).

[93] 17 CFR 240.10b–18.

investing public? What, if any, other requirements should be a prerequisite to receiving the protection of the safe harbor?

Q. Item 703 of Regulation S–K requires disclosure of repurchases of all shares of a company's equity securities of a class registered under Section 12 of the Exchange Act regardless of whether an issuer relies on the safe harbor. Should compliance with the disclosure requirements of Item 703 be made a condition of using the safe harbor? Should Rule 10b–18 contain a specific disclosure requirement as a condition of the safe harbor, similar to other Commission regulations that link a safe harbor with disclosure (*e.g.,* Regulation D with Form D and Rule 144 with Form 144)? What specific types of information would be useful to investors regarding an issuer's repurchase activity?

Q. Would requiring specific disclosure as a condition of the safe harbor provide a useful way to monitor the operation of (or verify compliance with) the safe harbor? Would it provide useful information in assessing the level and market impact of issuer repurchases? If so, should the safe harbor require disclosure on a daily basis, or would more frequent disclosure (*e.g.,* on a "real time" basis) be more meaningful to investors? If so, how should the disclosure be made (*e.g.,* issuing daily press releases, posting daily notices on the issuer's website, or reporting such purchases to the tape using a special trade indicator)? Please provide specific suggestions.

Q. Should the safe harbor require issuers to maintain (and provide to the Commission, upon request) separately retrievable written records concerning the trade details (trade-by-trade information) about the manner, timing, price, and volume of their Rule 10b–18 repurchases?

Q. Should the safe harbor be made available to securities other than common equity, such as preferred stock, warrants, rights, convertible debt securities, or other products? If the safe harbor were to include such securities, what price, volume, and time of purchase conditions should apply? We seek specific comment concerning the potential for manipulative abuse that transactions in such securities may present.

Q. Should the safe harbor be available for issuer repurchases involving security futures or option contracts (including the receipt or purchase for delivery of securities underlying such contracts)? Should the number of shares underlying an option or security futures contract (or other derivative security) entered into by an issuer count against an issuer's 25% daily volume limitation? What effect, if any, should taking delivery of common stock pursuant to a security futures contract or upon exercise of an option have regarding the Rule's other conditions (*e.g.,* price, timing, and manner of purchase) with respect to the availability of the safe harbor for purchases effected in accordance with Rule 10b–18?

Q. Currently, the Rule 10b–18 safe harbor is not available for an issuer and the broker-dealer who engage in an accelerated share repurchase plan or use a forward contract to repurchase the issuer's stock, or for the broker's covering transactions. What, if any, manipulative concerns are raised by alternative or novel methods of repurchasing securities (*e.g.,* use of derivatives or share accumulation programs)? Please provide specific comment as to what limitations should apply to such repurchases to address these concerns.

Q. Should the safe harbor apply to an issuer's repurchases of its common stock effected outside of the United States (*e.g.,* on foreign exchanges)? If so, how should the safe harbor conditions apply to such purchases (*e.g.,* should a security's ADTV include worldwide trading volume)?

Q. Should the safe harbor only be available outside of the United States to foreign private issuers, or to foreign companies whose principal market is outside the United States? If so, are there certain conditions of Rule 10b–18 that should be modified or that should not apply at all with respect to purchases outside the United States and, if so, why?

Q. Are there different conditions under Rule 10b–18 that should apply with respect to purchases outside the United States and, if so, why are those conditions more appropriate than the conditions currently proposed for Rule 10b–18?

IV. General Request for Comment

We request and encourage any interested person to comment generally on these proposals. In addition to the specific requests for comment, the Commission invites interested persons to submit written comments on all aspects of the proposed amendments. The Commission also requests commenters to address whether the proposed Rule 10b–18 amendments provide appropriate safe harbor conditions in light of recent market developments. The Commission seeks comment on whether the safe harbor proposals raise any manipulation risks. Commenters may also discuss whether there are legal or policy reasons why the Commission should consider a different approach.

The Commission encourages commenters to provide information regarding the advantages and disadvantages of each proposed amendment. The Commission invites commenters to provide views and data as to the costs and benefits associated with the proposed amendments. We also seek comment regarding other matters that may have an effect on the proposed amendments.

V. Paperwork Reduction Act

A. Background

One provision of the proposed amendments to Rule 10b–18 would result in new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[94] The Commission is therefore submitting this proposal to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information requirements is "Purchases of Certain Equity Securities by the Issuer and Others." If adopted, this collection would not be mandatory, but would be necessary for issuers that wish to avail themselves of the proposed VWAP exception to Rule 10b–18's price condition. Responses to the collection of information requirements of the proposed VWAP exception to Rule 10b–18's price condition would not be kept confidential. 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. OMB has not yet assigned a control number to the new collection for the proposed VWAP exception to the Rule's price condition.

B. Summary

In order to provide issuers with additional flexibility to conduct repurchase programs using VWAP within the safe harbor, we are proposing to except from the Rule 10b–18's price condition Rule 10b–18 purchases effected on a VWAP basis, provided certain criteria are met. Proposed Rule 10b–18(a)(14)'s definition of a "Rule 10b–18 VWAP Purchase" would require a new collection of information in that one of the requirements for qualifying for the exception is that the VWAP purchase must be reported using a special VWAP (*e.g.,* a ".W") trade modifier[95] in order to indicate to the

[94] 44 U.S.C. 3501 *et seq.*

[95] Proposed Rule 10b–18(a)(14)(vii).

market that such purchases are unrelated to the current or closing price of the security.

C. Proposed Use of Information

The information that would be collected under the special trade modifier requirement would help prevent the issuer's Rule 10b–18 VWAP purchase from providing any price discovery information or influencing the pricing direction of the security. The information collected also would aid the Commission in monitoring compliance with the proposed VWAP exception.

D. Respondents

The collection of information that would be required by the proposed special trade modifier requirement of the proposed VWAP exception to Rule 10b–18 would apply to all 5,561 registered broker-dealers effecting Rule 10b–18 VWAP on behalf of issuers in reliance on the proposed VWAP exception to Rule 10b–18's price condition. As discussed below, the Commission has considered the above respondents for the purposes of calculating the reporting burdens under the proposed amendments to Rule 10b–18. The Commission requests comment on the accuracy of these figures.

E. Total Annual Reporting and Recordkeeping Burdens

Proposed Rule 10b–18(a)(14)'s definition of a "Rule 10b–18 VWAP Purchase" would require that the VWAP purchase must be reported using a special VWAP trade modifier.[96] VWAP trade reports are already required to be identified with a special trade indicator or modifier to indicate that such transaction reports are unrelated to the current or closing price of the security.[97] Thus, this identification is usual and customary in the conduct of this activity and no new burden would be imposed.[98]

F. Record Retention Period

The proposed VWAP exception's special modifier requirement does not contain any new record retention requirements. All registered broker-dealers that would be subject to the proposed special trade modifier requirement are currently required to retain records in accordance with Rule 17a–4(e)(7) under the Exchange Act.

G. Request for Comment

We invite comment on these estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to: (i) Evaluate whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (ii) evaluate the accuracy of our estimate of the burden of the collection of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–04–10. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. S7–04–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Costs and Benefits of the Proposed Amendments

The Commission is considering the costs and the benefits of the proposed amendments. The Commission encourages commenters to discuss any additional costs or benefits. In particular, the Commission requests comment on the potential costs for any modifications to information gathering, management, and recordkeeping systems or procedures, as well as any potential benefits resulting from the proposals for issuers, investors, broker-dealers, other securities industry professionals, regulators, and others. Commenters should provide analysis and data to support their views on the costs and benefits associated with the proposed amendments.

A. Costs

As an aid in evaluating costs and reductions in costs associated with the proposed amendments, the Commission requests the public's views and any supporting information. The Commission believes that the proposed amendments would impose negligible costs, if any, on issuers and would not compromise investor protection. The Commission notes that any costs related to complying with the proposed amendments to Rule 10b–18 are assumed voluntarily because the Rule provides an optional safe harbor.[99] The Commission, however, notes that issuer repurchases effected under the proposed VWAP exception, or other passive pricing mechanisms, may create costs to both issuers and market participants to update systems and enhance recordkeeping in order to comply with the proposed exception. Also, to qualify as a "Rule 10b–18 VWAP Purchase" under the proposed Rule 10b–18(a)(14), the VWAP purchase be reported using a special VWAP trade modifier.[100] VWAP trade reports are already required to be identified with a special trade indicator or modifier to indicate that such transaction reports are unrelated to the current or closing price of the security.[101] Thus, this identification is usual and customary and no new burden would be imposed. In addition, if adopted, an issuer may need to establish specific procedures that would help them develop the necessary protocols to deal with the various market centers when flickering quotes appear or fast-moving markets occur in order to help reduce any unnecessary or undue reliance on the proposed disqualification limitation. The Commission seeks estimates of such costs. The Commission also solicits comments as to whether the proposed

[96] *Id.*

[97] For example, FINRA rules require VWAP transaction reports to be identified with a special modifier to indicate to the market that such transaction reports are unrelated to the current or closing price of the security. *See* FINRA Rule 6380A(a)(5)(E) (requiring members to append the applicable trade report modifier, as specified by FINRA, to all last sale reports that occur at a price based on an average weighting or another special pricing formula).

[98] 5 CFR 1320.3(b)(2).

[99] *See* discussion in Section VII, *infra,* noting that, even with the proposed modification to the "merger exclusion," all issuers, including SPACs, still have the ability to make safe harbor repurchase following an announcement of a merger or covered transaction (subject to Regulation M's restricted period and any other applicable restriction) so long as the total amount of the issuer's Rule 10b–18 purchases effected on any single day does not exceed the lesser of 25% of the security's four-week ADTV or the issuer's average daily Rule 10b–18 purchases during the three full calendar months preceding the date of the announcement of the merger or other covered transaction. *See* 17 CFR 240.10b–18(a)(13)(iv)(B)(*1*). *See also* 2003 Adopting Release, 68 FR at 64955.

[100] *Id.*

[101] *See, e.g.,* text accompanying *supra* note 97.

amendments would impose greater costs on issuers than the current Rule.

The Commission also notes that the proposed modification to the "merger exclusion" in connection with SPAC acquisitions may create costs to issuers in terms of not being able to effect all of their issuer repurchases within the safe harbor. We understand that this, in turn, could affect some SPACs' ability to complete an acquisition or other covered transaction. However, we preliminary do not believe that the proposed modification to the "merger exclusion" would significantly hinder a SPAC's ability to complete an acquisition or other covered transaction. The proposed modification is designed to maintain reasonable limits on the availability of the safe harbor consistent with the objectives of the Rule to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer. Moreover, even with the proposed modification to the "merger exclusion," SPAC issuers, similar to other issuers, would still be able to effect other repurchases (*i.e.,* privately negotiated repurchases) and certain ordinary course Rule 10b–18 purchases following the announcement of a merger or covered transaction (subject to Regulation M's restricted period and any other applicable restriction) so long as the total amount of the issuer's Rule 10b–18 purchases effected on any single day does not exceed the lesser of 25% of the security's four-week ADTV or the issuer's average daily Rule 10b–18 purchases during the three full calendar months preceding the date of the announcement of the merger or other covered transaction.[102] As such, we do not believe that the proposed modification to the "merger exclusion" would unfairly hinder a SPAC's ability to complete an acquisition or other covered transaction. In fact, by extending the "merger exclusion" to the time of the vote by the shareholders of the SPAC (and not just the vote by the target shareholders), the proposal would simply make the safe harbor unavailable to SPAC issuers during the period when the incentive to engage in substantial repurchases to facilitate a corporate action is greatest.[103] We also note that some SPAC issuers may conduct privately negotiated repurchases for which the safe harbor is already unavailable. As such, this proposal would not trigger new costs for that purchasing activity. Nevertheless, the Commission seeks estimates of any potential costs associated with the proposed modification to the "merger exclusion," including the extent to which, if at all, the proposed modification would affect a SPAC's ability to effect issuer repurchases within the safe harbor or otherwise complete an acquisition or other covered transaction.

B. Benefits

The proposed amendments would update the safe harbor in light of market developments since the 2003 Adopting Release, as well as provide issuers with greater flexibility to conduct their issuer repurchase programs within the safe harbor without sacrificing investor protection or market integrity. The proposed amendments would allow issuer repurchases under conditions designed to reduce the potential for manipulative abuse without either imposing undue restrictions on the operation of issuer repurchases or undermining the economic benefit such purchases provide investors, issuers, and the marketplace. In addition, the proposed amendments would provide clarity as to the scope of permissible market activity for issuers and the broker-dealers that assist them in their repurchasing. Many issuers may be reluctant to repurchase without the certainty that their activity comes within the safe harbor. If an issuer effects repurchases in compliance with Rule 10b–18, it may avoid what might otherwise be substantial and unpredictable risks of liability under the anti-manipulative provisions of the Exchange Act. Therefore, the safe harbor may provide increased liquidity to the marketplace from issuers that would not repurchase but for the safe harbor.

The proposed modification to the timing condition would maintain reasonable limits on the safe harbor consistent with the objectives of the Rule to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer. As such, the proposed condition would establish additional reasonable limits on issuer activity that may influence market prices at or near the open. In addition, the amendment would allow issuers to carry out their repurchase programs more effectively by providing issuers with guidance in complying with Rule 10b–18's opening purchase limitation, particularly when, for example, the principal market has a delayed opening in a stock and another exchange's smaller opening transaction is reported in the consolidated system first.

The proposed VWAP exception from the Rule's price condition would provide issuers and their brokers with flexibility and greater certainty in effecting qualifying VWAP transactions within the safe harbor. The proposed VWAP exception to the Rule's price condition also may increase the likelihood that firms would engage in open market repurchases since the price condition would be less restrictive for such transactions. As such, the proposed VWAP exception may further provide increased liquidity to the marketplace.

In addition, if an issuer's repurchase meets all of the conditions under Rule 10b–18 but fails to meet the Rule's price condition due solely to flickering quotes, the proposed limitation to the general disqualification provision would disqualify only this otherwise compliant Rule 10b–18 purchase, rather than disqualifying all of the issuer's other purchases from the safe harbor for that day. The proposed amendments to the disqualification provision under the Rule also may increase the likelihood that firms would engage in open market repurchases since the execution of an otherwise compliant Rule 10b–18 purchase in a fast moving market would no longer jeopardize the availability of the safe harbor for all of an issuer's other Rule 10b–18 purchases that day. As such, the proposed limitations to the general disqualification provision may further provide increased liquidity to the marketplace.

The proposal to modify the "merger exclusion" under the Rule in connection with a SPAC acquisition, merger, or similar transaction is designed to maintain the integrity of the safe harbor by narrowing its use where an issuer is under considerable pressure to complete an acquisition, merger, or similar transaction and effects a substantial amount of open market repurchases solely to facilitate the intended merger or other covered transaction. Additionally, as discussed above, these open market repurchases can have the effect of supporting and/or raising the market price of the SPAC shares, and cause other investors to buy up shares in the SPAC in the open market when they might not otherwise have done so. Thus, the proposed modification would maintain reasonable limits on the availability of the safe harbor consistent with the objectives of the Rule to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer

[102] *See* 17 CFR 240.10b–18(a)(13)(iv)(B)(*1*). *See also* 2003 Adopting Release, 68 FR at 64955.

[103] Proposed Rule 10b–18(a)(13)(iv).

and, therefore, help to promote price efficiency in the marketplace.

The Commission encourages commenters to provide empirical data or other facts to support their views concerning these and any other benefits not mentioned here.

VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation.[104] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[105] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

We believe the proposed amendments would have minimal impact on the promotion of price efficiency and capital formation and preliminarily believe that these proposals would promote efficiency, competition and capital formation by enhancing market transparency, promoting liquidity in issuer securities and providing clarity to market participants engaging in issuer repurchases.

First, the proposed modification to the timing condition would promote price transparency in issuer securities. The proposed modifications to Rule 10b–18's timing condition are designed to minimize the market impact of an issuer's repurchases during a period (the market open) where market activity is considered to be a significant indicator of the direction of trading, the strength of demand, and the current market value of the security. This additional, reasonable limit on issuer activity, consistent with the objectives of the Rule, would allow the market to establish a security's price based on independent market forces without undue influence by the issuer, thereby further promoting price transparency at the market open. Second, the proposed amendments to the Rule would promote increased liquidity in issuer securities, by providing issuers with additional flexibility to conduct their repurchase programs more effectively and within the safe harbor. For example, the proposed VWAP exception to the safe harbor's existing price condition may increase the likelihood that firms would engage in open market purchases, thereby potentially providing increased liquidity in issuers' securities. Finally, the commission preliminarily believes that the proposed amendments should improve market efficiency by providing greater clarity and uniformity of the safe harbor conditions. It is our understanding that significant market changes with respect to trading strategies and developments in automated trading systems that have increased the speed of trading (evidenced by flickering quotes) have made it increasingly difficult for issuers to operate within the Rule. As such, the proposed modifications to the Rule would clarify and modernize the Rule's provisions in light of market developments since the Rule's adoption, providing the market with additional comfort while engaging in issuer repurchases.

In addition, we believe that the proposed modification to the "merger exclusion" in connection with SPAC acquisitions would have minimal impact on the promotion of price efficiency and capital formation. While the proposed modification may impact an issuer's ability to effect all of their issuer repurchases within the safe harbor, the proposed modification is designed to maintain reasonable limits on the availability of the safe harbor[106] consistent with the objectives of the Rule to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer. An efficient market generally promotes capital formation. Moreover, even with the proposed modification to the "merger exclusion," SPAC issuers, similar to other issuers, would still be able to effect other repurchases (*i.e.,* privately negotiated repurchases) and certain ordinary course Rule 10b–18 purchases following the announcement of a merger or covered transaction (subject to Regulation M's restricted period and any other applicable restriction) so long as the total amount of the issuer's Rule 10b–18 purchases effected on any single day does not exceed the lesser of 25% of the security's four-week ADTV or the issuer's average daily Rule 10b–18 purchases during the three full calendar months preceding the date of the announcement of the merger or other covered transaction.[107] As such, we do not believe that the proposed modification to the "merger exclusion" would unfairly hinder a SPAC's ability to complete an acquisition or other covered transaction. In fact, by extending the "merger exclusion" to the time of the vote by the shareholders of the SPAC (and not just the vote by the target shareholders), the proposal would simply make the safe harbor unavailable to SPAC issuers when the incentive to engage in substantial repurchases to facilitate a corporate action is greatest.[108]

The Commission has considered the proposed amendments in light of the standards cited in Section 23(a)(2) and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. We believe the proposed VWAP exception to the Rule's price condition, the proposed amendments to the Rule's opening purchase condition, and the proposed limitation of the general disqualification provision under the Rule might help to avoid undermining competition by increasing the likelihood that more issuers will be able to effect qualifying Rule 10b–18 repurchases within the safe harbor. In addition, we believe that the proposed modification to the "merger exclusion" in connection with a SPAC acquisition would have a minimal impact on competition as SPAC issuers, similar to other issuers, would still be able to effect other repurchases (*i.e.,* privately negotiated repurchases) and certain ordinary course Rule 10b–18 purchases following the announcement of a merger or other acquisition. Moreover, Rule 10b–18 is a safe harbor rather than a mandatory rule, and as such, issuers choose whether or not to use it. Many issuers might be reluctant to repurchase without the safe harbor. Therefore, the safe harbor may provide increased liquidity to the marketplace from issuers that would not repurchase but for the safe harbor. Issuers also have the option to repurchase securities outside the Rule 10b–18 safe harbor conditions without raising a presumption of manipulation.

[104] 15 U.S.C. 78c(f).

[105] 15 U.S.C. 78c(f).

[106] As discussed above, because the benefit of a safe harbor is only appropriate during "normal" market conditions, and not where there is a heightened incentive to engage in substantial repurchase activity solely to facilitate a corporate action, we believe that extending the "merger exclusion" to the time of the vote by the shareholders of the SPAC (and not just the vote by the target shareholders) is warranted. *See also supra* note 80.

[107] *See* 17 CFR 240.10b–18(a)(13)(iv)(B)(*1*). *See also* 2003 Adopting Release, 68 FR at 64955.

[108] Proposed Rule 10b–18(a)(13)(iv).

Moreover, the proposed version of the Rule 10b–18 safe harbor, like the current Rule, would apply to all issuers. Thus, we do not believe the proposed amendments would have a significant effect on competition because all issuers have the option of complying with the manner, volume, time and price conditions.

The Commission requests comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA," [109] we must advise the Office of Management and Budget as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effect on competition, investment or innovation.

If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act ("RFA") [110] requires the Commission to undertake an initial regulatory flexibility analysis of a proposed rule on small entities, unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[111] Pursuant to Section 605(b) of the RFA, the Commission hereby certifies that the proposed amendments to Rule 10b–18, would not, if adopted, have a significant economic impact on a substantial number of small entities.

The proposed amendments are intended to clarify and modernize the safe harbor provisions. In particular, the proposal to modify the price condition is intended to provide issuers with greater flexibility to conduct their issuer repurchase programs within the safe harbor under conditions designed to reduce the potential for abuse. The proposal to limit the general disqualification provision is intended to provide issuers with additional flexibility to conduct their share repurchase programs in fast moving markets. At the same time, the proposals to modify the timing condition and the "merger exclusion" provision are intended to maintain reasonable limits on the safe harbor while furthering the objectives of Rule 10b–18. The Commission believes that the proposed amendments would impose negligible costs, if any, on issuers and would not, if adopted, have a significant impact on a substantial number of small entities. Based on Exchange Act Rule 0–10, a small issuer is one that on the last day of its most recent fiscal year had total assets of $5,000,000 or less. The Commission believes that the majority of issuers effecting repurchase programs are not small entities.[112] Moreover, any costs related to complying with the proposed amendments to Rule 10b–18 would be assumed voluntarily because the Rule provides an optional safe harbor.

We encourage written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact. In particular, the Commission requests comment on: (i) The number of small entities that would be affected by the proposed amendments to the Rule, (ii) the nature of any impact the proposed amendments would have on small entities and empirical data supporting the extent of the impact, and (iii) how to quantify the number of small entities that would be affected by or how to quantify the impact of the proposed amendments.

X. Statutory Basis and Text of Proposed Amendment

The Rule amendments are being proposed pursuant to Sections 2, 3, 9(a)(6), 10(b), 12, 13(e), 15, 15(c), 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78*l,* 78m(e), 78o, 78o(c), and 78w(a).

List of Subjects in 17 CFR Part 240

Brokers, Dealers, Issuers, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.10b–18 is amended by:

a. Revising the next to last sentence of the Preliminary Note 1;

b. Revising the term "Item 15(e)" to read "Item 16E" in Preliminary Note 2;

c. Revising paragraph (a)(5)(iii) and the introductory text of paragraph (a)(13)(iv);

d. Adding paragraph (a)(14); and

e. Revising paragraphs (b)(2)(i), (b)(3)(i) and (d).

The addition and revisions read as follows:

§ 240.10b–18 Purchases of certain equity securities by the issuer and others.

* * * * *

1. * * * Except as provided in paragraph (d)(2) of this section, failure to meet any one of the four conditions will remove all of the issuer's repurchases from the safe harbor for that day. * * *

* * * * *

(a) * * *

(5) * * *

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the ADTV for that security or, in the event that ADTV data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate; *Provided, however,* That a block under paragraph (a)(5)(i), (ii), and (iii) of this section shall not include any amount a broker or dealer, acting as principal, has accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that such amount was accumulated for such

[109] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. and as a note to 5 U.S.C. 601).

[110] 5 U.S.C. 603(a).

[111] 5 U.S.C. 605(b).

[112] The Commission's OEA estimates that, of the 2,218 issuers that announced repurchases during the years 2005 through 2008 (and that had total asset figures available), only 25 had assets below $5 million. Source: Securities Data Company "SDC" database.

purpose, nor shall it include any amount that a broker or dealer has sold short to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that the sale was a short sale.

* * * * *

(13) * * *

(iv) Effected during the period from the time of public announcement (as defined in § 230.165(f) of this chapter) of a merger, acquisition, or similar transaction involving a recapitalization, until either the earlier of the completion of such transaction or the completion of the vote by target shareholders or, in the case of an acquisition or other covered transaction by a special purpose acquisition company ("SPAC"), the earlier of the completion of such transaction or the completion of the votes by the target and SPAC shareholders. This exclusion does *not* apply to Rule 10b–18 purchases:

* * * * *

(14) *Rule 10b–18 VWAP purchase* means a purchase effected at the volume-weighted average price ("VWAP") by or on behalf of an issuer or an affiliated purchaser of the issuer that meets the conditions of paragraphs (b)(1), (b)(2), and (b)(4) of this section and the following criteria:

(i) The purchase is for a security that qualifies as an "actively-traded security" (as defined in § 242.101(c)(1) of this chapter);

(ii) The purchase is entered into or matched before the opening of the regular trading session;

(iii) The execution price of the VWAP purchase is determined based on all regular way trades effected in accordance with the conditions of paragraphs (b)(2) and (b)(3) of this section that are reported in the consolidated system during the primary trading session for the security;

(iv) The purchase does not exceed 10% of the security's relevant average daily trading volume;

(v) The purchase is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security;

(vi) The VWAP assigned to the purchase is calculated by:

(A) Calculating the values for every regular way trade reported in the consolidated system during the regular trading session, except as provided in paragraph (a)(14)(iii) of this section, by multiplying each such price by the total number of shares traded at that price;

(B) Compiling an aggregate sum of all values; and

(C) Dividing the aggregate sum by the total number of trade reported shares for that day in the security that represent regular way trades effected in accordance with the conditions of paragraphs (b)(2) and (b)(3) of this section that are reported in the consolidated system during the primary trading session for the security; and

(vii) The purchase is reported using a special VWAP trade modifier.

(b) * * *

(2) * * *

(i) The opening regular way purchase reported in the consolidated system, the opening regular way purchase in the principal market for the security, and the opening regular way purchase in the market where the purchase is effected;

* * * * *

(3) * * *

(i) Does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system at the time the Rule 10b–18 purchase is effected; *Provided, however,* that Rule 10b–18 VWAP purchases, as defined in paragraph (a)(14) of this section, shall be deemed to satisfy paragraph (b)(3)(i) of this section;

* * * * *

(d) *Other purchases.* (1) No presumption shall arise that an issuer or an affiliated purchaser has violated the anti-manipulation provisions of section 9(a)(2) or 10(b) of the Act (15 U.S.C. 78i(a)(2) or 78j(b)), or § 240.10b–5, if the Rule 10b–18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraph (b) or (c) of this section; and

(2) A Rule 10b–18 purchase of an issuer or affiliated purchaser that meets the conditions specified in paragraph (b) or (c) of this section at the time the purchase order is entered but does not meet the price condition specified in paragraph (b)(3)(i) of this section at the time the purchase is effected due to flickering quotes shall remove only such purchase, rather than all of the issuer's other Rule 10b–18 purchases, from the safe harbor for that day.

Dated: January 25, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–1856 Filed 1–28–10; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA–2009–0044]

RIN 1218–AC45

Occupational Injury and Illness Recording and Reporting Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; announcement of public meeting.

SUMMARY: OSHA is proposing to revise its Occupational Injury and Illness Recording and Reporting (Recordkeeping) regulation to restore a column to the OSHA 300 Log that employers would use to record work-related musculoskeletal disorders (MSD). The 2001 Recordkeeping final regulation included an MSD column, but the requirement was deleted before the regulation became effective. This proposed rule would require employers to place a check mark in the MSD column, instead of the column they currently mark, if a case is an MSD that meets the Recordkeeping regulation's general recording requirements.

DATES: *Written comments:* Comments must be submitted (postmarked, sent, or received) by March 15, 2010.

Public meeting: OSHA will hold a public meeting on the proposed rule from 9 a.m. to 5 p.m. on March 9, 2010. If necessary, the meeting may be extended to subsequent days.

Requests to speak at the public meeting and requests for special accommodation at the meeting: You must submit requests to speak at the public meeting and requests for special accommodations to attend the meeting by February 16, 2010.

ADDRESSES: *Written comments and requests to speak at the public meeting:* You may submit comments and requests to speak, identified by docket number OSHA–2009–0044, or regulatory information number (RIN) 1218–AC45, by any of the following methods:

Electronically: You may submit comments, requests to speak, and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions;

Fax: If your submission, including attachments, does not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648; or

Mail, hand delivery, express mail, messenger or courier service: You must submit your comments, requests to speak, and attachments to the OSHA Docket Office, Docket Number OSHA–2009–0044, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Public meeting: The public meeting will be held in C 5320, Room 6, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Requests for special accommodation: Submit requests for special accommodations to attend the public meeting to Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999; e-mail *Chatmon.veneta@dol.gov.*

Instructions for submitting comments, requests to speak, and requests for special accommodation: All submissions must include the docket number (Docket No. OSHA–2009–0044) or the RIN number (RIN 1218–AC45) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger or courier service.

All comments and requests to speak, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates. For further information on submitting comments and requests to speak, plus additional information on the rulemaking process, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this notice.

Docket: To read or download submissions in response to this **Federal Register** notice, go to docket number OSHA–2009–0044, at *http://regulations.gov.* All submissions are listed in the *http://regulations.gov* index, however, some information (e.g., copyrighted material) is not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, is available at OSHA's Web page at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Jennifer Ashley, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

For general and technical information on the proposed rule: Jim Maddux, Acting Deputy Director, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950.

For the public meeting: Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION: OSHA is proposing to revise its Recordkeeping regulation (29 CFR part 1904) to restore a column to the OSHA 300 Log that employers would use to record work-related musculoskeletal disorders (MSD). The 2001 Recordkeeping final regulation included an MSD column, but the requirement was deleted before it became effective (66 FR 5916, 6129 (1/19/2001)). The proposed rule would require employers to place a check mark in the MSD column, instead of the column they mark now, if the case is an MSD and meets the general recording requirements of the Recordkeeping rule. The rule also proposes, for this recordkeeping purpose only, a definition of MSD that is identical to the one contained in the 2001 final Recordkeeping rule. In addition, OSHA proposes an entry for the total number of MSDs on the OSHA 300A form, the form that employers use to annually summarize their work-related injuries and illnesses (see 29 CFR 1904.32).

In 2003 OSHA deleted the MSD provisions (column and definition) from the 2001 Recordkeeping rule (68 FR 38601). However, after further consideration and analysis, the Agency believes that information generated from the MSD column will improve the accuracy and completeness of national occupational injury and illness statistics; will provide valuable and industry specific information to assist OSHA in effectively targeting its inspection, outreach, guidance and enforcement efforts to address workplace MSDs; and will provide useful establishment-level information that will help both employers and employees readily identify the incidence of MSDs.

OSHA stresses that the purpose of this rulemaking is solely to improve data gathering regarding work-related MSDs. The proposed rule does not require employers to take any action other than to check the MSD column on the OSHA 300 log if a work-related MSD case occurs that meets the general recording requirements of the Recordkeeping regulation. Unlike OSHA standards, the proposed rule does not require employers to implement controls to prevent and control employee exposure to an identified occupational hazard.

I. Background

Regulatory History

On January 19, 2001, OSHA published the revised Recordkeeping rule, which took effect on January 1, 2002 (66 FR 5916). The rule contained a section, which never became effective (Section 1904.12), that would have required that any MSD meeting the regulation's general recording criteria be recorded on the OSHA 300 Log by checking the MSD column. Section 1904.12(b)(1) of the Recordkeeping rule defined MSDs as "disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs, except those caused by slips, trips, falls, motor vehicle accidents or other similar accidents" (66 FR 6129). Section 1904.12(b)(2) clarified that an MSD, like any other injury or illness, was recordable if it "is work-related, and is a new case, and meets one or more of the general recording criteria" in §§ 1904.5, 1904.6 and 1904.7 (66 FR 6129–6130).

Prior to revision of the Recordkeeping regulation in 2001, OSHA's injury and illness recording form (the OSHA 200 Log) did not contain an MSD column. Instead, the OSHA 200 Log had a column for "repeated trauma" cases. Repeated trauma included some, but not all, MSDs (e.g., it excluded back MSDs) and included some non-MSD cases, such as occupational hearing loss. In the preamble to the 2001 Recordkeeping rule, the Agency concluded, after extensive consultation with the Bureau of Labor Statistics (BLS) and the National Institute for Occupational Safety and Health (NIOSH), that adding an MSD column to the new OSHA 300 Log was "essential to obtain an accurate picture of the MSD problem in the United States" (66 FR 6030). OSHA also noted that, in the past, determining the

number of MSD cases had been complicated. It required close cooperation between OSHA and BLS, since MSDs were not recorded in a single column. It also required special computer analyses to calculate MSD numbers. OSHA said that adding an MSD column to the 300 Log not only would permit "more complete and accurate reporting of these disorders" in the national statistics, but also "provide a useful analytical tool at the establishment level" (66 FR 6030). In addition, OSHA said that capturing all recordable MSDs in a "single entry" would "allow employers, employees, authorized representatives, and government representatives to determine, at a glance, what the incidence of these disorders in the establishment is" (66 FR 6030).

On October 12, 2001, after providing notice and seeking comment (66 FR 35113 (7/3/2001)), OSHA delayed the effective date of § 1904.12 of the Recordkeeping rule (66 FR 52031). At that time, the Agency was reconsidering the MSD column requirement and MSD definition in light of the Secretary of Labor's decision to develop a comprehensive plan to address ergonomic hazards (66 FR 52032). On April 5, 2002, OSHA announced the plan, which included a combination of industry-targeted guidelines, enforcement measures, workplace outreach, and a National Advisory Committee on Ergonomics (see OSHA's Web page at *http://www.osha.gov;* 68 FR 38601, 38602). On December 17, 2002, following notice and comment (67 FR 44121 (7/1/2002)), OSHA again delayed the effective date of § 1904.12, explaining that the Agency had not yet decided on the correct approach for dealing with the MSD definition in the Recordkeeping regulation (67 FR 77165, 77166).

On June 30, 2003, OSHA deleted § 1904.12 from the Recordkeeping rule, after determining that the MSD column was not necessary or supported by the record (68 FR 38601, 38605). OSHA explained that it was not persuaded that the MSD column would provide the type of detailed information that would make it a useful tool for addressing MSDs at the establishment level; materially improve national statistics on MSDs; or help to ensure effective enforcement of section 5(a)(1) (the General Duty Clause) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656). The Agency said that the existing MSD data published by BLS were adequate to provide information for OSHA and the public. The Agency did note, however, that the addition of columns might be warranted if a type of injury or illness was misrepresented in the BLS data for cases resulting in days away from work (68 FR at 38605). Based on this, OSHA concluded there was a need to create a separate column for occupational hearing loss. OSHA reasoned that, since many hearing loss cases do not result in days away from work, the BLS statistics on those cases "represented only a minor fraction" of the total occupational hearing loss that workers experienced (68 FR at 38605). The column for hearing loss was added to the log in 2003 (67 FR at 44037).

Consultation With ACCSH and HHS

As required by the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704) and OSHA regulations (29 CFR 1911.10(a) and 1912.3(a)), OSHA has consulted with the Advisory Committee on Construction Safety and Health (ACCSH) about this proposal. OSHA provided ACCSH with the materials necessary to deliberate about the proposed rule and, in December 2009, OSHA met with ACCSH to discuss the rulemaking, answer their questions, and receive the committee's comments and recommendations.

On December 11, 2009, ACCSH unanimously recommended that OSHA add an MSD column to the OSHA 300 and 300A recordkeeping forms. The committee also unanimously recommended that OSHA: highlight the "do not include" language in the proposed MSD definition that is intended to make clear that MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents; and, to the extent possible, include additional common examples of MSDs. OSHA is requesting comment on the definition of MSD in this rulemaking, including identification of any additional examples of common MSDs that would make clear the MSDs that are to be recorded. OSHA has modified the proposed regulatory text to highlight the "DO NOT include" language by using all capital letters. Other highlighting techniques, such as italics, bold, or underline are reserved by the **Federal Register** for other purposes, and cannot be used for emphasis. OSHA asks for comments on alternative methods the Agency could use to make clear that MSDs do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents.

OSHA has also consulted with the Department of Health and Human Services (HHS), as required by Section 8(c) of the OSH Act (29 U.S.C. 657).

BLS Statistical Program

BLS is the Federal agency responsible for producing national occupational injury and illness statistics. BLS produces information on two basic categories of non-fatal occupational injuries and illnesses: (1) all injuries and illnesses combined, and (2) injuries and illnesses that result in days away from work.

For all occupational injuries and illnesses combined, BLS publishes aggregate and industry totals for the number and rates of injuries and illnesses. BLS breaks down the aggregate and industry injury and illness totals into cases that result in lost-work days and those that do not result in lost-workdays. For occupational illnesses (skin diseases or disorders, respiratory conditions, poisonings, hearing loss, and all other illnesses), BLS also publishes the totals from the illness columns on the OSHA 300 Log (BLS, "Workplace Injuries and Illnesses in 2007," available on the BLS Web page at *http://www.bls.gov*). BLS makes the detailed and aggregate results available for both research and for public information.

BLS only publishes detailed information about injuries and illnesses that result in days away from work. The detailed information on injuries and illnesses resulting in days away from work, called case characteristics, is derived from a survey BLS conducts to elicit information from employers about the specific characteristics of these cases. Case characteristics include the employee's age, sex, occupation, and length of service; the employer's industry classification; the part of the body affected; the source of injury (e.g., bodily motion or position, machinery, fire); and the causal event or exposure (e.g., overexertion, repetitive motion, fall).

To produce information on MSDs that resulted in days away from work, BLS uses information from its survey about the nature of the injury or illness and the event or exposure leading to the injury or illness. Cases that BLS reports as MSDs include those in which the nature of the injury is a sprain, strain, tear, soreness, hernia, carpal tunnel syndrome or other similar type of injury to the soft tissue structures, and in which the causal event is bodily movement, such as bending, climbing, reaching, twisting, overexertion, or repetition (BLS, "Lost-Worktime Injuries and Illnesses: Characteristics and Resulting Time Away From Work, 2007," available on the BLS Web page at *http://www.bls.gov*).

II. Legal Authority

The OSH Act authorizes the Secretary to issue two types of occupational safety and health rules: *standards* and *regulations.* The OSH Act defines "occupational safety and health standard," which is authorized by section 6 of the OSH Act (29 U.S.C. 655), as a rule that "requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment" (29 U.S.C. 652(8)). Standards specify remedial measures to be taken to prevent and control employee exposure to identified occupational hazards (*Louisiana Chemical Ass'n* v. *Bingham,* 657 F.2d 777, 781 (5th Cit. 1981); *United Steelworkers of America* v. *Reich,* 763 F.2d 728, 735 (3d Cir. 1985) (court held Hazard Communication rule was a standard because it aimed to ameliorate the significant risk of inadequate communication about hazardous chemicals)).

Regulations, by contrast, are the means to effectuate other statutory purposes, including the collection and dissemination of records of occupational injuries and illnesses. Courts of appeals have held that OSHA recordkeeping rules are regulations and not standards (*Louisiana Chemical Ass'n,* 657 F.2d at 782–785 (Access to Employee Exposure and Medical Records); *Workplace Health & Safety Council* v. *Reich,* 56 F.3d 1465, 1467–1469 (D.C. Cir. 1995) (Reporting of Fatality or Multiple Hospitalization Incidents)). These courts applied a functional test to differentiate between standards and regulations: standards aim toward correction of identified hazards, while regulations serve general enforcement and detection purposes (*Workplace Health & Safety Council,* 56 F.3d at 1468).

OSHA is issuing this proposed revision of the Recordkeeping regulation pursuant to authority expressly granted by sections 8 and 24 of the OSH Act (29 U.S.C. 657, 673). Section 8(c)(1) requires each employer to "make, keep and preserve, and make available to the Secretary [of Labor] or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses." Section 8(c)(2) directs the Secretary to prescribe regulations "requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job" (29 U.S.C. 657(c)(2). Section 8(g)(2) of the OSH Act broadly empowers the Secretary to "prescribe such rules and regulations as [s]he may deem necessary to carry out [her] responsibilities under the Act" (29 U.S.C. 657(g)(2)).

Section 24 of the OSH Act contains a similar grant of authority. It requires the Secretary to "develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics" and "compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job" (29 U.S.C. 673(a)). Section 24 also requires employers to "file such reports [of work injuries and illnesses] with the Secretary" as she may prescribe by regulation (29 U.S.C. 673(e)).

In addition, the Secretary's responsibilities under the OSH Act are defined largely by its enumerated purposes, which include "[p]roviding appropriate reporting procedures that will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem" (29 U.S.C. 651(b)(12)).

Where an agency is authorized to prescribe regulations necessary to implement a statutory provision or purpose, a regulation promulgated under such authority is valid "so long as it is reasonably related to the enabling legislation." *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, 369 (1973). *See also Louisiana Chemical Assn.* v. *Bingham,* 550 F. Supp. 1136, 1138–1140 (W.D. La. 1982), aff'd, 731 F.2d 280 (5th Cir. 1984) (records access rule is directly related to the goals stated in the OSH Act and supported by the language of section 8). The proposed MSD requirements are reasonably related to the purposes of the OSH Act and serve administrative functions necessary to carry out the purposes of sections 8 and 24 of the OSH Act. As discussed below, the proposed rule will improve the completeness and quality of national occupational injuries and illnesses statistics. It will ensure that OSHA has more complete information to help the agency effectively target its inspection, guidance, outreach, and enforcement efforts to address MSDs. Finally, the proposal will provide easily identifiable information at the establishment level that will be useful for both employers and employees.

III. Summary and Explanation of Proposed Rule

MSD Column

OSHA proposes to restore on the OSHA 300 Log the MSD column that the Agency included in the 2001 final Recordkeeping rule. After further consideration and analysis, OSHA believes that the MSD column would provide valuable information for maintaining complete and accurate national occupational injury and illness statistics; assist OSHA in targeting its inspection, outreach, guidance, and enforcement efforts to address MSDs; and provide easily identifiable information at the establishment level that will be useful for both employers and employees.

Having data from the MSD column would improve national statistics on MSDs in several ways. It would allow BLS to collect and annually report the total number and rate of MSDs, both nationally and in specific industries, not just the figures for cases that result in days away from work (as is currently reported). Currently, this basic information is unavailable. Having the total number of MSDs would provide BLS with more complete data for analyzing the magnitude of the MSD problem and trends over time in the country as a whole, as well as in specific industries. Having more complete MSD data would assist OSHA, and other safety and health policy makers, in understanding MSDs and making informed decisions on policies concerning workplace MSDs.

Prior to the 2001 Recordkeeping rule, the OSHA 200 Log did not contain an MSD column, but it did have a "repeated trauma" column. However, the column did not include all MSDs (i.e., it excluded back MSDs) and included some non-MSDs (i.e., occupational hearing loss). As a result, the column did not provide accurate information on MSDs. The MSD column that OSHA proposes would correct that problem. The proposed MSD definition, which is identical to the definition in the 2001 final Recordkeeping rule, covers all MSDs, including back cases. The proposed definition does not cover hearing loss cases, which already have a separate column on the OSHA 300

Log. OSHA believes that information from the MSD column would help to ensure that national statistics more accurately reflect the full extent of MSD problems in U.S. workplaces.

In its 2003 notice rescinding the MSD column, the agency stated that information from the column would be of little statistical value because it would be general for all MSDs and would lack the detailed breakdown of case characteristics that is available for days away from work cases (68 FR 38605). After careful reconsideration, OSHA believes that this conclusion substantially understated the usefulness of the MSD column information. As noted above, the column would enable the agency and the public to learn, for the first time, the total number of MSDs both nationally and by industry sector. Moreover, the MSD category is no broader than the other illness categories that are included as columns on the OSHA 300 Log, and the information from those columns has proved useful. Like MSDs, each of these columns combines a class or range of illnesses or disorders into a single category. For example, respiratory illness includes a broad range of illnesses differing in etiology and severity. OSHA believes that information from the MSD column would be at least as useful as the valuable data generated from the other illness columns already present on the Log (i.e., skin disorders, respiratory conditions, poisonings, and hearing loss).

Furthermore, OSHA believes that, compared to MSDs, each of these other categories individually account for a smaller fraction of the total number of occupational illnesses. In 2007, for instance, skin disorders, the category with the highest number of cases (35,000), accounted for 17% of all illnesses while poisonings, the category with the fewest cases (3,400), accounted for less than 2% (BLS, "Workplace Injuries and Illnesses in 2007"). The hearing loss column, which OSHA added in 2001, accounted for 11% of all illnesses. The number of skin disorders, respiratory conditions, poisonings and hearing loss cases combined was 78,400 in 2007, which was only 38% of all occupational illnesses and less than 2% of the total number of occupational injuries and illnesses (4,002,700) that year.

MSDs, on the other hand, accounted for significantly more occupational illnesses than the combined total for the specific illnesses currently listed on the OSHA 300 Log. Looking only at MSDs that resulted in days away from work, BLS reported 335,390 MSDs, which accounted for 29% of the 1,158,870 injuries and illnesses with days away from work (BLS, "Lost-Worktime Injuries and Illnesses: Characteristics and Resulting Time Away From Work, 2007") and 8.4% of all occupational injuries and illnesses combined. Clearly the total of all MSDs (i.e., cases with and without days away from work) would account for a significantly greater portion of all occupational injuries and illnesses. OSHA believes it is reasonable and appropriate to have a column on the log for the type of case that accounts for such a significant portion of all occupational illnesses.

Further, OSHA believes that having both types of data, the overall number and rate of MSDs by industry, combined with the existing detailed demographic and case characteristic data on cases with days away from work, will provide a strong statistical tool for researchers. Having both types of data available may allow researchers to make new inferences about MSDs that have previously not been possible.

OSHA also believes that restoring the MSD column on the 300 Log would help to eliminate some of the uncertainties in existing national occupational illness statistics. In 2007, the "all other illnesses" column on the OSHA 300 Log accounted for 62% of all occupational illnesses (BLS, "Workplace Injuries and Illnesses in 2007"). OSHA believes that MSDs account for a large portion of "all other illnesses." In 2000, the last year the OSHA 200 Log contained a repeated trauma column, repeated trauma was the dominant illness reported, accounting for 67% of all illnesses (BLS, "Workplace Injuries and Illnesses in 2000," available on the BLS Webpage at *http://www.bls.gov*). Even if hearing loss cases were removed, repeated trauma still would have accounted for the majority of all occupational illnesses reported that year. OSHA believes that having the MSD column not only would help to eliminate some of the uncertainties concerning occupational illnesses in the national statistics, but would also provide better information on the nature of the large proportion of illnesses currently reported in the "all other illnesses" column.

In addition to its statistical value, the MSD column would provide valuable information to assist OSHA's inspection, outreach, guidance, and enforcement efforts. Each year, OSHA collects summary data from OSHA 300 Logs from approximately 80,000 establishments and uses them to schedule targeted inspections in high hazard industries. The summary data are comprised of the totals for each column on the OSHA 300 Log. These data include totals for the number of injuries and illnesses, cases with days away from work, cases involving restricted work or job transfer, and cases of each specific illness listed on the log. However, the summary data do not include any data specifically on MSDs. Restoring the MSD column on the OSHA 300 Log would provide the Agency with such data.

Data from the MSD column would also allow OSHA to better target its future outreach and guidance efforts and to more accurately measure the effectiveness of its ongoing efforts. OSHA currently uses information about MSDs that resulted in days away from work to estimate whether its programs have been effective in reducing the severity of MSDs. Data from an MSD column, however, would allow the agency to better measure whether those programs have been effective in reducing MSDs, including those that did not result in days away from work. For example, if the MSD column had been on the OSHA 300 Log when OSHA issued guidelines for nursing homes, poultry processing, grocery stores, and shipyards, the information from that column would have provided baseline and post-intervention data to allow OSHA to more effectively measure the success of those guidelines in reducing MSDs. Such data could also be used in developing inspection programs aimed at identifying and reducing MSD hazards.

Data from the column also would be useful at the establishment level. Having an MSD column would provide information that both employers and employees could quickly and easily identify at a glance. Although OSHA noted in 2003 that employers can identify MSDs without the aid of a specific column (68 FR 38604), OSHA believes that having readily available MSD information in a single column will save employers and employees time in identifying and tracking the incidence of MSDs at the establishment. In the absence of the column, a person interested in MSD incidence must study every entry on the log to determine which cases are MSDs. Having the person responsible for the log identify a case as an MSD up front, at the time it is recorded, will be far easier and faster than studying every entry to identify which ones are MSDs. Employers would be able to use MSD column data in connection with their efforts to determine whether their workplace programs are effective in reducing MSDs. Having the column would also make it easier for employees to remain informed about MSD hazards associated with their jobs. Being able to easily access data on MSDs in the workplace

will give employees the type of information that will help them to actively participate in their own protection.

OSHA is also reconsidering restoring the MSD column in light of recent information that indicates employers are recording fewer and fewer cases as days away from work cases. This increases the importance of understanding what is happening with the other kinds of cases, which are not reflected in the BLS detailed case characteristics analyses. Recently, concerns have been raised about accuracy of workplace injury and illness records. In 2008, the U.S. House of Representatives Committee on Education and Labor held a hearing to examine the extent of this problem and its causes. In June 2008, the Committee Staff Majority published a report titled "Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses" (Ex.A). The report identified ergonomics injuries as one type of case that has been "significantly underreported" (Ex. A, p. 10). The report discussed a series of articles in the *Charlotte Observer* about MSDs at poultry plants in North and South Carolina (Ex. B, Hall, Alexander & Ordonez, "The Cruelest Cuts: The Human Cost of Bringing Poultry to Your Table, *Charlotte Observer,* February 10, 2008). The *Charlotte Observer* reported that one South Carolina plant had not reported any MSDs during a four-year period, even though 12 employees who worked at the plant during that time said they suffered pain brought on by MSDs, and two said they had carpal tunnel surgery paid for by the company. The *Charlotte Observer* reported that the plant avoided having to record these injuries as days away from work cases by bringing injured employees back to the factory within hours of surgery. Similarly, OSHA has received information about MSD cases in which employers have scheduled employees for surgery on Friday afternoons and brought them back on Monday using restricted work. Those cases would not be recorded as resulting in days away from work, so they would not be included in the BLS detailed case characteristics analysis.

OSHA believes that these types of changes in employer practices for medically managing MSDs may be resulting in underrepresentation in BLS statistics for cases with days away from work. OSHA is concerned that employers are increasingly using restricted work, job transfers and medical treatment or surgeries without lost work time to bring employees back to work more quickly and to avoid recording MSDs as cases with days away from work. Employer use of restricted work and job transfer has grown significantly during the past decade. In 1997, for instance, occupational injuries and illnesses involving restricted work or job transfer accounted for 36% of all cases (BLS, "Lost-Worktime Injuries and Illnesses: Characteristics and Resulting Time Away From Work, 1997," available on the BLS Web page at *http://www.bls.gov*). In 2007, they accounted for 43% of all injuries and illnesses (BLS, "Lost-Worktime Injuries and Illnesses: Characteristics and Resulting Time Away From Work, 2007").

OSHA believes that MSD data may be particularly affected by these changes in employer practices, since many MSDs may not fully incapacitate workers and may still enable them to perform alternative work duties during the recovery period. As the number of MSD cases being shifted from days away from work to restricted work continues to grow, there will be fewer and fewer MSDs represented in BLS detailed statistics on cases with days away from work. The MSD column would ensure that serious MSDs are included in the BLS statistics, regardless of employer practices.

The House Committee on Education and Labor Majority Staff Report also found that OSHA's withdrawal of the MSD column provision may have contributed to the underreporting of these incidents (Ex. A, p. 13). When OSHA removed the MSD column provision in 2003, some employers were confused about whether they were required to record MSD cases. Since 2003, OSHA has received numerous calls from employers asking whether MSDs are considered recordable injuries and illnesses. Although the Agency has been clear in all of its communications and outreach activities that, even without an MSD column, MSDs must be recorded on the OSHA 300 Log just as any other injury or illness, some confusion remains. Including a specific reference in the regulation making it clear that employers are required to record MSDs, combined with the specific MSD column, should provide clarity and help to finally resolve this confusion.

OSHA requests comment on the proposal to put back the MSD column on the OSHA 300 Log, including comment on the following:

- What are current employer practices regarding recording, tracking, and analysis of MSDs in workplaces?
- How do employers, employees, researchers and others use MSD data that are recorded on the OSHA 300 Log?
- Should OSHA put the MSD column back on the OSHA 300 Log? Please explain.
- Will the MSD column make it easier to analyze MSDs? Please explain.
- If OSHA restores the MSD column, how will your industry and establishment use the additional information?
- To what extent are employers using restricted work and job transfer instead of time away from work for managing MSDs? How are these changes affecting the reporting of MSDs?
- Will the MSD column result in additional costs to employers? If so, what are the costs? Will easier analysis of MSDs offset some of these costs? Please explain.

MSD Definition

Proposed section 1904.12(b)(1) defines MSDs as "disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs." The proposal clarifies that MSDs "do not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents." In addition, it gives examples of MSDs, including "Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain." The proposed definition is identical to the one OSHA included in the 2001 final Recordkeeping rule, which never became effective.

MSDs have been studied for many years. During that time different terms have been used to describe these disorders, including cumulative trauma disorders, repetitive motion injuries, repetitive strain injuries, occupational overuse syndrome, occupational cervicobrachial disease, occupational overexertion syndrome, and ergonomic injuries. In recent years, MSD has become one of the most frequently used terms.

Different definitions for MSDs have been used for different purposes and by different organizations (Exs. C). Despite the differences, these definitions all share a common goal: to aggregate into one category a class of injuries and illnesses that have certain connections or commonalities. These definitions also have some common approaches. Like OSHA's proposed definition, most definitions use a general description, usually of the parts of the body MSDs generally affect. For instance, NIOSH has defined an MSD as a condition or "disorder that involves the muscles, nerves, tendons, ligaments, joints, cartilage, or spinal discs" (NIOSH,

"Proceedings of a Meeting to Explore the use of Ergonomics Interventions for the Mechanical and Electrical Trades," 2002; NIOSH "Elements of Ergonomics Programs: A Primer Based on Evaluations of Musculoskeletal Disorders," 1997 DHHS (NIOSH) Publication No. 97–117. Both documents are available on the NIOSH Web page at *http://www.cdc.gov*).

Many definitions using a general description also contain examples of specific types of MSDs to help illustrate the types of disorders the definition is intended to cover. OSHA's proposed definition uses this approach, as does the American National Standard A10.40, 2007, Reduction of Musculoskeletal Problems in Construction, which defines "musculoskeletal problems" as:

> [I]njuries to the muscle, tendon, sheath, nerve, bursa, blood vessel, bone, joint, or ligament and musculoskeletal pain or swelling, and also where there may not be any obvious evidence of injury, and where occupational exposure is clearly identified. The injuries include, but are not limited to:
> —Muscular
> —Carpal Tunnel Syndrome
> —Throracic Outlet
> —Tenosynovitis
> —Myalgia
> —Double Crush Syndrome
> —Connective Tissue
> —Bursitis
> —Spasms
> —Sciatica
> —Disc Damage
> —Neurological
> —Vascular
> —Tendonitis
> —Back

A number of MSD definitions include causal risk factors, events or sources of exposure to clarify the types of disorders the definition covers. For example, the U.S. Navy definition of MSDs includes risk factors such as force, repetition, awkward or static postures, vibration, and contact stress (resulting from occasional, repeated or continuous contact between sensitive body tissues and a hard or sharp object) (Ex. C, OPNAVINST 5100.23G, December 30, 2005).

To clarify the scope, some definitions exclude disorders that may result from other causes, exposures, or events. The MSD definition in "NIOSH Elements of Ergonomics Programs" excludes disorders that are "the result of any instantaneous or acute event (such as a slip, trip, or fall)." *The Occupational Ergonomics Handbook* also used this approach (Waldemar Karwowski & William S. Marras, eds., *The Occupational Ergonomics Handbook: Fundamentals and Assessment Tools for Occupational Ergonomics, Second Edition,* 1999).

The BLS detailed definition of MSDs, which has been used for over 10 years, utilizes a combination of all these approaches:

> Musculoskeletal Disorders (MSDs) include cases where the nature of the injury is sprains; strains; tears; back pain; hurt back; soreness; pain; hurt; except the back; carpal tunnel syndrome; hernia; or musculoskeletal system and connective tissue diseases and disorders, when the event or exposure leading to the injury or illness is bodily reaction/bending, climbing, crawling, reaching, twisting, overexertion, or repetition. Cases of Raynaud's phenomenon, tarsal tunnel syndrome, and herniated spinal discs are not included, although they may be considered MSDs, the survey classifies these injuries and illnesses in categories that also include non-MSD cases (See the BLS Webpage at *http://www.bls.gov/iif/oshdef.htm*).

Because there currently is not an MSD column on the OSHA 300 Log, BLS must obtain statistics on the number of MSDs resulting in days away from work by aggregating cases that fall under certain nature of injury/illness and event or exposure codes used to classify cases. As the BLS definition notes, having to aggregate cases and classification codes to obtain the number of MSDs with days away from work has the unavoidable result of omitting some disorders (e.g., Raynaud's phenomenon, tarsal tunnel syndrome, herniated spinal discs) that could otherwise be classified as MSDs.

Like BLS, the proposed MSD definition incorporates a combination of approaches. The proposed definition is essentially identical to the summary description of MSDs that BLS uses in its news releases reporting annual case characteristics data (see e.g., BLS, "Lost-Worktime Injuries and Illnesses: Characteristics and Resulting Time Away From Work, 2007"), except that the proposed definition also includes a list of examples of disorders, and the proposed list includes Raynaud's phenomenon, tarsal tunnel syndrome, and herniated spinal discs. OSHA believes that the proposed definition provides clarity without imposing too much complexity. OSHA notes that the Agency is proposing this MSD definition for recordkeeping purposes only, and that there may be other definitions that are useful for other purposes.

OSHA requests comment on the proposed definition of MSD, including comment on the following:

- What MSD definitions are employers using currently and for what purposes?
- Should the definition include examples of MSDs? Should the examples be expanded to include hand arm vibration syndrome, Guyon's canal syndrome, radial tunnel syndrome, or hypothenar hammer syndrome. Should the definition include other examples?
- Are there any MSDs that the proposed definition should exclude? If so, which ones and why?
- Should the MSD definition include language on exposure or causal risk factors? Please explain.
- Are there other definitions of MSD that would be more effective for recordkeeping purposes? If so, please provide them and explain why.

MSD Recording Criteria

Proposed section 1904.12(b)(2) identifies which injuries and illnesses must be identified as MSDs on the OSHA 300 Log. MSDs that meet the general criteria for recordability (i.e., a work-related new case resulting in medical treatment, job transfer or restriction, or days away from work) are already required to be recorded on the log. The proposed section, like the 2001 Recordkeeping rule, specifies that "there are no special criteria" for determining which MSDs to record. Employers would continue to use the same process to decide whether an MSD must be recorded, as they are required to do for any other injury or illness under the Recordkeeping regulation. Under the proposal, employers would simply be required to identify which of those injuries and illnesses are MSDs by checking the MSD column on the log instead of the column they currently mark.

The proposed section also guides employers to the appropriate sections of the Recordkeeping regulation that discuss how to determine whether an MSD is work-related, is a new case and not a recurrence, and meets the general recording criteria (i.e., days away from work, restricted work or transfer to another job, or medical treatment beyond first aid). The proposed section is identical to the section OSHA included in the 2001 final Recordkeeping rule.

OSHA request comments on the proposed section.

Subjective Symptoms

Section 1904.12(b)(3) of the proposed rule specifies that the symptoms of an MSD are to be treated in exactly the same manner as symptoms for any other injury or illness. That is, an employer must record a case as an MSD if (1) The employee experiences "pain, tingling, burning, numbness or any other subjective symptom of an MSD;" (2) the

symptoms are work-related; (3) new; and (4) meet the general recording criteria in the Recordkeeping regulation (e.g., restricted work, job transfer, days away from work, medical treatment beyond first aid). As with any injury or illness, an MSD case would be recordable only if it meets all of these requirements. OSHA included this provision in section 1904.12 of the 2001 Recordkeeping rule (66 FR 6130), but, as discussed, that section was deleted in 2003. OSHA is including the proposed provision to eliminate any potential for confusion about when and what MSDs are recordable and to carry out the basic principle that, for recordkeeping purposes, MSDs should not be treated differently from other occupational injuries and illnesses.

The Recordkeeping regulation in section 1904.46 defines "injury or illness" as "an abnormal condition or disorder." As explained in the preamble to the rule, this definition includes pain and other subjective symptoms. "Pain and other symptoms that are wholly subjective are also considered an abnormal condition or disorder. There is no need for the abnormal condition to include objective signs to be considered an injury or illness." (66 FR 6080). Although the definition is broad, and is intentionally so, it captures "only those changes that reflect an adverse change in the employee's condition that is of some significance, i.e., that reach the level of abnormal condition or disorder" (66 FR 6080). OSHA pointed out that including pain and other symptoms in the definition of injury or illness is appropriate because their occurrence is only the starting point of the inquiry into whether the case is a recordable injury or illness. Unless the pain or other symptoms are also work-related, new, and reach the level of seriousness in the Recordkeeping regulation's general recording criteria, the employer does not have to record it (66 FR 6080). This definition applies to all injuries and illnesses, regardless of whether they are MSDs or any other kind of condition.

In its 2001 preamble discussion of section 1904.12, the agency elaborated on the reasons for including pain and similar symptoms within the definition of an "injury or illness." First, OSHA explained that "symptoms such as pain are one of the primary ways that injuries and illnesses manifest themselves," regardless of the type of injury or illness (66 FR 6020). Second, symptoms such as pain, burning, and numbness also "generally indicat[e] the existence of some underlying physiological condition" (e.g., inflammation, spinal disc damage) that warrants further investigation by the employer to determine whether there is a work connection (66 FR 6020). Third, OSHA pointed out that the *International Classifications of Diseases, Clinical Modification* (ICM–CM), the official system of assigning codes to diagnoses to diseases, injuries, and illnesses, lists several MSDs that consist only of pain (66 FR 6020). When health care professionals diagnose these disorders, they do so on the basis of employee-reported pain, evaluating and confirming them by physical examination (66 FR 6020). Therefore, OSHA concluded that pain and other subjective symptoms, of and by themselves, may indicate an injury or illness (66 FR 6020). The agency stressed that MSDs should not be treated differently from any other kind of case (66 FR 6021). When the agency revoked section 1904.12 in 2003, it noted that it was not changing which injuries and illnesses were required to be recorded, but was only deleting the requirement to identify cases as MSDs (68 FR 38606). Thus, this discussion has remained an authoritative guide to the current rule's definition of injury and illness.

To eliminate any potential for confusion, OSHA also intends to remove language from the Recordkeeping Compliance Directive that says that "minor musculoskeletal discomfort" is not recordable under § 1904.7(b)(4) as a restricted work case "if a health care professional determines that the employee is fully able to perform all of his or her routine job functions, and the employer assigns a work restriction for the purpose of preventing a more serious injury" (CPL 02–00–135, Chapter 2, Section I(F)). This language was first introduced into OSHA's initial Recordkeeping Compliance Directive as a result of a settlement agreement between OSHA and the National Association of Manufacturers (66 FR 66943 (12/27/2001)). OSHA agreed to include the language in its initial Compliance Directive but the agreement did not change the language of the Recordkeeping regulation itself. The agreement also stipulated that nothing in it affected the Agency's right to modify or interpret its Recordkeeping regulations in the future (66 FR 66943–44).

OSHA intends to remove the language in the Compliance Directive because of concerns that it creates confusion about recording MSDs. First, OSHA is concerned that employers may misinterpret "minor musculoskeletal discomfort" to include MSD pain and other subjective symptoms that are truly indicative of injury or illness under the Recordkeeping regulation's definition of "injury or illness." This confusion could result in the underreporting of work-related MSDs.

Second, OSHA finds that the language in the Compliance Directive also creates confusion about recordability of MSDs involving work restriction or job transfer. OSHA is concerned that employers who assign job transfers or work restrictions to prevent an injury from worsening may misinterpret the Compliance Directive language and not record the case. Again, this could result in the underreporting of work-related MSDs.

In addition, OSHA believes that the language in the Compliance Directive is not necessary because § 1904.4 of the Recordkeeping regulation clearly and fully specifies when cases involving work restrictions and transfers must be recorded. The decision tree accompanying that provision clearly delineates the decisionmaking process the employer must use to determine whether the case is recordable. The decision tree specifies that the first decision the employer must make is whether the case is an injury or illness within the meaning of the Recordkeeping regulation. If it is not, the case does not meet the very first requirement for recording, therefore, any work restriction or job transfer the employer assigns or voluntarily implements at this point (i.e., before the employee has an injury or illness) does not turn the case into a recordable one. On the other hand, if the employer determines that the employee's injury or illness, including an MSD, meets the definition of "injury or illness" and the next two inquiries indicate that the case is work-related and new, then the job transfer or work restriction that results from the injury or illness MSD is recordable regardless of its purpose (i.e., to prevent the injury or illness from getting worse or to allow the employee to recover from the injury or illness or both). OSHA believes that by following the decision tree in § 1904.4, employers will be able to accurately determine whether an injury or illness, including an MSD, must be recorded.

The agency underscored this point in the preamble discussion of job transfer in the 2001 rule. The agency rejected suggestions to add an exception to recordability for voluntary or preventive job transfers. The agency explained that this concept is not relevant to the recordkeeping rule:

> Transfers or restrictions taken *before* the employee has experienced an injury or illness do not meet the first recording requirement of the recordkeeping rule, i.e.

that a work-related injury or illness must have occurred for recording to be considered at all. * * * However, transfers or restrictions whose purpose is to allow an employee to recover from an injury or illness as well as to keep the injury or illness from becoming worse are recordable because they involve restriction or work transfer caused by injury or illness. All restricted work cases and job transfer cases that result from an injury or illness that is work-related are recordable on the employer's Log" (66 FR 5981).

OSHA requests comment on proposed section 1904.12(b)(3).

Startup Date

Proposed § 1904.12(b)(4) explains that employers would be required to start using the MSD column of the OSHA 300 Log on January 1, 2011. Changes in recording procedures are implemented on January 1 of each year to ensure that occupational injury and illness data for that year reflect the same process and criteria. The January 1 effective date also reflects the annual summary requirements of section 1904.32. Choosing any other date would complicate the annual summary, result in errors, and affect the statistics and programs that rely on the records. The 2001 Recordkeeping rule also became effective on January 1. In the preamble to the 2001 Recordkeeping rule, OSHA agreed with commenters that beginning a new requirement on any other date but January 1 would create "an insurmountable number of problems" (66 FR 6071). For example, if the startup date occurred during the middle of a year, it would necessitate that employers go back through their OSHA 300 Log and update it to reflect the change in the columns on the log.

Former Privacy Provisions

In § 1904.29 of the 2001 Recordkeeping rule, OSHA clarified that certain sensitive occupational injuries and illnesses were to be considered privacy concern cases (§ 1904.29(b)(7)), and set forth specific requirements for protecting the identity of injured or ill workers (§ 1904.29(b)(9) and (10)). The MSD provisions in the 2001 rule clarified that MSDs were not to be considered privacy concern cases (§ 1904.29(b)(7)(vi)).

At this time OSHA is not proposing to add a provision specifying that MSDs are not considered privacy concern cases. The privacy concern provisions have been in place since 2002, and the Agency is not aware of any difficulty with MSD cases being entered as privacy concern cases. However, if comments on the proposed rule support including language concerning MSDs and privacy concern cases, the Agency will consider adding such language to the final rule. OSHA requests comment on the issue of privacy concern cases, including comment on the following:

- Currently, are employers having any difficulty determining whether an MSD is a privacy concern case? If so, how should OSHA clarify this issue in the final rule?
- Should OSHA include language in the final rule clarifying that MSDs are not to be considered privacy concern cases? If so, please explain why.

IV. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

This proposed rule is not a "significant regulatory action" within the context of Executive Order 12866 [1] or the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)), or a "major rule" under the Congressional Review Act (5 U.S.C. 801 *et seq.*).[2] The rulemaking imposes far less than $100 million in annual costs on the economy, and does not meet any of the other criteria specified for a significant regulatory action or major rule in the Executive Order, UMRA and the Congressional Review Act.

This section addresses the potential costs of the proposed rule. OSHA notes that this proposal would merely restore the Recordkeeping rule as issued in 2001 (i.e., before the deletion of the MSD column). All findings related to the economic impact of the 2001 rule, such as the determinations that the regulation (including the MSD column requirement) was economically feasible and had no significant impact on small entities, were established at that time and need not be revisited here. Therefore, the potential costs associated with this proposal are limited to the time for affected employers to familiarize themselves with the MSD column reporting procedures and the time to mark MSDs on the OSHA 300 Log. As noted in the Summary and Explanation, this rule involves no change in when and under what circumstances MSDs are recordable injuries or illnesses. Since employers will use the general recording criteria in the existing Recordkeeping rule for recording MSDs, there are no costs to either employees or employers with respect to becoming familiar with recordability criteria.

Familiarization With Reporting Procedures

The Agency expects the largest time required to comply with the proposed rule will be related to familiarization with the MSD column reporting procedure. At the time of the 2001 recordkeeping rulemaking, the Agency estimated that it would take 20 minutes for the average affected employer to familiarize themselves with all of the new recordkeeping requirements and procedures (66 FR 6092).[3] That estimate included time for learning the procedures for recording MSDs. When the Agency subsequently removed the MSD-column requirement in 2003, the Agency did not provide a quantitative estimate of time or cost savings (68 FR 38606). OSHA believes that the proposed MSD reporting requirement would require a fraction of the time that the Agency estimated for employers to familiarize themselves with all of the provisions in the 2001 Recordkeeping rule, including the MSD column. As such, OSHA preliminarily estimates that it would take affected employers five minutes to familiarize themselves with the proposed MSD reporting procedures.

The proposed rule affects all firms within OSHA jurisdiction that have 10 or more employees at some time in the year, except for those low hazard industries that are not required to routinely prepare an OSHA Form 300 and 301. In 2008, OSHA put out an Information Collection Request (ICR),

[1] "Significant regulatory action" means any regulatory action that is likely to result in a regulation that may:

(1) Have an annual effect on the economy of $100 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order (E.O. 12866 Section 3(f)).

[2] A "major rule" means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in:

(A) An annual effect on the economy of $100 million or more;

(B) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(C) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises or compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

[3] The 20-minute estimate for familiarization was for employers who were already required to keep OSHA injury and illness records. OSHA estimated that familiarization would take longer for employers who were required to keep injury and illness records for the first time. Since 2001, all affected employers have been keeping OSHA 300 Logs and OSHA assumes they are familiar with the recordkeeping procedures.

which calculated that the Recordkeeping rule affects 1,542,000 establishments (Recordkeeping ICR Supplemental Statement (SS) 1218–1706 (1–17–08)). Multiplying the estimate of the total number of affected facilities by the estimated time (five minutes) to familiarize the record keeper with the proposed MSD recording requirement, the proposed regulation would require 129,000 hours in the first year it takes effect.

OSHA believes the occupational category most likely to prepare OSHA injury and illness records is a Human Resource, Training, and Labor Relations Specialist, not elsewhere classified (Human Resources Specialist). The BLS Occupational Employment Survey (OES) indicated that in May 2008, Human Resources Specialists earned a mean hourly wage of $28 (BLS OES, 2009). In June 2009, the BLS National Compensation Survey indicated a mean fringe benefit factor of 1.43 for civilian workers in general. This would indicate an hourly compensation of $40.04 for Human Resources Specialists. Using this estimate of the cost of labor, the cost of initial familiarization with the proposed MSD recording requirement annualized over 10 years at a discount rate of 7 percent would be $735,000 per year for all affected establishments combined.

Recording MSDs

The Agency believes that there will be some small incremental cost above what firms currently incur for recordkeeping to decide whether specific cases are MSDs and mark them on the MSD column. Given the recordkeeping guidance OSHA provides, as well as information already recorded on the OSHA Form 301 and workers' compensation reports, the Agency believes that the incremental time to decide and record cases in the MSD column will be minimal. The Agency also believes that, in the large majority of cases, it will be obvious whether a case is an MSD. Therefore, the Agency estimates it will take employers approximately one minute per case to record it in the MSD column.

The Agency is aware that some establishments use computer software to track worker injuries, although the Agency does not have information on employer patterns of use. Currently, commercially available recordkeeping software comes in various forms. While the software would presumably reduce the amount of time required for recordkeeping, employers may incur some costs to slightly modify the software to provide an extra column on the OSHA Form 300. More sophisticated software, such as software that uses questions and decision logic to aid the employer in filling out the OSHA Form 300, may necessitate slightly more modification.

OSHA is considering developing software for free public distribution to assist employers, particularly smaller employers, with recordkeeping. The Agency requests comment on the use of computer software for recordkeeping, particularly among small businesses. For example, OSHA requests comment on whether computer software reduces employer recordkeeping burdens and, if so, in what ways or by how much. OSHA also requests comment about whether the proposed change in the Recordkeeping rule might affect current recordkeeping software and, if so, in what ways.

BLS reported that in 2007 there were 335,390 MSD cases that involved days away from work (DAFW). While we do not currently know how many non-days-away-from-work (non-DAFW) cases are MSDs, in 2007 BLS estimated there were 4,002,700 total workplace injuries and illnesses, of which 1,158,870 were days-away-from-work cases. If it is assumed that the pattern of DAFW MSDs and non-DAFW MSDs mirrors that of DAFW and non-DAFW injuries and illnesses as a whole, it would suggest the total number of MSDs would be approximately 3.45 times (4.0 divided by 1.159) the number of DAFW MSDs reported in 2007. The number of non-DAFW MSDs implied by this calculation would be 2.45 (3.45 − 1) times greater than the DAFW MSDs reported in 2007.

As discussed in Section III of this notice, the Agency anticipates that the number of non-DAFW MSDs, relative to the DAFW MSD count, may be higher than implied by taking a simple division of the total number of injuries and illnesses by the number of all DAFW cases. To ensure that the costs of the proposed rule are not underestimated, the Agency is estimating that the ratio of non-DAFW MSDs to DAFW MSDs is 50 percent higher than for the ratio for injuries and illnesses as a whole. This results in a ratio of 3.68 non-DAFW MSDs for each DAFW MSD. Using this ratio, the total estimated number of non-DAWF MSDs is estimated to be 1.233 million. Combined with the 335,390 DAFW MSDs reported in 2007, OSHA estimates that a total of 1.568 million recordable MSDs are occurring annually.

While the Agency estimates that 1.568 million MSDs occur annually, not all of these cases would occur in establishments that are required to maintain OSHA 300 Logs. Some cases occur in establishments with fewer than 10 employees, and others occur in low hazard, "partially exempt" industries in the trade and service industries. Based on the pattern of injuries and illnesses generally, only approximately 80 percent of the cases annually are actually recorded (2008 ICR, SS 1218–1706 (1–17–08)).[4] Therefore, the Agency estimates approximately 1.254 million MSDs (80% of 1.568 million MSDs) would be recorded annually. At the same time, the Agency also recognizes that there will be some cases, perhaps 20 percent more than the total, that might require consideration as possible MSDs, but which employers would ultimately determine not to be MSDs, leaving 1.505 million MSDs (1.254 times 1.2) that employers would be required to record. At one minute of recording time per case, and using the hourly rate of $40.04, the actual data entry would cost $1.004 million annually for all affected establishments combined. This cost estimate assumes that no establishments are currently making any determinations as to whether a case is an MSD for other reasons. The addition of the MSD entry on the OSHA 300A summary form is expected to impose no new costs, as the summary totals will simply be tallied in the MSD column instead of the injury and all other illness columns. The annualized cost of both initial familiarization and annual MSD recording costs combined would be $1.739 million per year for all affected establishments combined.

OSHA welcomes comment on all aspects of these cost estimates.

Economic Impacts

The economic impact on any affected establishment would obviously be quite small. As mentioned, 1.505 million recordable MSD cases are expected to occur annually among the 1.542 million affected establishments, which averages to approximately one case per establishment per year. This suggests that the average establishment would require an extra 6 minutes (5 minutes to familiarize and 1 minute to record an MSD) in the first year and 1 minute to record MSDs in subsequent years. The resulting costs for the typical affected establishment would be $4.00 in the first year, and 67 cents in future years. In smaller establishments with fewer injuries, the cost would be even lower. Costs on this order should not pose an economic difficulty for any firm.

OSHA's guideline for determining whether a regulation has a significant

[4] The estimate of 80% of cases was based on an estimate of 3.365 million recorded cases out of a total of 4.214 million cases in 2005.

impact on a substantial number of small firms is whether the costs of the regulation exceed one percent of revenues or 5 percent of profits. Costs of $4.00 in the first year and lower thereafter will never represent more than 1 percent of revenues or 5 percent of profits for a substantial number of small firms. Even if considerably more MSDs occurred in an establishment in a given year, it still would be very unlikely that the costs would pose any economic difficulty. Accordingly, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605), OSHA certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

V. Environmental Impact Assessment

In accordance with the requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4231 *et seq.*), Council on Environmental Quality NEPA regulations (40 CFR part 1500 *et seq.*), and the Department of Labor NEPA regulations (29 CFR Part 11), the Assistant Secretary has determined that this proposed rule will not have a significant impact on the external environment.

VI. OMB Review Under the Paperwork Reduction Act of 1995

The proposed regulation contains revised collections of information requirements (paperwork) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 ("PRA–95"), 44 U.S.C. 3501 *et seq.,* and OMB's regulations at 5 CFR part 1320. The PRA–95 defines a "collection of information" as "obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format" (44 U.S.C. 3502(3)(A)). OSHA's existing Recordkeeping forms are promulgated under 29 CFR part 1904, and consist of the OSHA Form 300, the Log of Work-Related Injuries and Illnesses; the OSHA Form 300A, Summary of Work-Related Injuries and Illnesses; and the OSHA Form 301, and the Injury and Illness Incident Report. These forms are contained in the Information Collection Request (ICR) (paperwork package) titled, 29 CFR Part 1904 *Recordkeeping and Reporting Occupational Injuries and Illnesses* ("Recordkeeping"), and are approved by OMB under OMB control number 1218–0176, (expiration date 03/31/2011). OSHA is proposing to revise its Occupational Injury and Illness Recording and Reporting (Recordkeeping) regulation to add a musculoskeletal disorder (MSD) column to the OSHA 300 Log that employers use to record work-related injuries and illnesses. This proposed rule would require employers to place a check in the MSD column if a case is an MSD and meets the Recordkeeping regulation's general recording requirements.

OSHA has submitted a revised Recordkeeping ICR to OMB for review (44 U.S.C. 3507(d)). OSHA solicits comments on the collection of information requirements and the estimated burden hours associated with these collections, including comments on the following:

- Whether the proposed collection of information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated or other technological techniques for collecting and transmitting information.

The title of the ICR, summary of the paperwork requirements, description of the need, respondent description, estimated recordkeeping burden, and the proposed frequency of the information collection requirements are described below.

Title: 29 CFR Part 1904 Recordkeeping and Reporting Occupational Injuries and Illnesses.

OMB Control Number: 1218–0176.

Summary: Proposed section 1904.12(b)(2) identifies which injuries and illnesses must be identified as MSDs on the OSHA 300 Log. MSDs that meet the general criteria for recordability (i.e., a work-related new case resulting in medical treatment, job transfer or restriction, or days away from work) are already required to be recorded on the log. The proposed section explains that employers would continue to use the same process to decide whether an MSD must be recorded as they are required to do for any other injury or illness under the Recordkeeping regulation. Under the proposal, however, employers would be required to identify which of those injuries and illnesses are MSDs by checking the MSD column on the log. Section 1904.12(b)(3) of the proposed rule specifies that an employer must record a case as an MSD if (1) The employee experiences "pain, tingling, burning, numbness or any other subjective symptom of an MSD;" (2) the symptoms are work-related; (3) new; and (4) meet the general recording criteria in the Recordkeeping regulation (e.g., restricted work, job transfer, days away from work, medical treatment beyond first aid). A case would be recordable only if it meets all of these requirements.

Description of Need: OSHA believes that an MSD column would provide valuable information for maintaining complete and accurate national occupational injury and illness statistics; assist OSHA in targeting its inspection, outreach, guidance, and enforcement efforts to address MSDs; and provide easily identifiable information at the establishment level that will be useful for both employers and employees.

Adding an MSD column to the OSHA 300 Log would improve national statistics on MSDs in several ways. It would allow BLS to collect and annually report the total number and rates of MSDs, both nationally and in specific industries, not just the figures for cases that result in days away from work. Currently, this basic information is unavailable. Having the total number of MSDs would provide BLS with more complete data for analyzing the magnitude of the MSD problem and trends over time in the country as a whole as well as in specific industries. Having more complete MSD data would assist OSHA, and other safety and health policy makers in understanding MSDs and making informed decisions on policies concerning workplace MSDs.

Affected Public: Business or other for-profit. The proposed rule affects all firms within OSHA jurisdiction that have 10 or more employees at some time in the year, except for those low hazard industries that are not required to routinely prepare an OSHA Form 300 and 301.

Number of Respondents: 1,541,900 employers.

Frequency: On occasion.

Average Time per Response: Five minutes for employers to familiarize themselves with the proposed MSD reporting procedure; and. approximately one minute per MSD to record it in the MSD column. The addition of the MSD entry on the OSHA 300A summary form is expected to impose no new paperwork burden, as the summary totals will simply be tallied in the MSD column instead of the injury and all other illness columns.

Estimated Total Burden Hours: 127,978 hours for employers to become familiar with the MSD reporting procedure; and, 25,585 hours for

employers to mark 1,505,000 MSDs in the MSD column.

Estimated Costs (Capital Operation and Maintenance): $0.

Submitting comments. Members of the public who wish to comment on the paperwork requirements in this proposal may send their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218–AC45), Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency encourages commenters to also submit their comments on these paperwork requirements to the rulemaking docket (Docket Number OSHA–2009–0044), along with their comments on other parts of the proposed rule. For instructions on submitting these comments to the rulemaking docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES.** Comments submitted in response to this notice are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth.

Docket and inquiries. To access the docket to read or download comments and other materials related to this paperwork determination, including the complete ICR (containing the Supporting Statement with attachments describing the paperwork determinations in detail), use the procedures described under the section of this notice titled **ADDRESSES.** You also may obtain an electronic copy of the complete ICR by visiting the Web page at *http://www.reginfo.gov/public/do/PRAMain,* scroll under "Currently Under Review" to "Department of Labor (DOL)" to view all of the DOL's ICRs, including those ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, not withstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

VII. Unfunded Mandates

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million.

VIII. Federalism

The proposed rule has been reviewed in accordance with Executive Order 13132 (52 FR 41685), regarding Federalism. Because this rulemaking involves a "regulation" issued under Sections 8 and 24 of the OSH Act, and is not an "occupational safety and health standard" issued under Section 6 of the OSH Act, the rule will not preempt State law (29 U.S.C. 667(a)). The effect of the proposed rule on States is discussed in section IX. State Plan States.

IX. State Plan States

If the proposed rule is issued in final form, the 27 States and territories with their own OSHA-approved occupational safety and health plans must adopt an identical regulation within six months of the publication date. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, and New York have OSHA approved State Plans that apply to state and local government employees only.

Consistent with Section 18 of the OSH Act (29 U.S.C. 667) and the requirements of 29 CFR 1904.41 and 1952.4, State-Plan States must promulgate occupational injury and illness recording and reporting requirements that are the same as the Federal requirements for determining which injuries and illnesses will be entered into the records and how they are entered. All other injury and illness recording and reporting requirements that are promulgated by State-Plan States may be more stringent than, or supplemental to, the Federal requirements, but, because of the unique nature of the national recordkeeping program, States must consult with OSHA and obtain approval of such additional or more stringent reporting and recording requirements to ensure that they will not interfere with uniform reporting objectives.

Because this proposed rule determines how MSD injuries and illnesses are entered onto the OSHA 300 Log, the State-Plan State requirements must be the same as the Federal OSHA requirements to ensure the consistency of the occupational injury and illness information across the States.

X. Public Participation

This rulemaking is governed by the notice and comments requirements in the Administrative Procedures Act (APA) (5 U.S.C. 553) rather than section 6 of the OSH Act (29 U.S.C. 655) and 29 CFR part 1911, which only apply to "promulgating, modifying or revoking occupational safety and health standards" (29 CFR part 1911). For example, section 6(b)(3) of the OSH Act and 29 CFR 1911.11 state that the requirement to hold an informal public hearing on a proposed rule only applies to rulemakings on occupational safety and health standards, not to those dealing with regulations.

Section 553(b)(1) of the APA requires the agency to specify the type of rule involved, the time during which the agency will receive comments on the proposal, and the instructions regarding the procedures for submitting comments. The APA does not specify a minimum period for submitting comments. In accordance with the goals of E.O. 12866, OSHA is providing 60 days for public comment (E.O. 12866 § 6(a)(1)).

Public Submissions

OSHA invites comment on all aspects of the proposed rule. Interested persons must submit comments by March 15, 2010. The Agency will carefully review and evaluate all comments, information, and data, as well as all other information in the rulemaking record, to determine how to proceed.

You may submit comments in response to this document, requests to speak at the public meeting, and requests for special accommodation to attend the meeting (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All submissions must identify the Agency name and the OSHA docket number (Docket No. OSHA–2009–0044) or RIN number (RIN No. 1218–AC45) for this rulemaking. You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit them to the OSHA Docket Office (see

ADDRESSES section). The additional materials must clearly identify your electronic comments by name, date, and docket number, so OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Access to Docket

Comments in response to this **Federal Register** notice, requests to speak, and submissions at the public meeting are posted without change at *http://www.regulations.gov,* the Federal eRulemaking portal. Therefore, OSHA cautions individuals about submitting personal information such as social security numbers and birthdates. Exhibits referenced in this **Federal Register** document are posted at *http://www.regulations.gov.* Although submissions are listed in the *http://www.regulations.gov* indexes, some information (e.g., copyrighted material) is not publicly available to read or download through that Web page. All comments, requests to speak, materials presented at the public meeting, and exhibits, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using *http://www.regulations.gov* to submit comments and access dockets is available on the Webpage. Contact the OSHA Docket Office for information about materials not available through the Web page and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.* For specific information about OSHA's Recordkeeping rule, go the Recordkeeping page on OSHA's Web page.

Public Meeting

OSHA will hold a two-day public meeting on the proposed rule on March 9, 2010 at the U.S. Department of Labor in Washington, DC (see **ADDRESSES** section). If necessary, the meeting may be extended to subsequent days.

The purpose of the public meeting is to allow interested persons to provide oral comments on the proposed rule, which is a limited rulemaking to revise one provision of the Recordkeeping regulation. Although OSHA is not required to hold a public meeting on proposed regulations, the Agency believes that the public meeting will help to facilitate the development of a clear and complete rulemaking record. Consistent with this purpose, OSHA has the discretion to limit the time of speakers whose presentation goes beyond the scope of the proposed regulation.

Individuals interested in speaking at the public meeting must submit their request by February 16, 2010. The request must provide the following information:

- Name, address, and telephone number of each individual who will speak at the public meeting;
- Name of organization or establishment each individual represents, if any;
- Occupational title and position of each person speaking at the meeting;
- Date on which each individual wishes to speak at the meeting;
- Approximate amount of time each individual wishes to speak;
- An outline of the statement each individual wishes to make at the meeting.

OSHA will review each request to speak and determine whether the information it contains warrants the amount of time the individual requested to speak. To ensure that each participant has an opportunity to speak, OSHA will generally limit the time allotted to each speaker to a maximum of 15 minutes. Therefore, OSHA urges speakers to submit written comments of their presentation and to summarize and clarify their written submissions during the meeting. OSHA may also limit the time to speak of any individual who fails to comply substantially with the procedures for submitting a request to speak.

At OSHA's discretion and as time permits, individuals who did not submit a request to speak may be allowed time to make a brief oral statement not exceeding five minutes at the end of the scheduled presentations.

OSHA will post the schedule of appearances for the public meeting as well as additional information about the meeting on the OSHA Web page at *http://www.osha.gov.* The meeting will be transcribed. The transcription and all materials submitted during the public meeting will be put in the public docket of this rulemaking.

List of Subjects in 29 CFR Part 1904

Health statistics, Occupational safety and health, Recording and reporting of occupational injuries and illnesses, State plans.

Authority and Signature

This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 8 and 24 of the Occupational Safety and Health Act (29 U.S.C. 657, 673), 5 U.S.C. 553, and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, this 27th day of January 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Proposed Rule

Part 1904 of Title 29 of the Code of Federal Regulations is hereby proposed to be amended as follows:

PART 1904—[AMENDED]

1. The authority citation for part 1904 is to be revised to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Order No. 3–2000 (65 FR 50017) and 5–2007 (72 FR 31160), and 5 U.S.C. 553.

2. A new § 1904.12 is to be added to read as follows:

§ 1904.12 Recording criteria for cases involving work-related musculoskeletal disorders.

(a) *Basic requirement.* If any of your employees experiences a recordable work-related musculoskeletal disorder (MSD), you must record it on the OSHA 300 Log by checking the "musculoskeletal disorder" column.

(b) *Implementation*—(1) *What is a "musculoskeletal disorder" or MSD?* MSDs are disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs DO NOT include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

(2) *How do I decide which MSDs to record?* There are no special criteria for determining which MSDs to record. An MSD case is recorded using the same process you would use for any other injury or illness. If an MSD disorder is work-related, is a new case, and meets

one or more of the general recording criteria, you must record the case as an MSD in the MSD column. The following table will guide you to the appropriate section of the rule for guidance on recording MSD cases.

(i) Determining if the MSD is work-related. See § 1904.5.

(ii) Determining if the MSD is a new case. See § 1904.6.

(iii) Determining if the MSD meets one or more of the general recording criteria:

(A) Days away from work, See § 1904.7(b)(3);

(B) Restricted work or transfer to another job, See § 1904.7(b)(4); or

(C) Medical treatment beyond first aid. See § 1904.7(b)(5).

(3) *If a work-related MSD case involves only subjective symptoms like pain or tingling, do I have to record it as an MSD?* The symptoms of an MSD are treated the same way as symptoms for any other injury or illness. You must record the case on the OSHA 300 Log as an MSD if:

(i) An employee has pain, tingling, burning, numbness or any other subjective symptom of an MSD;

(ii) The symptoms are work-related;

(iii) The MSD is a new case; and

(iv) The case meets one or more of the general recording criteria.

(4) *When do I have to start recording work-related MSDs on the MSD column?* You must begin recording work-related MSDs on the MSD column as of January 1, 2011.

[FR Doc. 2010–2010 Filed 1–28–10; 8:45 am]

BILLING CODE 4510–26–P

POSTAL SERVICE

39 CFR Part 111

Express Mail Open and Distribute and Priority Mail Open and Distribute Changes and Updates

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to revise its standards to reflect changes and updates for Express Mail® Open and Distribute and Priority Mail® Open and Distribute to improve efficiencies in processing and to control costs.

DATES: Submit comments on or before March 1, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of "Open and Distribute Comments." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Karen Key, 202–268–7492 or Garry Rodriguez, 202–268–7281.

SUPPLEMENTARY INFORMATION: The Open and Distribute feature of Express Mail and Priority Mail service allows customers to expedite the transportation of shipments of other classes of mail to destination facilities using Express Mail or Priority Mail service.

Currently, for customers using USPS-provided letter trays for Priority Mail Open and Distribute, the Postal Service provides the option to use sacks, USPS-supplied tray boxes, or Label 23, an adhesive label which must be affixed to the outside of the letter tray. Tray boxes were introduced April 6, 2009, to address Open and Distribute customers' concerns that a USPS-provided letter tray sleeve might not maintain the integrity of all mail inside a letter tray during processing. Customers now have the option to place their trays in either sacks or Open and Distribute tray boxes, which are more secure. The Open and Distribute tray boxes are provided free of charge by the Postal Service to all Open and Distribute customers and are available for both half-size and full-size trays. Customers using the customer-supplied containers must affix the appropriate USPS-supplied tag (*e.g.,* Tag 161, Tag 190). Label 23 is no longer needed since the letter trays will be enclosed in sacks or tray boxes and the Postal Service proposes to discontinue its use.

The Postal Service also proposes to discontinue the optional use of facsimile Tag 190, *Priority Mail Open and Distribute—Destination Delivery Unit.* Customers will now be required to use the USPS-supplied Tag 190, which is pink and easy to identify. This change will help to ensure accurate and efficient processing of Open and Distribute containers.

When presenting a mailing, Open and Distribute customers have always been required to leave containers unsealed until the business mail entry verification and acceptance of the contents have been completed, provide PS Form 3152, *Confirmation Services Certification,* and not exceed the 70 pound weight limit per container. We also propose to update the standards to reflect these requirements.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553 (b), (c)], regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revision of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual, incorporated by reference in the *Code of Federal Regulations.* See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, the Postal Service proposes to amend 39 CFR part 111 as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

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

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) as follows:

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

16.0 Express Mail Open and Distribute and Priority Mail Open and Distribute

16.1 Prices and Fees

16.1.1 Basis of Price

[Add new second sentence to 16.1.1 to clarify the maximum weight as follows:]

* * * The maximum weight for each container is 70 pounds.* * *

* * * * *

16.1.5 Payment Method

[Revise the third sentence of 16.1.5 to eliminate Label 23 as follows:]

* * * Priority Mail postage must be affixed to or hand-stamped on green Tag 161, pink Tag 190, or to the Open and Distribute tray box, or be part of the address label.

* * * * *

16.2 Basic Standards

16.2.1 Description of Express Mail Open and Distribute and Priority Mail Open and Distribute

[Revise the second sentence of 16.2.1 and add a new third sentence to clarify the requirement to leave containers unsealed and present a PS Form 3152 as follows:]

* * * Mailers prepare the mailings according to standards for the enclosed class of mail and enclose the mail in containers for expedited service as either Express Mail Open and Distribute or Priority Mail Open and Distribute. The containers must be presented unsealed, with the affixed barcoded address label and applicable tag, to the Business Mail Entry Unit or authorized USPS facility with a completed PS Form 3152, *Confirmation Services Certification,* by the critical entry time for USPS shipment under 16.0. * * *

* * * * *

16.5 Preparation

* * * * *

16.5.4 Tags 161 and 190—Priority Mail Open and Distribute

[Revise the first sentence of the introductory paragraph of 16.5.4 to remove the optional use of facsimiles as follows:]

Tag 161 and Tag 190 provide a place to affix Priority Mail postage and the address label for the destination facility. * * *

[Revise 16.5.4a by adding a new second sentence as follows:]

a. * * * This tag also must be affixed to containers used for Priority Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

[Revise the second sentence in 16.5.4b to remove the option of a facsimile to read as follows:]

b. * * * This tag also must be affixed to containers used for Priority Mail Open and Distribute shipments prepared under 16.5.1c or 16.5.1d.

[Revise heading of 16.5.5 to read as follows:]

16.5.5 Tray Boxes—Express Mail Open and Distribute and Priority Mail Open and Distribute

[Revise 16.5.5 to read as follows:]

As an alternative to sacks for Express Mail Open and Distribute and Priority Mail Open and Distribute shipments, unless prepared under 16.5.1c or 16.5.1d, mailers may use USPS-supplied tray boxes for this service. Mailers must place a 1-foot or 2-foot letter tray into the appropriate size tray box.

16.5.6 Address Labels

[Revise the first sentence of 16.5.6 by removing Label 23 as follows:]

In addition to Tag 157, Tag 161, or Tag 190, USPS-supplied containers and envelopes and mailer-supplied containers used for Express Mail Open and Distribute or Priority Mail Open and Distribute must bear an address label that states "OPEN AND DISTRIBUTE AT:" followed by the facility name. * * *

* * * * *

16.6 Enter and Deposit

[Delete the heading 16.6.1, Verification and Entry, and move text under 16.6. Revise 16.6 to include the requirements to present PS Form 3152 and to leave containers unsealed until verification and acceptance of contents as follows:]

Mailers must prepare Express Mail Open and Distribute and Priority Mail Open and Distribute shipments under 16.2 through 16.5. Shipments must be presented with PS Form 3152, *Confirmation Services Certification,* to a business mail entry unit (BMEU) or other location designated by the postmaster to accept both the enclosed mail and Priority Mail or Express Mail. Open and Distribute containers must not be sealed until the BMEU verification and acceptance of the contents has been completed. Mailers must present shipments to the BMEU with enough time for acceptance, processing, and dispatch before the facility's critical entry time for Express Mail or Priority Mail.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–1867 Filed 1–28–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0269; FRL–9107–6]

Approval and Promulgation of Implementation Plans; State of California; Legal Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to clarify the contents of the applicable implementation plan for the State of California under the Clean Air Act. Specifically, EPA is proposing to clarify that the statutory provisions submitted by California and approved by EPA in 1972 supporting the State's legal authority chapter of the original implementation plan were superseded by a subsequent approval by EPA in 1980 of California's revision to the legal authority chapter of the plan. EPA is proposing this action to clarify the status in the California plan of the statutory provisions submitted and approved in 1972.

DATES: Any comments must arrive by March 1, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0269, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions.
- *E-mail: rios.gerardo@epa.gov.*
- *Mail or deliver:* Gerardo Rios, Chief, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an

appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, Chief, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3974: *rios.gerardo@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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II. Background
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I. Summary of Today's Proposed Action

In today's action, under the Clean Air Act (CAA or "Act"), we are proposing to clarify that the statutory provisions submitted by California in 1972 supporting the State's legal authority chapter of the original implementation plan were superseded by a subsequent approval by EPA in 1980 of a revision to California's legal authority chapter of the plan.

II. Background

Pursuant to the Clean Air Act (CAA or "Act"), as amended in 1970, EPA promulgated national ambient air quality standards (NAAQS) for certain air pollutants, including photochemical oxidants, hydrocarbons, carbon monoxide, nitrogen dioxide, sulfur oxides, and particulate matter. The 1970 Amended Act required each state to submit to EPA a plan which provides for the implementation, maintenance, and enforcement of the NAAQS within the state. These plans are referred to as state implementation plans (SIPs).

The 1970 Amended Act also established content requirements for SIPs. Among other elements, the 1970 Amended Act required SIPs to provide "necessary assurances that the State will have adequate * * * authority to carry out such implementation plan, * * *." See section 110(a)(2)(F)(i) of the 1970 Amended Act. In 40 CFR 51.11 (now codified at 40 CFR 51.230–51.232), EPA regulations further specify that "Each plan shall show that the State has legal authority to carry out the plan, including authority to (1) Adopt emission standards and limitations, * * *. (2) Enforce applicable laws, regulations, standards, * * *." EPA regulations further specify: "The provisions of law or regulation which the State determines provide the authorities required under this section shall be specifically identified, and copies of such laws or regulations shall be submitted with the plan." See 40 CFR 51.11(c) (1972). In other words, the laws or regulations relied upon by the State to provide the necessary assurances of adequate legal authority must be identified in the plan, but copies of the actual laws or regulations themselves, while they must be submitted with the plan, need not be part of the plan itself.

On February 21, 1972, Governor Ronald Reagan submitted the original California SIP to EPA. The original SIP consisted of 13 parts, the first of which was referred to as the "State General Plan." The other parts contained air-basin-specific elements and appendices. The "State General Plan" was divided into eight chapters. Chapter 7 ("Legal Considerations," or, as referred to herein, the "legal authority" chapter) was submitted as part of the original SIP to meet the statutory and regulatory requirements described above in connection with legal authority. Chapter 7 describes, among other things, the history of air pollution control in California, the legal authority of the California Air Resources Board (ARB) and the local air districts to adopt emission limitations, enforce applicable laws, prevent new construction, obtain emission information, require source monitoring, and describes various principles governing transportation and land use controls. Chapter 7 includes many citations to individual sections within the California Health & Safety, Penal, Civil Procedure, Government, and Vehicle codes, as well as citations to (then) recently approved legislation, and attorney general opinions as support for the assurance that adequate legal authority exists in the state to meet CAA and EPA SIP requirements.

The state included an appendix to chapter 7 (entitled "Appendix II: State Statutes and other Legal Documents Pertinent to Air Pollution Control in California") in the plan (herein, "appendix II") that included the specific sections of California code and other legal documents cited in chapter 7, but also included many sections of the California Health & Safety Code (CH&SC) that were not cited specifically in chapter 7. Appendix II was organized into 14 categories: CH&SC provisions related to air pollution and pertinent 1971 amendments (not then yet codified), certain Penal Code sections, Senate Bill 678 (related to authority of attorney general to protect the environment), the California Emergency Services Act, an order approved by the Governor related to emergencies, certain California Code of Civil Procedure sections, certain Government Code sections, examples of continuous monitoring rules, the California Public Records Act, a Letter Opinion of the California Attorney General dated March 8, 1971 related to authority for regulating fuel composition, a Letter Opinion of the California Attorney General dated October 6, 1971 related to authority of the San Francisco Bay Area air pollution control district to prevent new construction, certain California Vehicle Code sections related to bus and commuter freeway lanes, SB 325 (1971) establishing a sales tax on gasoline, and various land use laws, including Assembly Bill (AB) 2070 (1970) related to land use planning requirements and the establishment of the Office of Planning and Research, certain California Government Code provisions, and AB 1301 (1970) related to consistency between zoning and general plans.

In May 1972, EPA approved in part and disapproved in part the original California SIP. See 37 FR 10842 (May 31, 1972) and 40 CFR 52.220(b). With respect to legal authority, EPA approved the submittal but found that the SIP did not meet certain requirements related to air pollution emergencies and availability of emission data. See 37 FR 10842, at 10852 and 40 CFR 52.225. EPA's approval included both chapter 7 and the statutory and other documents contained in appendix II as described above.

In response to EPA's request and in response to the Clean Air Act Amendments of 1977, California undertook a comprehensive update to the California SIP. On March 16, 1979, the ARB submitted a revision to the legal authority chapter of the SIP, entitled "Chapter 3—Legal Authority, Revision to State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards (December 1978)," (also referred to herein as the revised "legal authority" chapter). Much like the original legal authority chapter, the revised legal authority chapter provides an overview of air pollution control in California, generally describes the statutory responsibilities and authority of the ARB and the air pollution control districts, and addresses specific legal authorities for enforcement of the SIP, right of entry and source information gathering, public availability of data, emergency episodes, new source review, vehicular controls, and transportation and land use controls. While the general topics covered in the revised legal authority chapter were similar to those covered in the original legal authority chapter, the discussion is completely re-organized and updated to reflect, among other things, recodifications of statutory

provisions. Also, like the legal authority chapter in the original SIP, the revised legal authority chapter includes numerous citations to individual sections of the CH&SC (which had been re-numbered and re-codified since the time of the original SIP), certain citations to other California codes (*e.g.,* Business and Professions Code, Administrative Code, Government Code and Vehicle Code) and an attorney general's letter opinion. However, unlike the legal authority chapter in the original SIP, the revised legal authority chapter, as submitted in 1979, did not include physical copies of the actual statutory provisions nor the other documents cited in the chapter. Instead, the 1979 SIP revision simply incorporates by reference the 1978 edition of *California Air Pollution Control Laws* as "appendix 3–A" to the chapter. Later in 1979, we proposed approval of the revised SIP "Chapter 3—Legal Authority" as an update and clarification of the 1972 SIP. See 44 FR 38912 (July 3, 1979). The following year, we took final action, effective September 10, 1980, to approve the revised legal authority chapter. See 45 FR 53136 (August 11, 1980) and 40 CFR 52.220(c)(48). Since that time, EPA has not approved any other revision to the chapter that addresses legal authority in the California SIP.

Recently, the status of the statutory provisions from the original SIP has come into question in the context of third party litigation, an EPA rulemaking action on a revision to new source review rules in the San Joaquin Valley, and a lawsuit filed against EPA challenging certain EPA actions on the premise that such actions were arbitrary and capricious if a certain statutory provision submitted and approved by EPA in connection with the original SIP remains in effect as part of the current applicable California SIP.[1] Thus, we believe that clarification of the status of the statutory provisions (and other legal documents) submitted in connection with the original SIP is necessary and appropriate at this time.

III. Proposed Action

As shown from the State's submittals and the regulatory history of EPA's actions on the legal authority chapter, and revisions thereto, of the California SIP (as described in the previous section of this document), the statutory provisions and other legal documents submitted in support of the legal authority chapter in the original SIP are no longer part of the California SIP. The statutory provisions and other legal documents were superseded by our 1980 approval of the revised legal authority chapter of the California SIP (codified at 40 CFR 52.220(c)(48)). Our conclusion in this regard follows from our finding, based on the nature and scope of the revised chapter and the mismatch between the statutory citations in the revised chapter and those contained in the original chapter, that the 1979 submittal of the revised legal authority chapter represented a wholesale replacement of the original chapter.[2] We also note that the actual statutory provisions and other legal documents relied upon to support a state's assurance of adequate legal authority need not be approved into the SIP under CAA section 110 or EPA's SIP regulations in 40 CFR part 51 (although such provisions are required to be submitted with the plan). Thus, EPA could approve, consistent with CAA and EPA requirements, and did so in this instance, a wholesale revision to the original legal authority chapter without also approving the actual statutory provisions and other legal documents cited therein.[3]

To memorialize our interpretation of the effect of our 1980 approval of the revised legal authority chapter of the California SIP and thereby clarify the status of the statutory and other legal documents submitted in connection with the original California SIP's legal authority chapter, we propose today under CAA section 301(a)(1)[4] to revise 40 CFR 52.220(b)(12)(i).

The relevant provision of the CFR, 40 CFR 52.220(b)(12), currently lists certain CH&SC provisions related to variances that EPA deleted from the California SIP in 2004. See 69 FR 67062 (November 16, 2004). In today's action, we are proposing to revise 40 CFR 52.220(b)(12) to clarify that none of the statutory provisions (and other legal documents) submitted in connection with chapter 7 (Legal Considerations) of the original California SIP remain in the SIP, not just the few provisions currently listed. We propose to revise 40 CFR 52.220(b)(12) to codify the date (September 10, 1980) on which the statutory provisions (and other legal documents) were superseded in the California SIP.

The effect of our action, if finalized as proposed, would be to clarify that the subject statutory provisions, including the statutory-based agricultural permitting exemption contained in CH&SC section 24265, have not been part of the California SIP since the effective date (September 10, 1980) of our 1980 approval of the revised legal authority chapter of the California SIP.[5]

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[1] See *Ass'n of Irritated Residents* v. *C&R Vanderham Dairy,* No. 1:05–CV–01593(OWW) (E.D. Cal.) (third-party litigation); 73 FR 9260 (February 20, 2008) (EPA proposed rule approving changes to San Joaquin Valley new source review rules); and *Sierra Club* v. *EPA,* No. 08–70395 (9th Cir. filed January 28, 2008) (petition for review of three EPA actions). The particular provision at issue in these examples is CH&SC section 24265, which excludes certain categories of emissions sources, including equipment used in agricultural operations in the growing of crops or raising of fowls or animals, from the general grant of authority to local air districts to require permits for new and existing emissions sources. CH&SC section 24265 was not cited specifically in the legal authority chapter of the original SIP but was included within the large excerpt from the CH&SC submitted by the State of California in support of the original legal authority chapter. (CH&SC section 24265 was later re-codified as CH&SC section 42310.) As proposed in this action, it is clear that the statutory agricultural permitting exemption from the original SIP does not remain in effect as part of the current applicable California SIP. For the purposes of State law, effective January 1, 2004, Senate Bill 700 (2003) repealed the full permitting exemption for agricultural sources then in CH&SC 42310(e) and added a new section that provides a limited permitting exemption for minor agricultural sources. However, the California SIP has historically included, and continues to include, certain local district permitting rules that explicitly exempt agricultural sources or refer to the statutory agricultural exemption. EPA expects California to continue the process of revising local district permitting rules as necessary to amend the SIP consistent with the provisions of Senate Bill 700.

[2] ARB described the nature and purpose of that agency's comprehensive update of the California SIP during the late 1970's as follows: "The [EPA] has formally requested that the [ARB] update the *State of California Implementation Plan for Achieving and Maintaining the National Ambient Air Quality Standards,* usually referred to simply as the 'SIP.' The original SIP document, submitted to EPA in 1972, has become obsolete largely because of the many modifications to federal, state, and local air pollution rules and regulations and substantial advancements in technical aspects of air pollution prediction and control. A new *SIP 1978 Working Document* has been prepared as an initial response to the EPA request and contains an updated summary and description of the California SIP. * * * The SIP 1978 Working Document is a step towards replacing the obsolete 1972 SIP." See page 1 of Chapter 1 ("Introduction") (April 1978) of the SIP—78 Working Document. Therefore, the revised legal authority was intended by ARB, and approved by EPA, as a wholesale replacement of the original legal authority chapter, including the related statutory provisions and other materials submitted in support of the original chapter.

[3] We view the revised legal authority chapter's incorporation (as appendix 3–A) of the 1978 edition of *California Air Pollution Control Laws* as simply providing a general reference to where the statutory citations in the chapter could be located rather than as having the effect of a literal reading of the provisions into the chapter.

[4] CAA section 301(a)(1) states: "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. * * *." We believe that our rule proposed herein today is necessary to clarify the contents of the California SIP and thereby carry out the functions of EPA in connection with the state's plan.

[5] However, as noted in footnote #1 in this document, the California SIP has historically included, and continues to include, certain local district permitting rules that explicitly exempt agricultural sources or refer to the statutory agricultural exemption. EPA expects California to continue the process of revising local district

IV. Public Comment and Final Action

Under CAA section 301(a)(1) and for the reasons discussed above, EPA is proposing to clarify that the statutory provisions and other legal documents submitted in connection with the legal authority chapter of the original 1972 California SIP were superseded by EPA's approval of a revised legal authority chapter in 1980 (and codified at 40 CFR 52.220(c)(48)). To memorialize EPA's interpretation of the effect of the 1980 final rule on the earlier submitted and approved statutory provisions and other legal documents, EPA is proposing to revise 40 CFR 52.220(b)(12)(i) to read as follows:

"(i) Previously approved on May 31, 1972 and deleted without replacement, effective September 10, 1980, chapter 7 of part I and all of the statutory provisions and other legal documents contained in appendix II to chapter 7 (Legal Considerations)."

EPA is soliciting public comments on the issues discussed in this document and will accept comments for the next 30 days. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Accordingly, 40 CFR Part 52 is proposed to be amended as follows:

PART 52—[AMENDED]

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

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

2. Section 52.220 is amended by revising paragraph (b)(12)(i) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(12) * * *

(i) Previously approved on May 31, 1972 and deleted without replacement, effective September 10, 1980, chapter 7 of part I and all of the statutory provisions and other legal documents contained in appendix II to chapter 7 (Legal Considerations).

* * * * *

Dated: January 21, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–1839 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0062; FRL–9107–5]

Approval and Promulgation of Implementation Plans, State of California, San Joaquin Valley Unified Air Pollution Control District, New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under section 110(k)(6) of the Clean Air Act, EPA is proposing to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan. EPA is also proposing to take action on three amended District rules, one of which was submitted on March 7, 2008 and the other two of which were submitted on March 17, 2009. Two of the submitted rules reflect revisions to approved District rules that provide for review of new and modified stationary sources ("new source review" or NSR) within the District, and the third reflects revisions to an approved District rule that provides a mechanism by which existing stationary sources may be exempt from the requirement to secure a Federally-mandated operating permit. The NSR rule revisions relate to exemptions from permitting and from offsets for certain agricultural operations, to the establishment of NSR applicability and offset thresholds consistent with a classification of "extreme" nonattainment for the ozone standard, and to the implementation of EPA's NSR Reform Rules. With respect to the revised District NSR rules, EPA is proposing a limited approval and limited disapproval because, although the changes would strengthen the SIP, there are deficiencies in enforceability that prevent full approval. With respect to the operating permit rule, EPA is proposing a full approval. Lastly, EPA is proposing to rescind certain obsolete permitting requirements from the District portion of the California plan.

If EPA were to finalize the limited approval and limited disapproval action, as proposed, then a sanctions clock, and EPA's obligation to

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permitting rules as necessary to amend the SIP consistent with the provisions of Senate Bill 700.

promulgate a Federal implementation plan, would be triggered because certain revisions to the District rules that are the subject of this action are required under anti-backsliding principles established for the transition from the 1-hour to the 8-hour ozone standard.

DATES: Any comments must arrive by *March 1, 2010*.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0062, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
- *E-mail: R9airpermits@epa.gov*.
- *Mail or deliver:* Gerardo Rios (Air–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Regulatory Context

On February 20, 2008 (73 FR 9260), under sections 110(k)(2) and 110(k)(6) of the Clean Air Act (CAA or "Act"), we proposed to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District ("SJVUAPCD" or "District") portion of the California State Implementation Plan ("SIP") and to approve revisions to two District rules submitted to EPA by the California Air Resources Board (CARB) on December 29, 2006.[1] The specific provisions proposed for approval included paragraph 6.20 of District Rule 2020 ("Exemptions") and paragraph 4.6.9 of District Rule 2201 ("New and Modified Stationary Source Review Rule"). These provisions relate to review and permitting of new or modified stationary sources ("NSR") specifically in connection with agricultural sources. We received substantive comments on our proposed rule, and, since publication of the February 2008 proposed rule, the District has adopted further revisions to Rules 2020 and 2201 that have been submitted to EPA for approval by CARB. The further amended District rules carry forward the revisions submitted on December 29, 2006 but reflect more recent changes by the District as well. In light of the comments on our February 2008 proposed rule, and the more recent submittals of District Rules 2020 and 2201, we have decided not to take any further action on our February 2008 proposed rule, but rather to propose action anew. Published in today's **Federal Register** is a withdrawal of our February 20, 2008 proposed rule.

II. Correction of EPA's May 2004 Final Approval

A. CAA Legal Authority

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides: "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public."

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 71 FR 75690, at 75693 (December 18, 2006); 57 FR 56762, at 56763 (November 30, 1992).

[1] The San Joaquin Valley includes all of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings and Tulare counties, and the western half of Kern County, in the State of California. The San Joaquin Valley is designated as a nonattainment area for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS and is designated as attainment or unclassifiable for the other NAAQS. See 40 CFR 81.303. The area is further classified as "serious" for the 8-hour ozone NAAQS, but the State of California has submitted a request to reclassify the area to "extreme." See 74 FR 43654 (August 27, 2009) for EPA's proposed approval of the State's reclassification request. The San Joaquin Valley was further classified as an "extreme" area for the now-revoked 1-hour ozone NAAQS when EPA designated the area with respect to the 8-hour ozone NAAQS.

B. Background on District NSR Rules 2020 and 2201 and Related EPA Actions

EPA originally approved District NSR Rules 2020 ("Exemptions") and 2201 ("New and Modified Stationary Source Review Rule") into the California SIP on July 19, 2001 (66 FR 37587).[2] EPA's July 19, 2001 action was, however, a limited approval and limited disapproval reflecting our conclusion that District Rules 2020 and 2201 could not be fully approved as meeting all applicable requirements because, among other reasons, District Rule 2020 exempted all agricultural sources from District permitting requirements. 66 FR at 37590. At that time, District Rule 2020, citing California Health & Safety Code (CH&SC) section 42310(e), included a permitting exclusion for "any equipment used in agricultural operations in the growing of crops or the raising of fowl or animals," except for certain orchard and citrus grove heaters in the southern portion of the District.[3] Our limited disapproval stated that the District could not exempt major stationary sources or major modifications at existing major sources from NSR requirements and be found to meet applicable CAA requirements.[4]

To correct this deficiency, the District adopted a revision to Rule 2020 which eliminated the agricultural permitting exemption in its entirety, and CARB submitted the revised Rule 2020 to EPA on December 23, 2002 as a revision to the California SIP. In response, on February 13, 2003, EPA proposed several actions regarding the exemption of agricultural sources from major source NSR permitting requirements. First, EPA proposed approval of revised District Rule 2020. See 68 FR 7330 (February 13, 2003).[5] In that notice, EPA specifically noted that "California Health & Safety Code 42310(e) continues to preclude the District, as well as all other districts in California, from permitting agricultural sources under either title I or title V of the CAA." See 68 FR 7330, at 7335.

To address this issue, EPA published a proposal finding that California's statutory exemption of agricultural sources in CH&SC section 42310(e) from major source NSR permitting rules violated the requirements of CAA section 110(a)(2)(E). See 68 FR 7327 (February 13, 2003). This action, titled "Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision" (hereinafter "SIP Call"), determined that California lacked adequate legal authority to carry out its NSR permitting requirements because CH&SC section 42310(e) exempted major agricultural sources. EPA finalized the SIP Call on June 25, 2003, and thereby required California to submit the necessary assurances of authority by November 23, 2003 to support an affirmative finding by EPA under CAA section 110(a)(2)(E). If the State failed to submit the necessary assurances, then EPA indicated that the sanctions clock under CAA section 179 would be triggered.[6] See 68 FR 37746 (June 25, 2003).

Later that summer, the California legislature enacted Senate Bill (SB) 700, which the Governor of California signed on September 22, 2003. SB 700 removed the wholesale exemption from permitting for agricultural sources provided under CH&SC section 42310(e) and subjected major agricultural sources to permitting requirements. SB 700, however, retained exemptions for new source permitting for certain minor agricultural sources, and limited the ability to require minor agricultural sources to obtain Federal offsets.[7] California notified EPA of the legislature's action by letter dated November 3, 2003 thereby avoiding the triggering of a sanctions clock. California enclosed a copy of SB 700 with the November 3, 2003 letter.[8]

On May 17, 2004, EPA took final action approving the District's permitting rules, Rules 2020 and 2201, as proposed in February 2003. See 69 FR 27837 (May 17, 2004). These rules, as approved by EPA, did not on their face exempt any agricultural sources from permitting or limit the applicability of offset requirements. EPA's final approval stated that the District had removed its exemption for agricultural sources and that the state had also "removed a similar blanket exemption, thereby providing the District with authority to require air permits for agricultural sources, including Federally required NSR permits." See 69 FR 27837, at 27838. EPA's final approval cited SB 700 in a footnote, but did not note the limited scope of authority for permitting and offset requirements under SB 700, which allowed permitting of only certain minor agricultural sources.

C. Correction of Erroneous Final Approval

In this instance, we believe that our May 2004 final full approval of District Rules 2020 and 2201 was erroneous. For all SIP revisions, States must provide evidence that the State has the necessary legal authority under State law to adopt and implement the plan. See CAA section 110(a)(2)(E); 40 CFR part 51, appendix V, section 2.1(c). Thus, to support the approval CARB was required in December 2002 to provide evidence that the District had the necessary legal authority under State law to implement Rules 2020 and 2201, which purported to require permits and offsets for all agricultural sources. CARB could not have done so because CH&SC section 42310(e), applicable at that time, continued to preclude such authority under State law with respect to all agricultural sources.

Nonetheless, we proposed to fully approve Rules 2020 and 2201 on February 13, 2003, with the expectation that the California legislature would act to remove CH&SC section 42310(e)'s exemption for agricultural sources

[2] Rules 2020 and 2201 were adopted by the District to meet NSR requirements under the Clean Air Act, as amended in 1990, for areas that have not attained the National Ambient Air Quality Standards (NAAQS). District Rules 2020 and 2201 replaced existing NSR rules from the individual county air pollution control districts that were combined into the San Joaquin Valley Unified Air Pollution Control District ("District") in 1991.

[3] For more information on the status of the state law exclusion from permitting for agricultural sources in the California SIP, please see the related proposed rule published in today's **Federal Register.**

[4] District NSR permitting rules do not adopt the distinction between minor sources and major sources as set forth under the CAA. District Rules 2020 and 2201 generally apply to both Federal minor and major stationary sources. Our limited approval and limited disapproval specified that the rule deficiency was exempting major agricultural sources and major modifications. See 65 FR 58252, at 58254 (September 28, 2000).

[5] EPA also published an Interim Final Determination that SJVUAPCD had corrected the July 2001 limited approval deficiencies and EPA stayed or deferred the imposition of CAA sanctions on the District. See 68 FR 7321.

[6] On May 22, 2002, EPA issued a Notice of Deficiency for California's Title V program based on the exemption of agricultural sources from Title V permitting. See 67 FR 35990 (May 22, 2002). EPA's decision was upheld. See *California Farm Bureau Fed'n* v. *EPA,* No. 02–73371 (9th Cir. July 15, 2003) (memorandum opinion).

[7] As explained in Section II.C below, sources with emissions below 50 percent of the major source threshold are exempt from permitting unless the District makes certain findings, while sources at or above 50 percent of the major source threshold are subject to permitting unless the District makes certain findings. See CH&SC section 42301.16(b) and (c). In addition, offsets may not be required unless they meet the criteria for real, permanent, quantifiable, and enforceable emission reductions. See CH&SC section 42301.18(c).

It is worth noting that EPA and California interpret CH&SC section 42301.16(a) to require all sources that emit or have the potential to emit at or above the major source threshold to be subject to new source permitting and offset requirements, as required by the Clean Air Act, without regard to the provisions of sections 42301.16(c) or 42301.18(c). Thus, an agricultural source with actual emissions less than 50 percent of the major source threshold but potential emissions above the major source threshold is subject to new source permitting and offset requirements.

[8] See Letter from Bill Lockyer, Attorney General, California Office of the Attorney General, to Marianne Horinko, Acting Administrator, EPA, dated November 3, 2003.

thereby aligning Rule 2020 with District authority under State law. 68 FR 7330 (Feb. 13, 2003). While the legislature did act shortly thereafter to remove the exemption for major agricultural sources and major modifications at existing major agricultural sources, the legislature also retained the exemption from permitting for certain minor agricultural sources, leaving the words of Rule 2020 broader than the District's authority under State law. The legislature also exempted minor agricultural sources from obtaining offsets pending a determination that emissions reductions from such sources meet certain criteria, leaving Rule 2201, on its face, also at odds with State law.

As noted above, on May 17, 2004, EPA took final action to approve District Rules 2020 and 2201, as proposed in February 2003. See 69 FR 27837 (May 17, 2004). We now understand that our final approval action on Rules 2020 and 2201 should have ensured that the authority in those rules was consistent with the authority granted by SB 700. At that time, since the District had made no findings to broaden (above 50 percent of the major source threshold) or narrow the permitting exemption (below 50 percent of the major source threshold), as allowed under SB 700 and now codified in CH&SC sections 42301.16(b) and (c), the permitting exemption provided by State law applied to minor agricultural sources with actual emissions less than 50 percent of the major source threshold. Thus, we should have limited our approval of Rule 2020 to exclude applicability to agricultural sources exempt from new source permitting under SB 700 (i.e., minor sources with actual emissions less than 50 percent of the major source threshold). Our approval of Rule 2201 should have been limited to provisions requiring offsets for major agricultural sources, because at the time, the District had not found emissions reductions from agricultural sources to meet the criteria for real, permanent, quantifiable, and enforceable emissions reductions and thus did not invoke the authority otherwise provided in SB 700 (and codified in CH&SC section 42301.18(c)) to impose an offset requirement on new or modified minor agricultural sources. Given that California submitted a copy of SB 700 in November 2003, we had information indicating that the District did not have the authority to implement Rules 2020 and 2201 to the extent that the language of the rule appeared to allow (*i.e.,* to require permits and offsets from all new or modified agricultural sources, including those exempt under SB 700) prior to the time we took final action. We should have limited our approval of Rules 2020 and 2201 to conform with SB 700, and promulgated language in 40 CFR part 52 codifying that limitation on our approval.

We note that recent enforcement actions have been brought pursuant to the CAA's citizen suit provisions against minor agricultural sources in the District that have emissions less than 50 percent of the major source threshold for failure to apply for and receive a new or modified source permit. The District, however, does not have the authority under State law to issue such permits. The fact that such cases are being brought persuasively supports the need to correct our error in approving Rules 2020 and 2201 in 2004.

Therefore, pursuant to CAA section 110(k)(6), we are proposing to correct our error by limiting our approval of Rules 2020 and 2201 to apply only to the extent the District has authority under state law to require permits and offsets. Specifically, with respect to agricultural sources, we are approving Rule 2020 only to the extent it applies to agricultural sources subject to permitting under SB 700. Also and again with respect to agricultural sources, we are approving Rule 2201 only to the extent it requires offsets for new major sources and major modifications until certain criteria set forth in state law are met. To codify this proposed error correction, we are proposing the following language to be added as a new section, 52.245, of 40 CFR part 52, subpart F ("California"):

52.245 New Source Review Rules

(a) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved May 17, 2004, is limited, as it relates to agricultural sources, to apply the permit requirement only (1) to agricultural sources with potential emissions at or above a major source applicability threshold and (2) to agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold. The offset requirement, as it relates to agricultural sources, does not apply to new minor agricultural sources and minor modifications to agricultural sources.

In section IV of this document, we are proposing a limited approval/limited disapproval on subsequent submittals of District Rules 2020 and 2201 that carry forward the agricultural-source-related provisions for which we proposed action in February 2008, but that reflect subsequent additional changes made by the District to the rules. If we finalize this action, as proposed, we intend to codify the above language to clarify the status of affected sources that were constructed or were modified during the period extending from the effective date of our February 2004 final rule (i.e., June 16, 2004) through the effective date of our action on revised District Rules 2020 and 2201 as described in section IV of this document.

III. The State's Submittals of Revised District Rules

A. What rules did the State submit?

Table 1 lists the rules on which we are proposing action in this document with the dates that they were revised by the District and submitted to EPA by CARB.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	2020	Exemptions	12/20/07	03/07/08
SJVUAPCD	2201	New and Modified Stationary Source Review Rule	12/18/08	03/17/09
SJVUAPCD	2530	Federally Enforceable Potential to Emit	12/18/08	03/17/09

On April 17, 2008, we found that the submittal of District Rule 2020 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review. On April 20, 2009, we found the submittal of District Rules 2201 and 2530 to be complete.

B. Are there other versions of these rules?

As discussed above, we approved a version of Rule 2020 into the SIP on May 17, 2004 (69 FR 27837). On December 29, 2006, CARB submitted an amended version of District Rule 2020. On December 20, 2007, the District adopted further amendments to Rule 2020, and CARB submitted the further amended rule to us on March 7, 2008. The revision to District Rule 2020 that CARB submitted on December 29, 2006 was carried forward with the version

that was submitted on March 7, 2008 and for which we propose action today.

We also approved a version of Rule 2201 into the SIP on May 17, 2004 (69 FR 27837). Since our May 2004 approval of Rule 2201 into the SIP, the District has amended the rule on four occasions. One of those amendments added paragraph 4.6.9 to the rule. On December 29, 2006, CARB submitted only paragraph 4.6.9 from District Rule 2201 to EPA. On December 18, 2008, the District adopted the latest amendments to Rule 2201. On March 17, 2009, CARB submitted this latest version of District Rule 2201 to us. This latest version of District Rule 2020 that CARB submitted on March 17, 2009 carries forward with it all of the changes, including new paragraph 4.6.9, that the District has made in the rule since our May 2004 approval.

Prior to our 2004 approval of Rules 2020 and 2201, the SJVUAPCD portion of the California SIP included a broad exemption from permitting for all agricultural sources, citing CH&SC section 42310(e). See section 4.0 of District Rule 2020, as amended on September 17, 1998, submitted on October 27, 1998, and approved on July 19, 2001 at 66 FR 37587.

Lastly, we approved a version of Rule 2530 into the SIP on April 26, 1996 (61 FR 18500). Since EPA's 1996 approval of Rule 2530 into the SIP, the District has amended Rule 2530 twice, once on April 25, 2002 and then again on December 18, 2008. On March 17, 2009, CARB submitted this latest version of District Rule 2530 to us, and it includes all amendments to the rule by the District to date.

C. What are the purposes for revisions to these rules?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. Permitting rules were developed as part of the local air district's programs to control these pollutants.

The purpose of District Rule 2020 ("Exemptions") is to specify emission units that are not required to obtain an Authority to Construct or Permit to Operate. Rule 2020 also specifies the recordkeeping requirements to verify such exemptions and outlines the compliance schedule for emission units that lose the exemption.

Relative to the version of Rule 2020 that is approved into the SIP, the changes would revise and clarify certain exemptions and conform the rule to existing state law by explicitly exempting certain agricultural sources from permitting requirements. Specifically, the changes in District Rule 2020 would:

- Revise the existing exemption for steam generators, steam superheaters, water boilers, water heaters, steam cleaners, and closed indirect heat transfer systems that have a maximum input heat rating of five million Btu per hour or less and that are fired exclusively on natural gas or liquefied petroleum gas (LPG) (see paragraph 6.1.1 of the submitted rule). The existing exemption is limited to the types of equipment described above but also establishes the following specifications for both natural gas and LPG combusted by the equipment: "provided the fuel contains no more than five percent by weight hydrocarbons * * * and no more than 0.75 grains of total sulfur per 100 standard cubic feet of gas * * *." The revised exemption would establish separate specifications for natural gas and for LPG. The hydrocarbon content limit would remain five percent for natural gas but would drop to two percent for LPG. The sulfur content limit would increase from 0.75 grains, to 1.0 grain for natural gas, and to 15 grains (per 100 standard cubic feet of gas). The revised exemption would require use of the latest versions of the relevant ASTM test methods.
- Clarify and tighten the existing exemption for certain types of transfer equipment, such as loading and unloading racks, and equipment used exclusively for the transfer of refined lubricating oil (see paragraph 6.7 of the submitted rule). Specifically, with respect to crude oil, the existing exemption establishes a limiting specification in terms of specific gravity, and the revised exemption would add a second limiting specification in terms of True Vapor Pressure (TVP) and would establish certain test methods for determining the TVP of crude oil; and
- Conform District permit requirements to State law by explicitly exempting agricultural sources to the extent such sources are exempt pursuant to CH&SC section 42301.16 (see paragraph 6.20 of the submitted rule). Section 42301.16(a) requires local air permitting authorities to require permits for agricultural sources subject to the requirements of title I or title V of the Federal Clean Air Act. Section 42301.16(b) similarly requires permits for all agricultural sources unless specified findings are made at a public hearing or except as provided in section 42301.16(c). Section 42301.16(c) requires the District to make specified findings at a public hearing prior to requiring permits for agricultural sources with emissions that are less than one-half of any major source threshold. The net effect of this section is that all agricultural sources with actual emissions or a potential to emit at or above a major source applicability threshold are required to obtain a District permit pursuant to CH&SC section 42301.16(a). Agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold are required to obtain a District permit, unless the District makes the findings specified by subsection (b). No permits are required for agricultural sources with actual emissions of less than 50 percent of any major source applicability thresholds, unless the District makes the findings specified in subsection (c), subject to the limitation in CH&SC section 42301(a).

The purpose of District Rule 2201 ("New and Modified Stationary Source Review Rule") is to provide for the review of new and modified stationary sources of air pollution and to provide mechanisms including emission trade-offs by which Authorities to Construct such sources may be granted, without interfering with the attainment or maintenance of ambient air quality standards. District Rule 2201 is also intended to provide for no net increase in emissions above specified thresholds from new and modified stationary sources of all nonattainment pollutants and their precursors.

Key features of District Rule 2201 include:

- Best Available Control Technology (BACT) [9]: Mandates emission controls to minimize emission increases above de minimis values.
- Emission offsets: Requires emissions above specified offset threshold levels to be mitigated with either concurrent reductions or past reductions which have been banked as emission reduction credits (ERCs).
- Public notification: A 30- or 45-day notice period prior to issuance of an Authority to Construct (ATC) to accept comments on projects that result in emissions above specified levels.
- Required elements for Authority to Construct, Permit to Operate and administrative requirements for processing NSR applications.

As submitted on March 17, 2009, District Rule 2201 incorporates three major changes relative to the version of Rule 2201 that is approved into the SIP. First, amended District Rule 2201 would replace the term, "Major Modification,"

[9] While the District uses the term BACT as the level of control required, a review of the definition has shown that it is equivalent to the requirements for Federal LAER.

with two terms, "Federal major modification" and "SB 288 major modification." (See paragraphs 3.17 and 3.34 of the amended rule.) The former term incorporates EPA's NSR reform principles, and the latter term retains the pre-NSR reform approach to determining whether a modification is a major modification. Second, amended District Rule 2201 would incorporate the lower "major source" and "Federal major modification" emissions thresholds, and higher offset ratios, for the ozone precursors, VOC and NO_X, consistent with an "extreme" ozone classification. (See paragraphs 3.17, 3.23, and 3.34 of the amended rule). Lastly, changes to District Rule 2201 would conform the rule to existing state law by exempting new or modified agricultural sources from offset requirements, unless the offsets are required by Federal CAA requirements. (See paragraph 4.6.9 of the amended rule.)

Other changes in amended Rule 2201 would:

- Tighten one of the conditions that qualify a replacement of "any article, machine, equipment, or other contrivance" as a "Routine Replacement;" the existing rule requires that such a replacement, among other conditions, not result in an increase in permitting emissions from the "stationary source," whereas, the modified definition of the term "routine replacement" requires no such increase from the "replacement unit(s) (see paragraph 3.33.1 of the amended rule);
- Expressly extend the existing emission offset exemption for portable equipment to equipment registered in accordance with the provisions of District Rule 2250 (Permit-Exempt Equipment Registration) (see paragraph 4.6.3 of the amended rule). The existing exemption covers portable equipment registered under District Rule 2280 (Portable Equipment Registration) or under the Statewide Portable Equipment Registration Program. Existing District Rule 2020 provides a permitting exemption for portable emissions units covered by a valid registration under the above registration programs "or other equipment registration program approved by the APCO." District Rule 2250 is such a program, and thus, portable equipment registered under District Rule 2250 are exempt, not just from the emission offset requirement, but also from the requirement for a permit. However, the District expressly added a reference to equipment registered under District Rule 2250 in the emission offset exemption portion of Rule 2201 to provide consistency with similar exemptions for portable equipment and to avoid confusion; and
- Provide for a lower offset ratio (from 1.5 to 1.2) in the event EPA approves a demonstration that all existing major sources of VOC and NO_X in the San Joaquin Valley are equipped with BACT as defined in CAA section 169(3) (see paragraph 4.8.2 of the amended rule). This change amends the SIP to add the lower offset ratio provision contained in CAA section 182(e)(1). The lower offset ratio referred to in paragraph 4.8.2 has no current effect, because the required demonstration has not been submitted to EPA. Moreover, EPA would be reviewing any such demonstration, most likely as a SIP revision, and that review would include a review for compliance with the relevant statutory provision in CAA section 182(e)(1).

Unlike District Rules 2020 and 2201, District Rule 2530 ("Federally Enforceable Potential to Emit") is not an NSR rule, but is a rule that relies on thresholds based on certain percentages of the major source thresholds established for NSR purposes as a basis to exempt sources from the requirements of Rule 2520 ("Federally Mandated Operating Permits"). Relative to the corresponding rule in the existing SIP, the amended rule would lower the thresholds below which sources of VOC or NO_X are exempt from the requirements of Rule 2520 (see paragraph 6.1 of the amended rule), would lower the thresholds below which sources are exempt from certain recordkeeping and reporting requirements under Rule 2530 (see paragraph 5.4.1.2 of the amended rule); and would lower certain alternative operational limits (see, e.g., paragraph 6.2.4 of the amended rule).

IV. EPA's Evaluation and Action on the Rule Revisions

A. How is EPA evaluating the rules?

The rules that are the subject of this proposed action amend rules that EPA has previously approved as meeting the statutory and regulatory requirements for SIPs regarding minor NSR, major nonattainment NSR, and enforceability of permit conditions. Therefore, we have focused our review on the changes in the rules relative to the versions of the rules in the existing SIP to ensure the amended rules continue to meet the applicable requirements, taking into account that, in some instances, such as the "major source" threshold requirement, the applicable requirements have changed since we last acted on these rules.

The relevant statutory provisions for our review of the submitted rules include CAA section 110(a), section 110(l), and section 182(e) and (f). Section 110(a) requires that SIP rules be enforceable, while section 110(l) precludes EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act. Section 182(e) (together with section 182(f) for NO_X), requires NSR SIPs in "extreme" nonattainment areas to define "major sources" in terms of 10 tons per year of VOC or NO_X, to lower the threshold for "major modifications" to zero, and to increase the offset ratio to 1.5 to 1. In addition, we have reviewed the submitted rules for compliance with EPA implementing regulations for NSR, including 40 CFR 51.160 through 40 CFR 51.165.

B. Do the rules meet the evaluation criteria?

1. Regulatory Context

Other than rule clarifications and other minor revisions, the changes to the District's rules that are the subject of this action fall into four broad categories: Changes affecting minor source NSR permitting requirements; changes relating to the area's extreme classification for the 1-hour ozone standard; changes relating to NSR Reform; and changes affecting the mechanism used by sources to avoid title V requirements.

First, however, to provide the proper context for evaluating the submitted changes in the District's rules, it is important to consider the designations and plan status for the valley with respect to the relevant national ambient air quality standards. Area designations for California are set forth in 40 CFR 81.305 and shown in table 2, below. As shown in table 2, the San Joaquin Valley Air Basin is designated "nonattainment" for the 1997 8-hour ozone standard. With respect to particulate matter, the valley is designated "attainment" for PM_{10} and "nonattainment" for $PM_{2.5}$.

TABLE 2—SAN JOAQUIN VALLEY AREA DESIGNATIONS

Pollutant	Designation	Classification
(Revoked) Ozone—1-hour standard	Nonattainment	Extreme (at the time of designation for the 1997 8-hour ozone standard).
Ozone—1997 8-hour standard	Nonattainment	Serious.[a]
Respirable Particulate Matter (PM_{10})	Attainment	Not Applicable.
Fine Particulate Matter ($PM_{2.5}$)	Nonattainment	Not Applicable.
Carbon Monoxide	Attainment (4 urban areas); Unclassifiable/Attainment (rest of valley).	Not Applicable.
Nitrogen Dioxide	Unclassifiable/Attainment	Not Applicable.
Sulfur Dioxide	Unclassifiable/Attainment	Not Applicable.

[a] The State of California has requested reclassification of the San Joaquin Valley to "extreme" for the 1997 8-hour ozone standard. See 74 FR 43654 (August 27, 2009).

As to ozone, the valley is classified as a "serious" ozone nonattainment area for the 1997 8-hour ozone standard, but the State of California has requested reclassification of the area to "extreme." See 74 FR 43654 (August 27, 2009). The designation of an area as "nonattainment" triggers certain SIP planning requirements, and on November 16, 2007, the State of California responded to those requirements by submitting the San Joaquin Valley 2008 Ozone Plan to EPA as a revision to the California SIP. EPA has not yet acted on the plan. Significantly, because, as a general matter, the SIP requirements that applied by virtue of an area's classification for the now-revoked 1-hour ozone standard continue to apply to an 8-hour ozone nonattainment area, we note that the San Joaquin Valley was designated as an "extreme" nonattainment area for the 1-hour ozone standard at the time of designation for the 8-hour ozone standard. Recently, EPA approved the San Joaquin Valley 2004 Ozone Plan, which had been developed to address the SIP requirements for "extreme" areas for the 1-hour ozone standard.

As to PM_{10}, in 2008, EPA approved a redesignation request for the area from "nonattainment" to "attainment" for the PM_{10} standard and also approved the San Joaquin Valley 2007 PM_{10} Maintenance Plan as a revision to the California SIP. See 73 FR 66759 (November 12, 2008).

As to $PM_{2.5}$, in 2005, EPA designated the valley "nonattainment" for the 1997 $PM_{2.5}$ standards. In response, on June 30, 2008, the State of California submitted the San Joaquin Valley 2008 $PM_{2.5}$ Plan as a revision to the California SIP. EPA has not yet taken action on the plan. More recently, EPA designated the valley as nonattainment for the more stringent 24-hour $PM_{2.5}$ standard promulgated by EPA in 2006. See 74 FR 58688 (November 13, 2009)(Air Quality Designations for the 2006 $PM_{2.5}$ NAAQS).

With respect to carbon monoxide, the valley, outside of four urban areas, is designated as "unclassifiable/attainment." Bakersfield, Fresno, Modesto, and Stockton, the four urban areas where violations of the carbon monoxide standard had been monitored during the 1970s and 1980s, were redesignated from "nonattainment" to "attainment" in 1998. Lastly, the valley is designated as unclassifiable or attainment for the nitrogen dioxide and sulfur dioxide standards.

2. Minor Source NSR Permitting Requirements

a. General Considerations

The amended rules would affect minor source NSR ("minor NSR") by revising an existing permitting exemption for certain natural-gas- or LPG-fired combustion and heat transfer systems (see paragraph 6.1 in submitted District Rule 2020), by exempting minor agricultural sources with emissions less than 50 percent of the major source threshold (see paragraph 6.20 in submitted District Rule 2020) from permitting, and by exempting all new or modified minor agricultural sources from the offset requirement (see paragraph 4.6.9 of submitted District Rule 2201).

The requirements in 40 CFR 51.160 ("Legally enforceable procedures"), subsections (a) and (e) provide the basis for evaluating exemptions from NSR permitting. The basic purpose of NSR permitting is set forth in 40 CFR 51.160(a). Section 51.160(a) requires NSR SIPs to set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a stationary source would result in a violation of applicable portions of the control strategy; or would result in interference with attainment or maintenance of a national standard in the State in which the proposed source or modification is located or in a neighboring state. Section 51.160(e) provides that the procedures must identify types and sizes of stationary sources, which will be subject to review. We view this provision as allowing a State to exempt certain types and sizes of stationary sources so long as the program continues to serve the purposes outlined in 40 CFR 51.160(a). Thus, the revised exemption for certain natural gas or LPG-fired boilers, and the exemption from permitting for non-major agricultural sources whose actual emissions (excluding fugitive dust) are less than 50 percent of the major source thresholds are approvable so long as the minor source permitting program (i.e., including the exemption) continues to provide the necessary information to allow the District to determine whether new or modified stationary sources would result in a violation of applicable portions of the control strategy or would result in interference with attainment or maintenance of a national standard. In other words, exemptions are approvable if it can be shown that it is not necessary to review exempt sources in order to meet the purposes of 40 CFR 51.160(a).

Under 40 CFR 51.160, the District has discretion in conducting its minor source permitting program to exempt certain small sources and, under Federal law, minor sources are not required to obtain offsets. Congress directed the States to exercise the primary responsibility under the CAA to tailor air quality control measures, including minor source permitting programs, to the State's needs. See *Train* v. *NRDC,* 421 U.S. 60, 79 (1975) (States make the primary decisions over how to achieve CAA requirements); *Union Electric Co.* v. *EPA,* 427 U.S. 246 (1976); *Greenbaum* v. *EPA,* 370 F.3d 527 (6th Cir. 2006).

b. Analysis

With respect to certain smaller combustion and heat transfer systems (steam generators, water boilers, *etc.*), amended Rule 2020 revises the existing permitting exemption in paragraph 6.1.1

of the rule by providing separate fuel specifications for natural gas and LPG for those types of equipment eligible for the exemption. The hydrocarbon specification would remain unchanged for natural gas but would be tightened for LPG from five percent to two percent (by weight). With respect to sulfur content, the fuel specification would be relaxed from 0.75 grains (of total sulfur per 100 standard cubic feet of gas) to 1.0 grain (for natural gas) and 15 grains (for LPG). Theoretically, the effect of this change would be that certain combustion and heat transfer systems, that otherwise would be covered by the permit requirement, would avoid NSR, and would not be subject to the applicable controls, such as BACT and offsets, thereby resulting in emissions increases that may or may not be accounted for in regional plans intended to attain or maintain the national standards.

In response to a query from EPA concerning potential emissions impacts in the relaxation of the sulfur content specifications, the District explained how, notwithstanding the permitting exemption, certain prohibitory rules, such as Rule 4308 (Boilers, Steam Generators, and Process Heaters 0.075 to 2 MMBtu/hr) and Rule 4307 (Boilers, Steam Generators, and Process Heaters 2 to 5 MMBtu/hr) would still apply. See the District's November 13, 2009 memorandum, which we have placed in the docket for this rulemaking. Moreover, the District explained how, even if the BACT requirement were triggered by a source that otherwise would be exempt due to the relaxed sulfur content specification, BACT for emissions of sulfur oxides has historically been the use of LPG or natural gas, which is already a precondition for application of the exemption in the first place.[10] We find the District's explanation sufficient to find that the relaxed sulfur content specification in amended Rule 2020, paragraph 6.1, would have no significant impact on emissions in the valley.

In evaluating the limited permitting exemption for agricultural sources for consistency with 40 CFR 51.160(a), EPA is taking into account the specific pollutants emitted from agricultural operations, relevant non-permitting requirements, and regional air quality plans. First, California law defines "agricultural source" as a source of air pollution or group of sources used in the production of crops or the raising of fowl or animals located on contiguous property under common ownership or control that is a confined animal facility (*e.g.,* barn, corral, coop); is an internal combustion engine used in the production of crops or the raising of fowl or animals (*e.g.,* irrigation pumps, but excluding nonroad vehicles such as tractors); or is a title V source or is a source that is otherwise subject to regulation by a district or the Federal Clean Air Act. See CH&SC section 39011.5. As such, agricultural sources include both combustion sources (such as, internal combustion engines and boilers) and non-combustion sources [*e.g.,* confined animal facilities and on- and off-field vehicular activity (*e.g.,* tilling and harvesting)]. Among the non-combustion agricultural sources, some by their nature generate fugitive emissions such as tilling, harvesting, and vehicle travel over unpaved farm roads.

Agricultural sources, as described above, emit volatile organic compounds (VOC), oxides of nitrogen (NO_X), particulate matter (PM_{10} and $PM_{2.5}$), and carbon monoxide. As precursors for ozone, PM_{10} and $PM_{2.5}$, emissions of NO_X and VOC from agricultural sources are not a local concern but are logically evaluated from the standpoint of regional air quality planning efforts. Direct PM_{10} and $PM_{2.5}$ are both of local and regional concern and thus our evaluation must consider both the potential for local exceedances of the standard due to the exemption, and for inconsistency with regional control strategies for these pollutants. Carbon monoxide is typically a pollutant of localized concern, and emissions of carbon monoxide from exempt agricultural sources would not be significant given the rural location of agricultural sites, which are well away from the urban centers and high traffic densities historically associated with high ambient concentrations of carbon monoxide in the valley, and the long record of attainment of the carbon monoxide standard even within the urban centers of the valley. A pollutant-specific evaluation of the exemption for particulate matter and ozone is provided in the following paragraphs.

Particulate Matter. With respect to PM_{10} and $PM_{2.5}$, paragraph 6.20 of amended Rule 2020 would exempt agricultural operations with emissions up to 50 tons per year (assuming that 100 tons per year is the current applicable major source threshold based on the valley's current area designations for PM_{10} and $PM_{2.5}$). This threshold value, however, excludes fugitive dust, and thus, the permitting exemption would extend to agricultural sources with overall actual emissions of PM_{10} and $PM_{2.5}$ greater than 50 tons per year. Without application of some types of control measures, we would have no basis to categorically conclude that such sources would under no reasonably foreseeable circumstances cause or contribute to an exceedance of the PM_{10} or $PM_{2.5}$ standard.

However, because the District has adopted other rules that serve to control the fugitive dust emissions from agricultural sources, including those that would not require a permit due to the exemption in amended District Rule 2020, paragraph 6.20, we believe the exemption can be approved consistent with 40 CFR 51.160(a) and (e). Specifically, District Rule 4550 ("Conservation Management Practices") and the District's Regulation VIII ("Fugitive PM_{10} Prohibitions", particularly, Rules 8011 and 8081) act as non-permitting means to reduce fugitive dust emissions at agricultural sources that fall under the exemption and reduce the potential for localized exceedances of the PM_{10} and $PM_{2.5}$ standards. As explained further below, as a general matter, District Rule 4550 covers on-field agricultural operations and is implemented through an application and District approval process, whereas District Rules 8011 and 8081 cover off-field agricultural operations and are implemented as prohibitory rules.

District Rule 4550 ("Conservation Management Practices") applies to agricultural operation sites located within the San Joaquin Valley Air Basin and is intended to limit fugitive dust emissions from such sites. EPA approved Rule 4550 and associated List of Conservation Management Practices (CMP List) into the California SIP in 2006. See 71 FR 7683 (February 14, 2006). Under the rule, an owner/operator must implement the applicable CMPs selected pursuant to section 6.2 (one CMP from the CMP list for each of the applicable CMP categories for each agricultural parcel of an agricultural operation site). An owner/operator must prepare and submit a CMP Application for each agricultural operation site to the APCO for approval. A CMP Application approved by the APCO constitutes a CMP Plan, and owner/operators must implement the CMPs as contained in the CMP Plan.

Exemptions in District Rule 4550 include agricultural operation sites where the total acreage of all agricultural parcels is less than 100 acres and exempts Animal Feeding Operations (AFOs) involving less than a certain number of animals: Less than 500 mature dairy cows, less than 190

[10] If, in the future, use of natural gas or LPG no longer represents BACT for sulfur emissions, then this exemption may need to be re-evaluated.

cattle, less than 55,000 turkeys, less than 125,000 chickens (other than laying hens), or less than 82,000 laying hens. The District's staff report on Rule 4550 (dated August 19, 2004) concludes that Rule 4550 (with its 100-acre exemption level) will apply to approximately 91 percent of all irrigated farmland in the SJV. The District also estimated emissions from 100-acre farms to determine the emission impact of an exemption. District staff analyzed different commodities and determined that PM_{10} emissions would be quite low for smaller farms, less than 1 ton per year. See 71 FR 7683, at 7685 (February 14, 2006). The District also calculated the emissions impact of the size-based exemptions for animal feeding operations. Rule 4550 is expected to apply to 73% of dairy cows, 94% of feedlot cattle, and nearly all poultry operations in the valley. The District also determined that any sites qualifying for the size-based cut-offs would have emissions no greater than 1 ton per year. See 71 FR 7683, at 7685 (February 14, 2006). Such small farms would not be expected to cause or contribute to localized exceedances of the PM_{10} or $PM_{2.5}$ standard.

The District's Regulation VIII ("Fugitive PM_{10} Prohibitions") is intended to reduce ambient concentrations of PM_{10} by requiring actions to prevent, reduce or mitigate anthropogenic fugitive dust emissions from specified outdoor fugitive dust sources. Rule 8011 establishes generally applicable definitions, exemptions, requirements, administrative requirements, recordkeeping requirements, and test methods under Regulation VIII. Rule 8081 ("Agricultural Sources") establishes specific requirements for off-field agricultural sources. EPA approved Regulation VIII, including Rules 8011 and 8081, into the California SIP in 2003 (68 FR 8830, February 26, 2003) and approved Regulation VIII amendments into the California SIP in 2006 (71 FR 8461, February 17, 2006).

District Rule 8081 applies to off-field agricultural sources, which includes any agricultural source that meets the definition of: Outdoor handling, storage and transport of bulk material; paved road; unpaved road; or unpaved vehicle/equipment traffic area. Under Rule 8081, an owner/operator must sufficiently implement at least one of the control measures indicated in the rule to limit visible dust emissions (VDE) to 20% opacity or to stabilize the affected surface consistent with the requirements in Rule 8011. Together, implementation of the fugitive dust control measures required under District Rule 4550 and Rules 8011 and 8081 provide EPA with a reasonable basis to conclude that agricultural operations that escape permitting under paragraph 6.20 of amended District Rule 2020 would not cause or contribute to an exceedance of the PM_{10} or $PM_{2.5}$ standard.

With respect to the regional planning context, we have reviewed the various approved and submitted San Joaquin Valley attainment or maintenance plans cited above, and note that none of these plans rely upon NSR for agricultural sources less than 50 percent of the major source threshold. Further, for attainment planning purposes, growth in emissions from agricultural sources has been established by CARB's area source inventory growth methodologies, and no mitigation of that growth from an offsets requirement has been considered when determining the impact of the growth on the District's ability to achieve attainment with the standards.[11] In contrast, emissions reductions from the prohibitory rules affecting agricultural sources, discussed above, are taken into account in the plan inventory projections. Because the plans do not rely on emission reductions from permitting of agricultural sources less than 50% of the major source threshold and not rely on offsets for new or modified minor agricultural sources, approval of the amended Rules 2020 and 2201 would be consistent with regional planning efforts to attain and maintain the NAAQS.

Ozone. With respect to ozone precursors (VOC AND NO_X), paragraph 6.20 of amended District Rule 2020 would exempt agricultural operations with "actual" emissions (i.e., including fugitive emissions)[12] of less than 5 tons per year based on an applicable major source threshold of 10 tons per year. As such, the scope of the exemption therefore is limited to small-scale agricultural operations and is acceptable so long as the ozone plans for the valley do not count on permitting of such sources. As noted above, the regional plans do not rely on emission reductions from permitting of agricultural sources less than 50% of the major source threshold nor do the plans rely on offsets for new or modified minor agricultural sources.[13]

3. "Extreme" Ozone Area NSR Requirements

The most recent version of the District's NSR rules that EPA has approved into the SIP was adopted by the District on December 19, 2002. Since that time, with respect to major sources and major modifications, there have been two significant regulatory changes affecting the NSR rules in San Joaquin Valley: (1) EPA's approval of the State of California's request to reclassify the San Joaquin Valley to "extreme" for the 1-hour ozone standard, and (2) EPA's promulgation of NSR Reform Rules.

EPA approved the State of California's request to reclassify the San Joaquin Valley to "extreme" for the 1-hour ozone standard in 2004. See 69 FR 20550 (April 16, 2004). In doing so, EPA established a deadline of May 16, 2005 for submittal of revised District NSR rules that reflect the requirements for "extreme" ozone nonattainment areas. For such areas, the relevant NSR requirements include a major source threshold of 10 tons per year of VOC or NO_X [see CAA section 182(e) and 182(f) and 51.165(a)(1)(iv)], the offset ratio is 1.5 to 1 [see CAA section 182(e)(1) and 40 CFR 51.165(a)(9)], and any change at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source

[11] Also see the District's Clean Air Act section 110(l) analysis, entitled "San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201, as amended September 21, 2006, District's Clean Air Act 110(l) Analysis," dated November 20, 2007.

[12] The District's view on the whether CH&SC section 42301.16 (and cited in District Rule 2020, section 6.20) covers fugitive VOC emissions is found in the District's Final Staff Report (page B–13, response to comment #19) on proposed amendments to Rule 2201 and Rule 2530 (dated December 18, 2008): "The District appreciates the opportunity to reiterate that, for the purposes of implementing CH&SC sections 40724.6(c) and 42301.16(c), all emissions, except for fugitive dust, must be included in calculations to determine district permitting requirements based on one-half of the major source thresholds. The statutory language of these sections is consistent, which read separately or in the interrelated nature in which they were intended to be read, and [sic] District's implementation adheres to this statutory language." Thus, fugitive VOC emissions are included in the determination of whether actual emissions from a minor agricultural operation are greater than 50% of the applicable major source threshold which, for VOC, is 10 tons per year, or, in other words, greater than 5 tons per year.

[13] Like fugitive dust and District Rules 4550, 8011, and 8081, emissions of NO_X from certain types of equipment found at agricultural sources, such as boilers and internal combustion engines, are covered by District prohibitory rules regardless of whether a given agricultural source is subject to permitting. Two such rules include District Rules 4308 and 4702. SIP-approved District Rule 4308 ("Boilers, Steam Generators, and Process Heaters") limit NO_X emissions from boilers between 75,000 Btu/hour and 2 million Btu/hour. See 72 FR 29886 (May 30, 2007). SIP-approved District Rule 4702 ("Internal Combustion Engines—Phase 2") limits NO_X, VOC, and carbon monoxide from internal combustion engines with rated brake horsepower greater than 50 horsepower. See 73 FR 1819 (January 10, 2008). Such prohibitory rules further reduce the chance that agricultural sources that would be exempt from permitting under District Rule 2020, paragraph 4.6.9, might interfere with attainment or maintenance of the national standards.

is considered a major modification [see CAA section 182(e)(2) and 40 CFR 51.165(a)(1)(x)(E)]. These NSR SIP requirements will also apply once we approve the State of California's request to reclassify San Joaquin Valley to "extreme" for the 8-hour ozone standard.

As submitted on March 17, 2009, the VOC and NO_X provisions in District Rule 2201 have been amended to include the 10 ton per year threshold (see section 3.23 of amended Rule 2201), the 1.5 to 1 offset ratio (see section 4.8.1 of amended Rule 2201), and the "any increase" threshold for major modifications (see 3.17.1.4 of amended Rule 2201). As such, District Rule 2201 has adequately been amended to reflect "extreme" ozone area requirements under the CAA and 40 CFR 51.165.

4. EPA's NSR Reform Rules

On December 31, 2002 (67 FR 80186), EPA published final rule changes to 40 CFR parts 51 and 52, regarding the CAA's PSD and Nonattainment NSR programs relating to major sources and major modifications. On November 7, 2003 (68 FR 63021), EPA published a notice of final action on the reconsideration of the December 31, 2002 final rule changes. The December 31, 2002, and the November 7, 2003, final actions are collectively referred to as the "2002 NSR Reform Rules." The purpose of this action is to propose to approve the SIP submittal from the State of California that includes rule changes made as a result of EPA's 2002 NSR Reform Rules.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with Plantwide Applicability Limitations (PALs) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are designated clean units; and (5) excluded pollution control projects (PCPs) from the definition of "physical change or change in the method of operation." On November 7, 2003 (68 FR 63021), EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules, which added a definition for "replacement unit" and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see, 67 FR 80186 (December 31, 2002), and *http://www.epa.gov/nsr.*

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia (DC Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York* v. *United States,* 413 F.3d 3 (DC Cir. 2005). In summary, the DC Circuit Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping and the term "reasonable possibility" found in 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from Federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the DC Circuit Court.

With regard to the remanded portions of the 2002 NSR Reform Rules related to recordkeeping, on December 21, 2007, EPA took final action to establish that a "reasonable possibility" applies where source emissions equal or exceed 50 percent of the CAA NSR significant levels for any pollutant (72 FR 72607). The "reasonable possibility" provision identifies for sources and reviewing authorities the circumstances under which a major stationary source undergoing a modification that does not trigger major NSR must keep records.

The 2002 NSR Reform Rules require that states adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. State agencies may meet the requirements of 40 CFR part 51 and the 2002 NSR Reform Rules with different but equivalent regulations.

As submitted on March 17, 2009, District Rule 2201 has been amended to provide for the minimum program elements of the 2002 NSR Reform Rules that remain in the wake of subsequent litigation and EPA rulemaking. The amended rule provides for the minimum program elements by replacing a single definition for "Major Modification" with two definitions, one for "Federal Major Modification" and the other for "SB 288 Major Modification." The former term captures the NSR Reform program elements (and the "any increase" emissions threshold required in "extreme" ozone areas), while the latter retains the pre-Reform approach to determining major modification status. Section 3.17.1 incorporates the new method for determining baseline actual emissions and the actual-to-projected-actual methodology for determining whether a major modification has occurred. Section 3.17.2 incorporates provisions allowing major stationary sources to comply with PALs. Amended District Rule 2201 avoids any issue concerning potential SIP relaxations due to these changes, because, consistent with State law (SB 288), the District retained the pre-reform requirements. The net effect of these changes are that the District will now perform two separate major modification determinations, one to determine if the project will result in a SB 288 Major Modification and the other to determine if it will result in a Federal Major Modification. Under the revised rule, a modification of an existing stationary source would be required at a minimum to meet the NSR SIP requirements that had applied prior to adoption by the District of the 2002 NSR Reforms into Rule 2201, and may have to meet additional NSR requirements if the modification is determined to be a Federal Major Modification.

5. Other Changes to District Rules 2020 and 2201

As described in section III.C of this document, the District has made a number of changes to their NSR Rules (*i.e.,* Rules 2020 and 2201) not directly related to fuel specifications, agricultural sources, "extreme" area requirements, or NSR Reform. These changes include clarification and tightening of an existing exemption for certain types of transfer equipment and equipment used exclusively for the transfer of refined lubricating oil (see paragraph 6.7 of amended Rule 2020); tightening of one of the conditions that qualify a replacement of equipment as "routine replacement" (see paragraph 3.33.1 of amended Rule 2201); clarification of the scope of an existing emission offset exemption for portable equipment (see paragraph 4.6.3 of amended Rule 2201); and provision for a lower offset ratio if and when EPA makes the necessary findings under CAA section 182(e)(1) (see paragraph 4.8.2 of amended Rule 2210). We find these changes to either be neutral or strengthening relative to the existing SIP and consistent with all applicable requirements.

6. Enforceability Considerations

For the reasons given above, we find the amendments to District Rules 2020 and 2201 to be acceptable under applicable NSR regulations; however, SIP rules must also be enforceable [see CAA section 110(a)], and we find two specific deficiencies related to enforceability of Rules 2020 and 2201 that prevent our full approval. These deficiencies arise from the ambiguity introduced by the references in both paragraph 6.20 (of Rule 2020) and paragraph 4.6.9 (of Rule 2201) to State law under circumstances where the State law has not been submitted to EPA for approval into the SIP. Specifically, paragraph 6.20 (of Rule 2020) provides a permitting exemption for: "Agricultural sources, but only to the extent provided by California Health and Safety Code, Section 42301.16." In turn, CH&SC section 42301.16 requires districts to extend permitting requirements to all agricultural sources that are "major" under the CAA and to all "minor" agricultural sources with actual emissions one-half of the applicable major source emissions thresholds (or greater) for any air contaminant, but excluding fugitive dust. However, subsection (b) of CH&SC section 42301.16 provides a means through which a district can extend the exemption from "one-half of any applicable emissions threshold" to the "major source" threshold if certain findings are made in a public hearing.

Because CH&SC section 42301.16 is not included in the California SIP, nor has California submitted the section to EPA for approval, the SIP would be ambiguous as to the extent of the agricultural source permitting exemption if EPA were to approve submitted District Rule 2020 into the SIP. Effective enforcement of the permitting requirements would rely on judicial notice of the statutory provision cited in the rule, and such judicial notice may or may not be forthcoming. There is no need to rely on judicial notice when the District can eliminate the ambiguity by clearly stating the exemption for agricultural sources in District Rule 2020 or by submitting CH&SC section 42301.16 to EPA for approval into the SIP. Moreover, even if we could assume that judicial notice of the statutory provision would be taken, CH&SC section 42301.16 by its terms allows for a relaxation of the one-half of major source permitting threshold for agricultural sources, and such relaxations should be reviewed by EPA under section 110 for approval as a SIP revision. Therefore, we are proposing a limited approval and limited disapproval of submitted Rule 2020.

Paragraph 4.6.9 of submitted Rule 2201 contains a similarly-ambiguous reference to State law in listing emission offset exemptions: "Agricultural sources, to the extent provided by California Health and Safety Code, section 42301.18(c), except that nothing in this section shall circumvent the requirements of section 42301(a)." CH&SC section 42301.18(c) states: "A district may not require an agricultural source to obtain emissions offsets for criteria pollutants for that source if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions." Our understanding is that the District has no plans to require emissions offsets for new or modified agricultural sources unless such new or modified source is a "Major Source" or a "Federal Major Modification" as defined in another section of Rule 2201. Once again, there is no need for ambiguity in the applicability of the emissions offset exemption, and therefore, EPA is proposing a limited approval and limited disapproval of submitted Rule 2201.

7. Federally Enforceable Restriction on Potential To Emit

District Rule 2530 establishes limits to restrict the PTE of a stationary source so that the source may be exempt from the District's rule implementing Title V operating permit requirements. The emission limits in section 6.1 of District Rule 2530 are intended to represent 50% of the applicable major source threshold.[14] With the change in the valley's ozone classification to "extreme" for the 1-hour ozone standard, and the corresponding lowering of the applicable major source threshold from 25 tons per year to 10 tons per year, it follows that the District has amended Rule 2530 to change the corresponding emission limit in section 6.1 to 5 tons per year of VOC or NO_X, to maintain the emission limit at 50% of the applicable major source threshold. Other emissions thresholds in District Rule 2530, such as those for exemptions from recordkeeping and reporting (20% of applicable major source threshold) and from reporting (25% of applicable major source threshold) have also been reduced accordingly.

Certain alternative operational limits in section 6.2 of the rule, which were intended to allow sources using these types of limits to go up to 80% of the major source threshold (in actual emissions), were changed accordingly but certain other limits in section 6.2 were left unchanged or were changed by a lesser proportion. The District explained how the values that were not revised downwards in proportion to the drop in the major source threshold met the underlying purpose of the provision allowing alternative operational limits, *i.e.,* allowing certain types of sources to go up to 80% of the major source threshold (in actual emissions). For instance, the alternative operational limit of 7,000,000 gallons per year of gasoline dispensed at gasoline dispensing facilities with phase I and II vapor recovery systems, as set forth in paragraph 6.2.1 of Rule 2530, was left unchanged because it still is well below the 80% (of 10 tons per year) threshold for underground storage tanks (16.9 million gallons per year) and for above ground storage tanks (12.2 million gallons per year). See District memorandum on Rule 2530 (dated December 18, 2009), which we have placed in the docket.

Therefore, we find the changes to District Rule 2530 to be acceptable, and we propose to approve amended District Rule 2530, as submitted on March 17, 2009, as a revision to the California SIP.

8. CAA Section 110(l)

The only remaining issue is whether this SIP revision would interfere with requirements concerning attainment and reasonable further progress (or any other applicable CAA requirement) as set forth in CAA section 110(l). CAA section 110(l) provides: "Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title) or any other applicable requirement of this chapter." 42 U.S.C. 7410(l).

For the purposes of CAA section 110(l), we take into account the overall effect of the revisions included in this action. Given the wide application of the lower major source thresholds to all

[14] The approach in District Rule 2530 of establishing emission limits and alternative operational limits that are intended to represent percentages of the applicable major source threshold (50% for emission limits and 80% for alternative operational limits), as a mechanism to allow sources to avoid title V permitting requirements, is consistent with EPA guidance on this subject as set forth in a memorandum dated January 25, 1995 from John S. Seitz, Director, Office of Air Quality Planning and Standards, titled, "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under Section 112 and Title V of the Clean Air Act (Act)."

types of new or modified stationary sources of VOC and NO_X and the limited extent of the exemptions from permitting and offsets for certain types of agricultural sources, we find that the overall effect of the revisions would strengthen the SIP, notwithstanding deficiencies identified above in enforceability. Moreover, we do not anticipate localized exceedances of the PM_{10} or $PM_{2.5}$ standards, due to the permitting exemption for certain agricultural sources, given the application of non-permitting requirements in the SIP. Lastly, we note that the revisions are consistent with the assumptions of the various air quality plans developed for the valley.

Accordingly, we conclude that the revisions to Rules 2020, 2201, and 2530, if approved, would not interfere with any applicable requirements for attainment and reasonable further progress or any other applicable requirement of the CAA and are approvable under section 110(l).

9. Conclusion and Proposed Action on Submitted Rules

For the reasons given above, under CAA section 110(k)(2) and 301(a), we are proposing a limited approval and limited disapproval of amended Rules 2020 and 2201 because, although they would strengthen the SIP and meet all but one of the applicable requirements for SIPs in general and NSR SIPs in particular, they contain certain deficiencies related to enforceability that prevent our full approval. The deficiency in Rule 2020 can be remedied by the District by revision of Rule 2020 by replacing the statutory reference to CH&SC section 42301.16 in paragraph 6.20 with a clear description of the sources covered by the exemption. The deficiency in Rule 2201 can be remedied by either submittal of the statutory provisions cited in paragraph 4.6.9 or by replacement of the references with a clear description of the applicability of the offset requirement to agricultural sources. For amended Rule 2530, we are proposing a full approval because we find that it has been appropriately modified to reflect the decrease in the major source threshold for VOC and NO_X consistent with the area's "extreme" classification for the 1-hour ozone standard.

V. Deletion of Obsolete Conditions on SIP Approvals

In the 1980s, EPA placed conditions, including conditions related to NSR, on approvals of certain California nonattainment plans. As to certain San Joaquin Valley plans, EPA approved the plans on the condition that the State of California submit revised NSR rules for the individual county-based Air Pollution Control Districts (APCDs), then having jurisdiction in San Joaquin Valley, as revisions to the California SIP. These NSR-related conditions are identified in table 3, below, by applicable county, EPA action, and CFR citation.

On September 23, 1999, in an action proposing approval of previous versions of District Rules 2020 and 2201 (later superceded by a proposed rule published on September 28, 2000), we proposed to remove these conditions. See 64 FR 51493, at 51494 (September 23, 1999). Specifically, we proposed to delete the conditions set forth in 40 CFR 52.232(a)(5)(i)(A), (a)(6)(i)(A), (a)(10)(i)(A), and (a)(11)(i)(A).

In our September 1999 proposed rule, we noted that the conditions required the prior county-based APCDs (now combined to form the San Joaquin Valley Unified Air Pollution Control District) [15] to submit regulations consistent with EPA regulations that were current at the time the conditions were established in 1981, 1982, and 1985. We also noted that the conditions are moot today because the District has submitted revised NSR rules (i.e., Rules 2020 and 2201) that comply with EPA's current regulations and the Clean Air Act, as amended in 1990. However, we did not include the removal of these obsolete NSR-related conditions in the subsequent final rule on May 17, 2004 (69 FR 27837) fully approving the District's NSR rules, i.e., District Rules 2020 and 2201.

TABLE 3—OBSOLETE CONDITIONS PROPOSED FOR DELETION

County	Conditional approval Federal Register citation	Regulatory citation
Kern County [a]	46 FR 42450 (August 21, 1981)	40 CFR 52.232(a)(5)(i)(A).
San Joaquin County	47 FR 19694 (May 7, 1982), amended at 50 FR 7591 (February 25, 1985).	40 CFR 52.232(a)(6)(i)(A).
Kings, Madera, Merced, Stanislaus, and Tulare Counties.	47 FR 19694 (May 7, 1982)	40 CFR 52.232(a)(10)(i)(A).
Fresno County	47 FR 28617 (July 1, 1982)	40 CFR 52.232(a)(11)(i)(A).

[a] In today's document, we are proposing to remove the Kern County condition for carbon monoxide and ozone only.

In today's document, we are addressing the same provisions in 40 CFR 52.232 as our 1999 proposed rule, but we are not proposing exactly the same action as before. Today, we recognize that the condition in 40 CFR 52.232(a)(5)(i)(A) is obsolete as to carbon monoxide and ozone in light of the approval of District NSR rules in 2004 (69 FR 27837, May 17, 2004), the change in the boundary for the 1-hour ozone nonattainment boundary for San Joaquin Valley (66 FR 56476, November 8, 2001), and the redesignation of the East Kern County 1-hour ozone nonattainment area to attainment (69 FR 21731, April 22, 2004). However, as to particulate matter, we find the condition to be unfulfilled because the Kern County APCD retains jurisdiction over a small portion of the San Joaquin Valley planning area, the portion of the San Joaquin Valley planning area over which Kern County APCD retains jurisdiction remains nonattainment for PM_{10} (see 73 FR 66759, November 12, 2008), and because we have yet to approve a revision to Kern County APCD NSR rules that meet the condition in 40 CFR 52.232(a)(5)(i)(A). Therefore, we propose to amend 40 CFR 52.232(a)(5)(i) to remove the references to carbon monoxide and ozone only. We will retain the condition as to particulate matter until we approve the Kern County APCD's nonattainment NSR rules for the East Kern County PM_{10} nonattainment area or until we approve a redesignation request for the East Kern PM_{10} area to "attainment."

We are also proposing to remove the conditions set forth in 40 CFR 52.232(a)(6)(i)(A), (a)(10)(i)(A), and (a)(11)(i)(A) as obsolete in light of the approval of District NSR rules in 2004

[15] Kern County APCD, one of the original county-based APCDs covering San Joaquin Valley, was not entirely consolidated into the current unified District, but its jurisdiction is no longer county-wide, and is limited to the eastern portion of the county.

(69 FR 27837, May 17, 2004).[16] Unlike Kern County, the counties subject to the conditions in 40 CFR 52.232(a)(6), (10), and (11) (i.e., San Joaquin, Kings, Madera, Merced, Stanislaus, Tulare, and Fresno) all lie entirely within District jurisdiction. If we finalize this aspect of this action as proposed, we will be removing and reserving 40 CFR 52.232(a)(6), (a)(10), and (a)(11) because the conditions proposed for removal are the last conditions on approval that remain.

VI. Proposed Action and Opportunity for Public Comment

For the reasons set forth above, we are proposing to correct a previous approval of San Joaquin Valley District NSR rules, Rule 2020 ("Exemptions") and Rule 2210 ("New and Modified Stationary Source Review Rule"), to approve amended District Rule 2530 ("Federally Enforceable Potential to Emit"), and to take a limited approval and limited approval action for amended District NSR Rules 2020 and 2201.

More specifically, we are proposing to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan under section 110(k)(6) of the Clean Air Act. We do so because, by virtue of information submitted by California to us in November 2003, we should have limited our approval consistent with the legal authority provided in State law to air districts to permit, and require offsets for, new or modified agricultural sources. To correct our error, we are proposing language to be added as a new section, 52.245, of 40 CFR part 52.

Under CAA sections 110(k)(2) and 301(a), we are proposing a limited approval and limited disapproval of amended District Rules 2020 and 2201, as submitted on March 7, 2008 and March 17, 2009, respectively. The amended District Rules 2020 and 2201 would establish an exemption from permitting, and from offsets, for certain minor agricultural operations, would establish applicability thresholds (for major sources and major modifications) and offset thresholds consistent with a classification of "extreme" for the ozone standard, and would implement NSR Reform. We are proposing a limited approval and limited disapproval, because, although the amended rules meet most of the applicable requirements and strengthen the SIP, they contain unacceptably ambiguous references to statutory provisions.

With respect to amended District Rule 2530, as submitted on March 17, 2009, we are proposing full approval because we find that it has been appropriately modified to reflect the decrease in the major source threshold for VOC and NO_X consistent with an "extreme" classification.

Lastly, EPA is proposing to rescind conditions placed on 1980s era approvals by EPA on various nonattainment plans submitted by California for the San Joaquin Valley that have become obsolete by EPA approval of subsequent revisions to the District's NSR rules. Therefore, we propose to amend 40 CFR 52.232(a)(5)(i) to remove the references to carbon monoxide and ozone and to remove and reserve 40 CFR 52.232(a)(6), (a)(10), and (a)(11).

If EPA were to finalize the limited approval and limited disapproval action, as proposed, then a sanctions clock, and EPA's obligation to promulgate a Federal implementation plan, would be triggered because the revisions to the District rules for which a limited approval and limited disapproval is proposed are required under anti-backsliding principles established for the transition from the 1-hour to the 8-hour ozone standard.

We will accept comments from the public on this proposal for the next 30 days.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132

[16] The condition established in 40 CFR 52.232(a)(11) also relates to Ventura County, but removal of the condition is proper as to Ventura County in light of EPA's subsequent approval of the Ventura County nonattainment NSR rules at 68 FR 9561 (February 28, 2003).

requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it proposes to approve a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

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

Accordingly, 40 CFR part 52 is proposed to be amended as follows:

PART 52—[AMENDED]

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

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

2. Section 52.245 is added to read as follows:

§ 52.245 New source review rules.

(a) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved May 17, 2004, is limited, as it relates to agricultural sources, to apply the permit requirement only:

(1) To agricultural sources with potential emissions at or above a major source applicability threshold; and

(2) To agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold.

(b) The offset requirement, as it relates to agricultural sources, does not apply to new minor agricultural sources and minor modifications to agricultural sources.

Dated: January 21, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–1838 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0198; FRL–9102–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on January 16, 2009 and May 4, 2009. The revisions are to the Administrative Rules of Montana. Revisions include minor editorial and grammatical changes, updates to the citations and references to Federal and State laws and regulations, and a clarification of agricultural activities exempt from control of emissions of airborne particulate matter. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before March 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0198, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail: dolan.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency

(EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.

• *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: January 5, 2010.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2010–1746 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0122; FRL–9107–7]

Withdrawal of Proposed Rule Revising the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On February 20, 2008 (73 FR 9260), EPA published a rule proposing to correct EPA's May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District portion of the California State Implementation Plan (SIP) and to approve revisions to certain District rules. EPA's proposed correction, and proposed approval of District rules submitted in December 2006, would conform the SIP to a State law generally known as Senate Bill 700 by explicitly exempting certain minor agricultural sources from new source review permitting requirements and by limiting the applicability of offset requirements for all minor agricultural sources consistent with criteria identified in state law. EPA is withdrawing this previously published proposed rule, and in this **Federal Register,** EPA is publishing a proposed rule that replaces the February 20, 2008 proposed rule.

DATES: The proposed rule published on February 20, 2008 (73 FR 9260) is withdrawn as of January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, Permits Office (AIR–3), U.S. Environmental Protection Agency, Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

On February 20, 2008 (73 FR 9260), EPA proposed to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air Pollution Control District ("District") portion of the California State Implementation Plan ("SIP"). EPA also proposed to approve revisions to two District rules submitted to EPA by the California Air Resources Board (CARB) on December 29, 2006. The subject rules included District Rule 2020 and District Rule 2201 (paragraph 4.6.9 only). The proposed correction and proposed approval that were the subject of our February 20, 2008 proposed rule relate to review and permitting of new or modified stationary sources ("NSR") specifically in connection with agricultural sources. EPA received substantive comments on the February 2008 proposed rule, and, since publication of the February 2008 proposed rule, the District has adopted revisions to Rules 2020 and 2201, and CARB has submitted the amended rules in their entirety to EPA as revisions to the California SIP. In light of the comments on our February 2008 proposed rule, and the more recent submittals of District Rules 2020 and 2201, we have decided to withdraw the rule proposed on February 20, 2008, and in this **Federal Register,** EPA is publishing a new proposed rule. The rule being proposed in this **Federal Register** replaces the following rule published on February 20, 2008:

Title: Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (Proposed rule, 73 FR 9260, EPA–R09–OAR–2007–0122).

List of Subjects in 40 CFR Part 52

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

Dated: January 21, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–1840 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–RCRA–2008–0123; FRL–9108–1]

RIN 2050–AG42

Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: On November 14, 2006, Veolia ES Technical Solutions, LLC, (Veolia) submitted a rulemaking petition to the U.S. Environmental Protection Agency (EPA) requesting to import up to 20,000 tons of polychlorinated biphenyl (PCB) waste from Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. Based on the information available at that time, EPA proposed to grant Veolia's request in the proposed rule, Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, LLC.

Since that time, Veolia submitted a request to withdraw its petition from the rulemaking process. Due to this request, EPA is withdrawing this proposed rule.

DATES: The proposed rule is withdrawn as of January 29, 2010.

FOR FURTHER INFORMATION CONTACT: William Noggle, Office of Resource Conservation and Recovery, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8769; e-mail address: *noggle.william@epa.gov.* Mail inquiries may be directed to the Office of Resource Conservation and Recovery (ORCR), (5304W), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, and distribution in commerce of polychlorinated biphenyls (PCBs). Under TSCA section 3(7), "manufacture" is defined to include import into the Customs Territory of the United States. However, TSCA section 6(e)(3)(B) gives EPA the authority to grant petitions to perform these activities for a period of up to 12 months, provided EPA can make certain findings by rule. To issue such a rule, EPA must issue a proposed rule and provide the public an opportunity for an informal public hearing, if requested.

On November 14, 2006, Veolia submitted a rulemaking petition to EPA requesting to import up to 20,000 tons of PCB waste from various locations in Mexico for disposal at Veolia's TSCA-approved facility in Port Arthur, Texas. Based on the information available at that time, EPA proposed to grant Veolia's request in the proposed rule, Polychlorinated Biphenyls: Manufacturing (Import) Exemption for Veolia ES Technical Solutions, LLC, which was published in the **Federal Register** on March 6, 2008 (73 FR 12053). In addition to receiving written public comment, EPA held a public hearing on June 19, 2008, in Port Arthur, Texas, to receive additional written and oral comments and presentations regarding the proposed rule.

The details of the procedure for participating in the hearing pursuant to 40 CFR 750.18–750.21 are documented in the **Federal Register** notice for the hearing (73 FR 28786, May 19, 2008). In addition to all of the pre-registered speakers, EPA permitted any hearing attendee to state his or her comments and/or to make a presentation, if desired. EPA posted all the hearing presentations and the verbatim transcript of the hearing to the rulemaking docket. EPA also conducted post-hearing proceedings herein referred to as the "question and answer" process. The "question and answer" process was designed to allow the public to question the factual nature of material presented at the hearing. The process also granted the public two more opportunities to submit comments and/or questions to all hearing participants, including EPA. All the documents for the "question and answer" process are in the docket. These post-hearing proceedings were completed on October 18, 2009.

Subsequently, on November 17, 2009, Veolia submitted a request to withdraw its petition from the rulemaking process (docket entry EPA–HQ–RCRA–2008–0123–86). Due to this request, EPA is withdrawing this proposed rule. Withdrawing the proposed rule is the Agency's final action on this rulemaking. EPA will not issue a final rule on the proposal and will not respond further to comments that were filed for this rulemaking.

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: January 22, 2010.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2010–1943 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04–296; FCC 10–11]

Review of the Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission adopted a document seeking comment on its proposal to amend the Commission's rules governing the Emergency Alert System (EAS) rules to provide for national EAS testing and collection of data from such tests. The purpose of this testing and data collection is to determine whether the EAS will function as required should the President issue a national alert.

DATES: Comments are due on or before March 1, 2010 and reply comments are due on or before March 30, 2010.

ADDRESSES: You may submit comments, identified by EB Docket No. 04–296 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, at (202) 418–7452, or by e-mail at *Lisa.Fowlkes@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judy Boley Hermann at (202) 418–0214 or send an e-mail to *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communication Commission's Second Further Notice of Proposed Rulemaking (*Second FNPRM*) in EB Docket No. 04–296, FCC 10–11, adopted on January 12, 2010, and released on January 14, 2010. This document is available to the public at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-11A1.doc.*

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163 (1995). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in

this document, as required by the PRA. Public and agency comments on the PRA proposed information collection requirements are due March 30, 2010. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–0207.

Title: Emergency Alert System Information Collection.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Governments; Non-profit entities.

Number of Respondents: 3,569,028.

Estimated Time per Response: .034—20 hours.

Frequency of Response: Recordkeeping requirements; reporting requirements; third party disclosure requirement.

Obligation to Respond: Mandatory.

Total Annual Burden: 82,008 hours.

Total Annual Cost: $3,086,044.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality required for this information collection.

Needs and Uses: In the *Second FNPRM* in EB Docket No. 04–296, FCC 09–10, the Commission proposed a new rule obligating entities required to participate in EAS (EAS Participants) to gather and submit information on the operation of their EAS equipment during a national test of the EAS. Specifically, the Commission proposed requiring that EAS Participants record and submit to the Commission the following test-related diagnostic information: (1) Whether they received the alert message during the designated test; (2) whether they retransmitted the alert; and (3) if they were not able to receive and/or transmit the alert, their 'best effort' diagnostic analysis regarding the cause or causes for such failure. The Commission anticipates asking EAS Participants to provide it with the date/time of receipt of the EAN message by all stations; and the date/time of receipt of the EAT message by all stations. The gathering of all of the foregoing information is covered by an existing OMB authorized information collection. (OMB Control Number 3060–0207, expiration date 8/31/11). However, EAS participants are presently only required to log the foregoing information. The Commission's new rule requires EAS Participants to send this information to its Public Safety and Homeland Security Bureau. The Commission seeks authorization for this change. In addition, the Commission also anticipates asking EAS Participants to provide it with a description of their station identification and level of designation (PEP, LP–1, etc.); who they were monitoring at the time of the test, and the make and model number of the EAS equipment that they utilized. OMB has not yet authorized the collection of this information.

Synopsis of the Second FNPRM

1. In this *Second Further Notice of Proposed Rulemaking,* the Commission proposes to amend its Part 11 rules governing the Emergency Alert System (EAS) to provide for national testing of the EAS and collection of data from such tests.

2. The EAS is a national alert and warning system that exists primarily to enable the President of the United States to issue warnings to the American public during emergencies. To date, however, neither the EAS nor its predecessor national alerting systems have been used to deliver a national Presidential alert. Moreover, while the Commission's Part 11 rules provide for periodic testing of EAS at the state and local level, no systematic national test of the EAS has ever been conducted to determine whether the system would in fact function as required should the President issue a national alert, and, in their current form, the Commission's EAS rules do not mandate any such test.

3. In the *Second Report and Order* in this docket, the Commission noted that it is vital that the EAS operate as designed. In the *Further Notice of Proposed Rulemaking* adopted concurrently with the *Second Report and Order* the Commission sought comment on various issues relating to maintaining the quality of the EAS, including additional testing. Finally, in the Chairman's recent 30-Day Review on FCC Preparedness for Major Public Emergencies, the Public Safety and Homeland Security Bureau noted that concerns had been raised regarding the frequency and scope of EAS testing. The Bureau recommended that the three Federal partners responsible for EAS—the Commission, the Federal Emergency Management Agency (FEMA) and the National Weather Service (NWS), review the testing regime to see where improvement could be made.

4. Since the 30-Day Review was conducted, the Commission, FEMA, and NWS, along with the Executive Office of the President (EOP), have initiated discussions regarding testing of the EAS at the national level. The Commission and its Federal partners agree that it is vital that the EAS work as designed and we share concerns that existing testing may be insufficient to ensure its effective operation. In light of this, as described below, the Commission, FEMA, NWS and EOP have begun planning for a national EAS test, with subsequent tests to occur thereafter. To facilitate this test program, in this *Second Further Notice of Proposed Rulemaking,* the Commission proposes to amend its EAS rules to specifically provide for national EAS testing and data collection. The Commission seeks comment on all issues discussed herein, including whether its proposed rule would effectively ensure accurate EAS testing at the national level.

I. Background

5. The EAS is a national public warning system that provides the President with the ability to rapidly and comprehensively communicate with the American public during a national crisis. The EAS is the successor to two prior national warning systems: CONELRAD (Control of Electromagnetic Radiation), established in 1951, and the Emergency Broadcast System (EBS), established in 1963.

6. The Commission, in conjunction with FEMA and NWS, implements EAS at the federal level. The respective roles these agencies play are defined by a 1981 Memorandum of Understanding between FEMA, NWS, and the Commission; a 1984 Executive Order; a 1995 Presidential Statement of EAS Requirements; and a 2006 Public Alert and Warning System Executive Order. As a general matter, the Commission, FEMA, and NWS all work closely with radio and television broadcasters, cable providers, and other participants in EAS (EAS Participants) as well as with state, local, and tribal governments, to ensure the integrity and utility of EAS.

7. The Commission's EAS regulations are set forth in Part 11 of the rules, which imposes requirements governing mandatory participation in the national EAS by all EAS Participants. Part 11

rules also govern EAS participation at the state and local level, although currently state and local EAS participation is voluntary. State Emergency Coordination Committees (SECCs) and Local Emergency Coordination Committees (LECCs) undertake the development of operational plans and procedures for implementing state and local EAS activations. These organizations prepare coordinated emergency communications plans utilizing the EAS (which may be combined with other emergency information distribution plans and methodologies). State and local EAS plans must comply with Part 11 requirements and are submitted to the Commission for review.

8. Functionally considered, the present-day EAS is a hierarchical alert message distribution system. Initiating an EAS message, whether at the national, state, or local level, requires the message initiator (*e.g.,* FEMA, which initiates EAS alerts at the national level on behalf of the President) to deliver specially-encoded messages to a broadcast station-based transmission network that, in turn, delivers the messages to individual broadcasters, cable operators, and other EAS Participants who maintain special encoding and decoding equipment that can receive the message for retransmission to other EAS Participants and to end users (broadcast listeners and cable and other service subscribers). Sections 11.32 and 11.33 of the Commission's rules set forth minimum requirements for these EAS encoders and decoders, respectively, the functions of which can be combined into a single unit that is commonly referred to as an Encoder/Decoder.

9. The national EAS delivery/transmission system is commonly referred to as a "daisy chain." At its initial level, it consists of various FEMA-designated radio broadcast stations—known as Primary Entry Point (PEP) stations—which are tasked with receiving and transmitting "Presidential Level" messages initiated by FEMA. As the entry point for national level EAS messages, these PEP stations are designated "National Primary" (NP). At the next level (*i.e.,* below the PEP stations), designated "State Primary" stations monitor specifically-designated PEP stations and re-transmit the Presidential-level alert, as well as state-level EAS messages originating from the Governor or a State Emergency Operations Center (EOC). At the level below the State Primary stations, Local Primary stations monitor the State Primary and PEP stations and are monitored, in turn, by all other EAS Participants (radio and television broadcasters, cable TV service providers, *etc.*). At present, the United States is divided into approximately 550 EAS local areas, each of which contains at least two Local Primary stations, designated "Local Primary One" (LP1), "Local Primary Two" (LP2), and so on. The LP stations must monitor at least two EAS sources for Presidential messages (including State Primary stations and in some cases a regional PEP station), and also can serve as the point of contact for state and local authorities and NWS to activate the EAS for localized events such as severe weather alerts. All other EAS Participants are designated Participating National (PN) stations and must monitor at least two EAS sources, including an LP1 and an LP2 station as specified in the state's EAS plan.

10. The White House, through FEMA, initiates a presidential-level EAS alert by transmission of a coded message sequence, which includes an Emergency Action Notification (EAN) event code. Immediately upon receipt of an EAN message, EAS Participants must begin monitoring two EAS sources, discontinue normal programming, follow the transmission procedures in the appropriate section of the EAS Operating Handbook, and undertake various other requirements, until receipt of an Emergency Action Termination (EAT) message. Essentially, receipt of an EAN is designed to "seize" broadcast transmission equipment for the transmission of a presidential message. The equipment is not freed for resumption of regular broadcasting until the EAT is received.

11. State and local emergency operations managers also can request activation of the EAS by utilizing state-designated EAS entry points, such as the State Primary stations or State Relay stations. State Relay sources relay state-common emergency messages to local areas. Local Primary sources are responsible for coordinating the carriage of common emergency messages from sources such as the NWS or local emergency management offices as specified in EAS local area plans. State transmission systems vary from state to state, but can include "daisy chain" links between broadcast and other terrestrial communications facilities as well as satellite-based facilities.

12. As noted above, although the EAS (and its EBS and CONELRAD predecessor warning systems) were designed primarily to carry a national warning issued by the President, no such warning has ever been issued. In fact, the great majority of EAS alerts issued to date have been localized weather-related alerts originated by the NWS.

II. Discussion

A. Present EAS Vulnerabilities

13. Because of its daisy chain structure, the EAS is potentially vulnerable to "single point of failure" problems, *i.e.,* where failure of a participating station results in system-wide failure for all points below that station on the daisy chain. The Commission was made aware of one such failure during an inadvertent issuance of a national alert during a testing operation conducted by FEMA. In June 2007, FEMA was testing a new satellite warning system in Illinois and FEMA contractors inadvertently triggered a national-level EAS alert. This event caused some confusion to broadcasters and other communications in the Ohio valley and beyond before the test/alert was terminated by a combination of EAS Participant intervention and equipment failure. It was subsequently discovered that some EAS Participant equipment simply did not pass on the alert. The Commission has also received numerous anecdotal reports from EAS Participants and state and local emergency managers of problems with state and local level alert delivery architectures, as well as reports indicating problems with PEP station readiness as tested by FEMA.

14. As noted above, the EAS is administered and tested by multiple agencies at multiple levels of its operations, and this too may lead to vulnerabilities in functioning or gaps in nationwide coverage. For example, EAS PEP station operation and maintenance is the responsibility of FEMA, which tests the PEP stations but typically does not test other stations. The NWS tests its own National Weather Radio (NWR) facilities independently or as integrated with state and local level emergency alert delivery architectures, but again, its focus is solely on the proper operation of NWS/NWR facilities as those facilities interact with state and local EAS architectures. State EOC facilities are maintained and tested by their respective state officials. Thus, none of these entities have been responsible for "top-to-bottom" national testing of EAS.

15. Finally the Commission notes that the Government Accountability Office has recently testified before Congress on "long-standing weaknesses" that limit the reliability of the national-level EAS relay system. GAO specifically cited lack of redundancy, gaps in coverage, a lack of testing and training, and limitations on how alerts are

disseminated to the public. This too heightens our concern regarding potential EAS vulnerabilities.

B. Limitations of the Commission's EAS Testing Rules

16. Currently, the Commission's Part 11 rules provide for mandatory weekly and monthly tests at the state and local level. The rules also provide for "[p]eriodic [n]ational [t]ests" and "special tests." at the state or local level. *See* 47 CFR 11.61(a)(3) and (4). Section 11.61(a) further states that in addition to the EAS testing at regular intervals prescribed by the rules "additional tests may be performed anytime." However, Part 11 does not contain comparable rules for testing of EAS at the national level.

17. While the current rules give the Commission broad authority over EAS testing, the rules generally focus on testing of components of the system rather than the system as a whole. Sections 11.61(a)(1) and (a)(2) specify in detail the requirements for mandatory weekly and monthly EAS tests that are conducted at the state and local level. However, these tests are designed to ascertain whether the EAS equipment belonging to individual EAS Participants is functioning properly; they do not test whether the national EAS infrastructure as a whole works well or at all. Similarly, while the rules authorize "additional tests" and "special tests," these typically are carried out at the state or local level, and are usually designed to test for readiness during specific warning situations, for example, child abduction cases covered by so-called Amber Alerts.

18. The current Part 11 rules also require EAS participants to record data from EAS tests, but the data collected is limited in scope. Specifically, the rules require EAS Participants to log the dates/times that EAN and EAT messages are received, and to determine and log the cause of any failures in the reception of the required monthly and weekly tests. However, this data is not sufficient to provide an assessment of whether the EAS is capable of functioning nationally.

19. Section 11.61(a)(3) of the rules is entitled "Periodic National Tests," indicating that national EAS testing was at least contemplated when the rules were adopted. This rule, however, merely states that NP/PEP stations shall participate in such tests "as appropriate," but does not elaborate upon who would conduct such tests, how they would be conducted, or how often. In any case, as noted above, no national test has ever been conducted, under this provision or otherwise.

C. Next Generation EAS Concerns

20. The 2006 Presidential Executive Order requires provision of "as many communications pathways as practicable" to reach the American people during crises. In this regard, the development of additional "next generation" alert distribution systems is already under way. FEMA is presently working to upgrade the existing EAS through its Integrated Public Alert and Warnings System (IPAWS), envisioned as a network of alert systems utilizing common or complementary delivery architectures. FEMA envisions IPAWS as supporting both the current EAS architecture and so-called "Next Generation" EAS.

21. The Commission is also involved in the transition to Next Generation EAS, which will utilize state-of-the-art technologies and Common Alerting Protocol (CAP) to increase the amount and quality of alert and other emergency information delivered to the public. CAP is a standard alert message format that specifies data fields to facilitate data sharing across different distribution systems. In its May 2007 EAS *Second Report and Order,* the Commission adopted a requirement that all EAS Participants be able to accept CAP-formatted EAS messages no later than 180 days after FEMA publicly adopts a CAP standard. This requirement applies to EAS Participants regardless of whether they are utilizing existing EAS or Next Generation EAS. The *Second Report and Order* also required EAS Participants to adopt Next Generation EAS delivery systems no later than 180 days after FEMA publicly releases standards for those systems.

22. While significant efforts are being made to transition to Next Generation EAS, testing of the existing EAS remains important because it is likely that the existing EAS will continue to function as a critical alerting system for the foreseeable future. Moreover, while we expect that FEMA's adoption of CAP as part of IPAWS will spur the development of Next Generation EAS, there is at yet no established timetable for the development of next generation systems that will completely replace the existing EAS architecture, either at the federal or the state and local levels. Thus, we expect that FEMA will rely on the existing EAS daisy chain structure for at least the initial stages of IPAWS development and implementation. The various states and localities also appear to be at different stages in their ability to adopt and utilize CAP-based EAS architecture. As a result, our ability to systematically test the existing EAS architecture is important to support Next Generation EAS—at least in its initial stages of deployment—as well as to ensure the continued effectiveness of the current EAS.

D. Multi-Agency Planning for a National EAS Test

23. As noted above, concerns regarding the frequency and scope EAS testing raised in our recent 30-day review of emergency preparedness have led the Commission and its Federal partners to begin planning a program for annual EAS testing at the national level. Specifically, the Commission, FEMA, NWS, and EOP have formed a working group that is planning an initial national test of the Presidential-level EAS. As planned, this test will involve nationwide transmission of the EAN and associated messages and codes within the EAS. The purpose of the test is to assess for the first time the readiness and effectiveness of the EAS from top-to-bottom, *i.e.,* from origination of an alert by the President and transmission through the entire EAS daisy chain, to reception by the American public. Following the conduct and evaluation of the initial national test, it is contemplated that the Commission and its Federal partners will continue to test EAS nationally.

E. Proposed Rule

24. Given the potential vulnerabilities of EAS in the absence of national testing, the above-described multi-agency initiative to begin a national test program, and the lack of specific provisions in our Part 11 rules relating to national tests, the Commission proposes to amend its Part 11 rules to expressly require all EAS Participants to participate in national testing and to provide test results to the Commission. Specifically, it proposes to amend section 11.61(a)(3) of our rules to read as follows:

National Tests. All EAS Participants shall participate in national tests as scheduled by the Commission in consultation with the Federal Emergency Management Agency (FEMA). Such tests will consist of the delivery by FEMA to PEP/NP stations of a coded EAS message, including EAS header codes, Attention Signal, Test Script, and EOM code. The coded message shall utilize EAS test codes as designated by the Commission's rules or such other EAS codes as the agencies conducting the test deem appropriate. A national test shall replace the required monthly test for all EAS Participants in the month in which it occurs. Notice shall be provided to EAS Participants by the Commission at least two months prior to the conduct of any such national test. Test results as required by the Commission shall be logged by all EAS Participants and shall be provided to the Commission's Public

Safety and Homeland Security Bureau within thirty (30) days following the test.

25. The Commission seeks comment on the specific language of its proposed rule and its sufficiency to ensure an adequate framework for the conduct of national tests implemented by this agency in collaboration with FEMA and our other Federal partners. It also seeks comment on whether the specific rule that we propose is, on balance, the best way to implement national testing of the EAS, or whether different provisions should be adopted.

26. The Commission also proposes implementing the national test on a yearly basis. It seeks specific comment on this proposal. The Commission believes that regular testing of the EAS is necessary to ensure that it can function properly during emergencies. The Commission also believe that testing the EAS nationally at least once a year may be necessary to produce reliable results regarding the on-going operational readiness of the EAS. On the other hand, the Commission does not propose to require national testing more frequently than once a year, because it is concerned that more frequent testing could cause unnecessary disruption of regular broadcasting and other service transmission to the public. The Commission also wishes to minimize attendant costs. It seeks comment on this analysis.

27. The Commission does not propose to specify a set time each year for the national EAS test to occur. The Commission believes that avoiding a set date will yield more realistic data about EAS reliability and performance, and will discourage complacency. On the other hand, the Commission believes it is essential to provide sufficient notice of such tests to EAS Participants so that they can prepare for the test and alert the public that a national-level EAS test is pending. The Commission believes that two months notice provides enough preparation time for EAS Participants. The Commission seeks comment on the sufficiency of a two-month notice period.

28. The Commission envisions that national EAS testing will involve many of the same test elements that are already included in required monthly EAS testing at the state and local levels (*e.g.,* EAS header codes, Attention Signal, Test Script and EOM code). Accordingly, the Commission proposes that the annual national test would replace the required monthly test for the month in which it occurs. The Commission sees no benefit to requiring EAS Participants to give up further broadcast time for a redundant test.

29. In connection with national testing, the Commission proposes requiring that EAS Participants record and submit to it the following test-related diagnostic information for each alert received from each message source monitored at the time of the national test: (1) Whether they received the alert message during the designated test; (2) whether they retransmitted the alert; and (3) if they were not able to receive and/or transmit the alert, their 'best effort' diagnostic analysis regarding the cause or causes for such failure. The Commission also anticipates asking EAS Participants to provide it with a description of their station identification and level of designation (PEP, LP–1, etc.); the date/time of receipt of the EAN message by all stations; the date/time of PEP station acknowledgement of receipt of the EAN message to FOC; the date/time of initiation of actual broadcast of the Presidential message; the date/time of receipt of the EAT message by all stations; who they were monitoring at the time of the test; and the make and model number of the EAS equipment that they utilized.

30. The Commission proposes to require that this information be provided to it no more than thirty (30) days following the test date. It also anticipates making this information publicly available. The Commission foresees two related benefits from this data collection and its public release. First, it will provide the Commission and our Federal partners with necessary diagnostic information to assist our analysis of the readiness of the EAS. Second, it will provide state and local authorities with useful diagnostic information related to their evaluation of the system's regional and local performance. The Commission seeks comment on this proposal. Are there any concerns with making this data publicly available? Should the Commission instead limit availability to, for example, only its Federal partners and/or authorized personnel of state, tribal and local government emergency management agencies?

31. The Commission also notes that it plans to coordinate with FEMA on a regular basis in the implementation of the national test. FEMA is the agency responsible for transmission of a presidential-level alert to the PEP stations, and for the implementation and maintenance of PEP stations. Moreover, FEMA is integrating EAS into IPAWS. Although the Commission believes it is unnecessary to specifically state in its proposed rule that it will coordinate with FEMA on a regular basis, it seeks comment on whether this should in fact be written into the rule.

32. Finally, it has been brought to the Commission's attention that different ENDEC manufacturers may have programmed their devices to receive and transmit EANs in different ways, which may affect the ability of some ENDECs to properly relay an EAN. In its 2008 Closed Circuit Test Report, the Primary Entry Point Administrative Council noted that many ENDECs process EAN messages by ignoring a FIPS, *i.e.,* location codes for national level messages on the assumption that a national message is intended for the entire nation. Accordingly, they transmit the message whether or not an EAN contains a FIPS code. At least one ENDEC manufacturer, however, has devices which require a FIPS code match. Thus in order to properly forward an EAN, the devices must receive a message that contains an appropriate FIPS code as authorized by Commission rules. As a result, there is some concern that such devices may not properly transmit an EAN message nationwide. The Commission seeks comment on this situation. Could the difference in how these ENDECs are programmed result in breaks in the "EAS chain"? Could this impact the relay of an EAN test message during a national EAS test? If so, how? The Commission also seeks comment on what actions it should take to address this problem prior to a national test. Should the Commission, for example, adopt a requirement that all ENDECs relay an EAN message irrespective of any FIPS code? What would be the cost of implementing such a requirement prior to a national test? Alternatively, are there non-regulatory actions the Commission should take? Should the Commission designate a national-level FIPS code and, if so, what would the impact on the ENDEC manufacturers be?

III. Conclusion

33. The EAS is intended to provide a reliable mechanism for the President to communicate with the country during emergencies. Yet the EAS has never been tested nationally in a systematic way, *i.e.,* by use of a test methodology that can identify system flaws and failures comprehensively and on a nationwide basis. The Commission believes that development of such a test methodology is critically important to ensuring that the EAS works as intended, now and in the future. The Commission solicits comment on all issues, analysis, and proposals set out in this *Notice,* including our proposed rule. The Commission intends to move quickly to adopt any and all necessary

rule changes to ensure that it and other federal, state, local, and non-governmental EAS stakeholders have the necessary diagnostic tools to evaluate EAS performance and readiness nationwide.

IV. Procedural Matters

A. Ex Parte Presentations

34. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

B. Comment Filing Procedures

35. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Second Further Notice of Proposed Rulemaking should refer to EB Docket No. 04–296. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

36. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

37. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

38. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

39. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

40. Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. **Please Note:** The Commission's former filing location at 236 Massachusetts Avenue, NE., is permanently closed.

41. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

42. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

C. Accessible Formats

43. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

V. Initial Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Second Further Notice of Proposed Rulemaking *(Second Further Notice).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided in Section IV of the item. The Commission will send a copy of the *Second Further Notice,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register.**

Need for, and Objectives of, the Proposed Rules

45. Today's *Second Further Notice* seeks to ensure that the Commission's emergency alert services ("EAS") rules better protect the life and property of all Americans. To further serve this goal, the *Further Notice* invites additional comment on a proposed rule to implement national testing of the Emergency Alert System (EAS) through use of a coded EAS message which will replace a required monthly test, and requiring logging and provision to the Commission of test-related diagnostic information within 30 days of the test.

Legal Basis

46. Authority for the actions proposed in this *Second Further Notice* may be found in sections 1, 4(i), 4(o), 303(r), 403, 624(g) and 706 of the Communications Act of 1934, as amended (Act), 47 U.S.C. 151, 154(i), 154(j), 154(o), 303(r), 544(g) and 606.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

47. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

48. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or

special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2 percent) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.

49. *Television Broadcasting.* The SBA has developed a small business size standard for television broadcasting, which consists of all such firms having $14 million or less in annual receipts. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database, as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations ("LPTV"). Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard.

50. *Radio Stations.* The revised rules and policies potentially will apply to all AM and commercial FM radio broadcasting licensees and potential licensees. The SBA defines a radio broadcasting station that has $7 million or less in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number. According to Commission staff review of BIA Publications, Inc. Master Access Radio Analyzer Database on March 31, 2005, about 10,840 (95 percent) of 11,410 commercial radio stations have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

51. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System ("NAICS") defines "Wired Telecommunications Carriers" as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." The SBA has developed a small business size standard for wireline firms within the broad economic census category, "Wired Telecommunications Carriers." Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year. Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

52. *Wired Telecommunications Carriers—Cable and Other Program Distribution.* This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). The data we have available as a basis for estimating the number of such entities were gathered under a superseded SBA small business size standard formerly titled Cable and Other Program Distribution. The former Cable and Other Program Distribution category is now included in the category of Wired Telecommunications Carriers, the majority of which, as discussed above, can be considered small. According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, we believe that a substantial number of entities included in the former Cable and Other Program Distribution category may have been categorized as small entities under the now superseded SBA small business size standard for Cable and Other Program Distribution. With respect to OVS, the Commission has approved approximately 120 OVS certifications with some OVS operators now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2006, BSPs served approximately 1.4 million subscribers, representing 1.46 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

53. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. We have estimated that there were 1,065 cable operators who qualified as small cable system operators at the end of 2005. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,065 small entity cable system operators that may be affected by the rules and policies proposed herein.

54. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, ("Act") also contains a size standard for small cable system operators, which is "a cable

operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,065. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Act.

55. *Broadband Radio Service (FCC Auction Standard).* The established rules apply to Broadband Radio Service ("BRS," formerly known as Multipoint Distribution Systems, or "MDS") operated as part of a wireless cable system. The Commission has defined "small entity" for purposes of the auction of BRS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas. Of 67 winning bidders, 61 qualified as small entities. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees.

56. *Wireless Telecommunications Carrier (except satellite).* BRS also includes licensees of stations authorized prior to the auction. As noted above, the SBA has developed a definition of small entities for pay television services, Cable and Other Subscription Programming, which includes all such companies generating $15 million or less in annual receipts. This definition includes BRS and thus applies to BRS licensees that did not participate in the MDS auction. Information available to us indicates that there are approximately 392 incumbent BRS licensees that do not generate revenue in excess of $11 million annually. Therefore, we estimate that there are at least 440 (392 pre-auction plus 48 auction licensees) small BRS providers as defined by the SBA and the Commission's auction rules which may be affected by the rules adopted herein. In addition, limited preliminary census data for 2002 indicate that the total number of cable and other program distribution companies increased approximately 46 percent from 1997 to 2002.

57. *Educational Broadband Service.* The proposed rules would also apply to Educational Broadband Service ("EBS," formerly known as Instructional Television Fixed Service or "ITFS") facilities operated as part of a wireless cable system. The SBA definition of small entities for pay television services, Cable and Other Subscription Programming also appears to apply to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. However, we do not collect annual revenue data for EBS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 are small businesses and may be affected by the proposed rules.

58. *Incumbent Local Exchange Carriers ("LECs").* We have included small incumbent LECs in this present IRFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

59. *Competitive (LECs), Competitive Access Providers (CAPs),* "*Shared-Tenant Service Providers,*" *and* "*Other Local Service Providers*." Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are "Shared-Tenant Service Providers," and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are "Other Local Service Providers." Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed rules.

60. *Satellite Telecommunications.* The Commission has not developed a small business size standard specifically for providers of satellite service. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. Thus, the majority of Satellite Telecommunications firms can be considered small.

61. *Other Telecommunications.* This category includes "establishments primarily engaged in * * * providing

satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems." Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990. Thus, under this second size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

62. There are potential reporting or recordkeeping requirements proposed in this *Second Further Notice.* For example, the Commission is considering whether to adopt reporting obligations for EAS participants. The proposals set forth in this *Second Further Notice* are intended to advance our public safety mission and enhance the performance of the EAS while reducing regulatory burdens wherever possible.

Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

63. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

64. The proposed rules are designed to minimally impact all EAS participants, including small entities, while at the same time protecting the lives and property of all Americans, which confers a direct benefit on small entities. As noted in paragraph 2 above, the *Second Further Notice* seeks comment on how the Commission may better protect the lives and property of Americans. In commenting on this goal, commenters are invited to propose steps that the Commission may take to further minimize any significant economic impact on small entities. When considering proposals made by other parties, commenters are invited to propose significant alternatives that serve the goals of these proposals. We expect that the record will develop to demonstrate any significant alternatives.

65. The Commission will send a copy of this Second Further Notice of Proposed Rulemaking, including this IRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act ("CRA"), *see* 5 U.S.C. 801(a)(1)(A).

VI. Ordering Clauses

66. Accordingly, *it is ordered* that pursuant to sections 1, 2, 4(i), 4(o), 301, 303(r), 303(v), 307, 309, 335, 403, 624(g),706 and 715 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (o), 301, 303(r), 303(v), 307, 309, 335, 403, 544(g), 606, and 615, this Second Further Notice of Proposed Rulemaking *is adopted.*

67. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

68. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Second Further Notice of Proposed Rulemaking on or before 30 days after publication in the **Federal Register,** and interested parties may file reply comments on or before 60 days after publication in the **Federal Register.**

List of Subjects in 47 CFR Part 11

Radio, Television.

Federal Communications Commission.

Alethea Lewis,

Federal Register Liaison.

Proposed Rule

For the reasons set forth in the preamle, FCC proposes to amend 47 CFR part 11 as follows:

PART 11—EMERGENCY ALERT SYSTEM (EAS)

1. The authority citation for part 11 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

2. Revise § 11.61(a)(3) to read as follows:

§ 11.61 Tests of EAS procedures.

(a) * * *

(3) *National Tests.* All EAS Participants shall participate in national tests as scheduled by the Commission in consultation with the Federal Emergency Management Agency (FEMA). Such tests will consist of the delivery by FEMA to PEP/NP stations of a coded EAS message, including EAS header codes, Attention Signal, Test Script, and EOM code. The coded message shall utilize EAS test codes as designated by the Commission's rules or such other EAS codes as the agencies conducting the test deem appropriate. A national test shall replace the required monthly test for all EAS Participants in the month in which it occurs. Notice shall be provided to EAS Participants by the Commission at least two months prior to the conduct of any such national test. Test results as required by the Commission shall be logged by all EAS Participants and shall be provided to the Commission's Public Safety and Homeland Security Bureau within thirty (30) days following the test.

* * * * *

[FR Doc. 2010–1941 Filed 1–28–10; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 75, No. 19
Friday, January 29, 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 COMMERCE

National Oceanic and Atmospheric Administration

Availability of Grant Funds and Proposed Implementation Guidelines; Withdrawal of Solicitation for the Marine Aquaculture Initiative

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of withdrawal.

SUMMARY: The National Oceanic and Atmospheric Administration publishes this notice to announce the withdrawal of the solicitation of applications for the NOAA Marine Aquaculture Initiative 2010, which was published in the NOAA "Availability of Grant Funds for Fiscal Year 2010" on January 19, 2010. A new funding opportunity with revised requirements and goals is under development and will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Dr. Gene Kim, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, SSMC3, R/SG, Silver Spring, Maryland 20910, (301) 734–1281.

SUPPLEMENTARY INFORMATION: On January 19, 2010, the National Oceanic and Atmospheric Administration published its annual notice entitled "Availability of Grant Funds for Fiscal Year 2010" (75 FR 3092). Included in that notice, beginning on page 3110, was a solicitation of applications for the NOAA Marine Aquaculture Initiative 2010 (Catalog of Federal Domestic Assistance Number: 11.417, Sea Grant Support).

NOAA publishes this notice to announce that it is withdrawing the solicitation of applications for the program, due to incorrect guidance being published. A new funding opportunity with revised requirements and goals is under development and will be published in the **Federal Register.** Any applications received by the program will be returned to the applicant.

Classification Executive Order 12866: It has been determined that this notice is not significant for purposes of Executive Order 12866.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comments are not required pursuant to U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and none has been prepared.

Dated: January 25, 2010.

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–1954 Filed 1–28–10; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From The People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 22, 2008, the United States Court of International Trade ("CIT" or "Court") sustained the final remand determination made by the Department of Commerce ("the Department") pursuant to the Court's remand of the scope ruling of the antidumping duty order on hand trucks from the People's Republic of China ("PRC"). *See Gleason Industrial Products, Inc.* v. *United States,* Ct. No. 06–00089, Slip Op. 08–115 (Ct. Int'l Trade October 22, 2008) ("*Gleason III*"). This case arises out of the Department's antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China. The final judgment in this case was not in harmony with the Department's February 2006 final scope ruling.

DATES: *Effective Date:* November 1, 2008.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4243.

SUPPLEMENTARY INFORMATION: In December 2004, the Department placed an antidumping duty order on certain varieties of hand trucks manufactured in the People's Republic of China. *See Antidumping Duty Order on Hand Trucks and Certain Parts Thereof from the People's Republic of China,* 69 FR 70122 (December 2, 2004) ("Order"). In December 2005, Central Purchasing, LLC ("Central Purchasing"), requested the Department to determine whether two of the welding carts that it imported, models 93851 and 43615, were within the scope of the order. *See* Central Purchasing's Scope Ruling Request (December 19, 2005). The Petitioners, Gleason Industrial Products, Inc. and Precision Products, Inc. ("Gleason"), responded that both models of Central Purchasing's carts should be included within the scope of the Order. *See* Gleason's Response to Central Purchasing's Scope Request (January 4, 2006).

In an unpublished ruling, the Department found that both models of Central Purchasing's carts were outside the scope of the antidumping duty order. *See* Memorandum from Hilary E. Sadler, Case Analyst, though Wendy J. Frankel, Office Director, to Stephen J. Claeys, Acting Deputy Assistant Secretary for AD/CVD Operations: "Final Scope Ruling for Central Purchasing, LLC's Two Models of Welding Carts," dated February 15, 2006 ("Final Scope Ruling ").

On March 17, 2006, Gleason filed its summons with the Court alleging that the Final Scope Ruling was not supported by substantial evidence or otherwise in accordance with law. The Department requested a voluntary remand in November 2006 to reconsider its original determination, which the trial court granted. *See Gleason Indus.*

Prods., Inc. v. *United States,* Ct. No. 06–00089, Slip Op. 07–40 (Ct. Int'l Trade March 16, 2007) ("*Gleason I*").

On first remand, the Department reevaluated its position and determined that both models of welding carts were subject to the Order. The trial court affirmed the first remand results for model number 93851 in April 2008, but remanded the matter to Commerce to reexamine its findings for model 43615. *See Gleason Indus. Prods., Inc.* v. *United States,* 556 F. Supp. 2d 1344, 1347–49 (Ct. Int'l Trade 2008) ("*Gleason II*"). Commerce subsequently issued a second set of remand results in July 2008 in which it concluded that model 43615 lies outside of the scope of the antidumping duty order on hand trucks from the PRC. The trial court sustained Commerce's second remand results on October 22, 2008. *See Gleason III.* The United States Court of Appeals for the Federal Circuit subsequently affirmed the CIT's judgment in November 2009. *See Gleason Indus. Prods. Inc.* v. *United States,* Ct. No. 2009–1150 (Fed. Cir. November 4, 2009).

Timken Notice

In its decision in *Timken Co.,* v. *United States,* 893 F. 2d 337, 341 (Fed. Cir. 1990) ("*Timken*"), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination. The Court's decision in *Gleason III* on October 22, 2008, constitutes a final decision of that court that is not in harmony with the Department's scope ruling. This notice is effective as of November 1, 2008 and is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will issue revised instructions to U.S. Customs and Border Protection if the Court's decision is not appealed or if it is affirmed on appeal.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: January 22, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–1866 Filed 1–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT74

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshops

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

ACTION: Notice of a technical workshop.

SUMMARY: NMFS, the Alaska Region, the Alaska Department of Fish and Game, and the International Pacific Halibut Commission will present a technical workshop to instruct customers how to use the eLandings Extensible Markup Language interface.

DATES: The workshop will be held on February 5, 2010, 9 a.m. to 5 p.m., Pacific Standard Time.

ADDRESSES: The workshop will be held at the Silver Cloud Inn Lake Union, 1150 Fairview Avenue North, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Susan Hall, 907–586–7462.

SUPPLEMENTARY INFORMATION: This is a technical workshop intended for seafood industry software development and information technology staff, third-party system developers, seafood operations managers, and information technology consultants. The Extensible Markup Language (XML) interface is designed to facilitate an exchange of landings and production data between eLandings and the organizations' operational systems to facilitate one-time data entry.

There will be a morning and an afternoon session. The morning session will include an overview of the eLandings and the XML interface, as well as some hands-on experience importing XML documents. The afternoon session will consist of hands-on programming, tutorials demonstrating tools, and useful techniques for interface development.

The agenda and workshop materials are under development but may be reviewed at: *https://elandings.alaska.gov/confluence/display/tr/Agenda.*

Due to the inclusion of hands-on tutorials in both sessions, attendees should bring a laptop with wireless Internet capability. Programmers attending the afternoon session can review the Resources page at *https://elandings.alaska.gov/confluence/display/tr/Resources* and prepare their development environment with the tools, which we will demonstrate at the workshop.

Special Accommodations

These workshops will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Hall, 907–586–7462, at least five working days prior to the meeting date.

Dated: January 26, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–1875 Filed 1–26–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Initiation of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews. The Department also received requests to revoke one antidumping duty order in part and to defer the initiation of an administrative review for the same antidumping duty order.

EFFECTIVE DATE: January 29, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Honey from Argentina with respect to one exporter. In addition, the

Department received a request to defer for one year the initiation of the December 1, 2008 through November 30, 2009 administrative review of the antidumping duty order on Honey from Argentina with respect to another exporter in accordance with 19 CFR 351.213(c). The Department received no objections to this request from any party cited in 19 CFR 351.213(c)(1)(ii).

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review ("POR") listed below. If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the POR, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ("the Act"). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non–market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by F*inal Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2,1994). In accordance with the separate–rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate–rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate–rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate–rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's website at http://www.trade.gov/ia on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME–owned firms, wholly foreign–owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on the Department's website at http://www.trade.gov/ia on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME–owned firms, wholly foreign–owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate–rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate–rate status **unless** they respond to all parts of the questionnaire as mandatory respondents.

INITIATION OF REVIEWS:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 2010. Also in accordance with 19 CFR 351.213(c), we are deferring for one year the initiation

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceedings (e.g., an ongoing administrative review, new shipper review, etc.) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Application.

of the December 1, 2008 through November 30, 2009, administrative review of the antidumping duty order on Honey from Argentina with respect to one exporter.

Antidumping Duty Proceedings	Period to be Reviewed
ARGENTINA: Honey.	
A–357–812	12/01/08 - 11/30/09
AGLH S.A..	
Algodonera Avellaneda S.A..	
Alimentos Naturales–Natural Foods.	
Alma Pura.	
Bomare S.A. (Bodegas Miguel Armengol).	
Compania Apicola Argentina S.A..	
Compania Inversora Platense S.A..	
El Mana S.A..	
HoneyMax S.A..	
Interrupcion S.A..	
Mielar S.A..	
Miel Ceta SRL.	
Nexco S.A..	
Patagonik S.A..	
Productos Afer S.A..	
Seabird Argentina S.A..	
TransHoney S.A..	
INDIA: Carbazole Violet Pigment 23.	
A–533–838	12/1/08 - 11/30/09
Meghmani Pigments.	
INDIA: Certain Hot–Rolled Carbon Steel Flat Products.	
A–533–820	12/1/08 - 11/30/09
Essar Steel Limited.	
Ispat Industries Limited.	
JSW Steel Limited.	
Tata Steel Limited.	
JAPAN: Welded Large Diameter Line Pipe.	
A–588–857	12/1/08 - 11/30/090
JFE Steel Corporation.	
Nippon Steel Corporation.	
Sumitomo Corporation.	
Sumitomo Metal Industries, Ltd. (aka Sumitomo Metals Pipe & Tube Company).	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Cased Pencils[3].	
A–570–827	12/1/08 - 11/30/09
China First Pencil Co., Ltd., and its affiliated companies Shanghai First Writing Instruments Co., Ltd., Fang Zheng Co., Ltd., Shanghai Great Wall Pencil Co., Ltd., and China First Pencil Huadian Co., Ltd..	
Orient International Holding Shanghai Foreign Trade Co., Ltd..	
Shanghai Three Star Stationery Industry Co., Ltd..	
Beijing Fila Dixon Stationery Company, Ltd. a/k/a Beijing Dixon Ticonderoga Stationery Company, Ltd. a/k/a Beijing Dixon Stationery Company, Ltd. and Dixon Ticonderoga Company.	
Shandong Rongxin Import & Export Co., Ltd..	
THE PEOPLE'S REPUBLIC OF CHINA: Hand Trucks and Parts Thereof[4].	
A–570–891	12/1/08 - 11/30/09
Qingdao Huazhan Hardware and Machinery Co., Ltd..	
New–Tec Integration (Xiamen) Co., Ltd..	
Sunshine International Corp..	
Yangjiang Shunhe Industrial Co..	
Zhejiang Yinmao Import and Export Co..	
Century Distribution Systems, Inc..	
THE PEOPLE'S REPUBLIC OF CHINA: Honey[5].	
A–570–863	12/1/08 - 11/30/09
Ahcof Industrial Development Corp., Ltd..	
Alfred L. Wolff (Beijing) Co., Ltd..	
Anhui Honghui Foodstuff (Group) Co., Ltd..	
Anhui Honghui Import & Export Trade Co., Ltd..	
Anhui Cereals Oils and Foodstuffs I/E (Group) Corporation.	
Anhui Native Produce Imp & Exp Corp..	
APM Global Logistics (Shanghai) Co..	
Baiste Trading Co., Ltd..	
Cheng Du Wai Yuan Bee Products Co., Ltd..	
Chengdu Stone Dynasty Art Stone.	
Dongtai Peak Honey Industry Co., Ltd..	
Eurasia Bee's Products Co., Ltd..	
Fresh Honey Co., Ltd. (formerly Mgl. Yun Shen).	
Golden Tadco Int'l.	
Hangzhou Golden Harvest Health Industry Co., Ltd..	
Haoliluck Co., Ltd..	

Antidumping Duty Proceedings	Period to be Reviewed
Hengjide Healthy Products Co. Ltd..	
Hubei Yusun Co., Ltd..	
Inner Mongolia Altin Bee–Keeping.	
Inner Mongolia Youth Trade Development Co., Ltd..	
Jiangsu Cereals, Oils Foodstuffs Import Export (Group) Corp..	
Jiangsu Light Industry Products Imp & Exp (Group) Corp..	
Jiangsu Kanghong Natural Healthfoods Co., Ltd..	
Jiangsu Light Industry Products Imp & Exp (Group) Corp..	
Jilin Province Juhui Import.	
Maersk Logistics (China) Company Ltd..	
Nefelon Limited Company.	
Ningbo Shengye Electric Appliance.	
Ningbo Shunkang Health Food Co., Ltd..	
Ningxia Yuehai Trading Co., Ltd..	
Product Source Marketing Ltd..	
Qingdao Aolan Trade Co., Ltd..	
QHD Sanhai Honey Co., Ltd..	
Qinhuangdao Municipal Dafeng Industrial Co., Ltd..	
Renaissance India Mannite.	
Shaanxi Youthsun Co., Ltd..	
Shanghai Bloom International Trading Co., Ltd..	
Shanghai Foreign Trade Co., Ltd..	
Shanghai Hui Ai Mal Tose Co., Ltd..	
Shanghai Taiside Trading Co., Ltd..	
Shine Bal Co., Ltd..	
Sichuan–Dujiangyan Dubao Bee Industrial Co., Ltd..	
Silverstream International Co., Ltd..	
Suzhou Shanding Honey Product Co., Ltd..	
Tianjin Eulia Honey Co., Ltd..	
Wuhan Bee Healthy Co., Ltd..	
Wuhan Shino–Food Trade Co., Ltd..	
Wuhu Fenglian Co., Ltd..	
Wuhu Qinshi Tangye.	
Wuhu Qinshgi Tangye.	
Xinjiang Jinhui Food Co., Ltd..	
Zhejiang Willing Foreign Trading Co..	
THE PEOPLE'S REPUBLIC OF CHINA: Malleable Cast Iron Pipe Fittings.	
A–570–881	12/1/08 - 11/30/09
Mueller Comercial de Mexico, S. de R.L. de C.V..	
COUNTERVAILING DUTY PROCEEDINGS.	
ARGENTINA: Honey.	
C–357–813	1/1/09 - 12/31/09
INDIA: Carbazole Violet Pigment 23.	
C–533–839	1/1/08 - 12/31/08
Meghmani Pigments.	
SUSPENSION AGREEMENTS.	
None.	
DEFERRAL OF INITIATION OF ADMINISTRAIVE REVIEW.	
ARGENTINA: Honey.	
A–357–812	12/1/08 - 11/30/09
Asociacion de Cooperativas Argentinas.	

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Cased Pencils from the People's Republic of China ("PRC") who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of Hand Trucks and Parts Thereof from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above named companies does not qualify for a separate rate, all other exporters of Honey from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If the above named company does not qualify for a separate rate, all other exporters of Malleable Cast Iron Pipe Fittings from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v.United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment

of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional–measures "gap" period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.*, the filing of separate letters of appearance as discussed in 19 CFR 351.101(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of l930, as amended (19 USC 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–1898 Filed 1–28–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT13

Takes of Marine Mammals Incidental to Specified Activities; St. George Reef Light Station Restoration and Maintenance on Northwest Seal Rock, in the Northeast Pacific Ocean

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the St. George Reef Lighthouse Preservation Society (SGRLPS), to incidentally harass, by Level B harassment only, four species of marine mammals during the specified activity.

DATES: This authorization is effective from January 27, 2010, through April 30, 2010.

ADDRESSES: A copy of the IHA and the application are available by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application may be obtained by writing to this address, by telephoning the contact listed here (*FOR FURTHER INFORMATION CONTACT*) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody (301) 713–2289, ext. 113 or Monica DeAngelis, NMFS Southwest Region, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, for periods of not more than one year, by United States citizens who engage in a specified activity (other than commercial fishing) within a specific geographic region if certain findings are made and, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45–day time limit for NMFS' review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application from the SGRLPS for the taking by harassment, of marine mammals incidental to conducting helicopter operations, lighthouse restoration, and light maintenance activities on the St. George Reef Lighthouse Station (Station) in Del Norte County in California. SGRLPS aims to restore and preserve the Station which is listed in the National Park Service's National Register of Historic Places. The group must also perform annual maintenance on the Station's optical light system to renew a U.S. Coast Guard (USCG) Private Aid to Navigation (PATON) permit. The Station is located on Northwest Seal Rock (NWSR) (41° 50′ 24″ N, 124° 22′ 06″ W) approximately nine kilometers (km) (6.0 miles (mi)) offshore of Crescent City, California in the northeast Pacific Ocean.

Acoustic and visual stimuli generated by helicopter landings/takeoffs, noise generated during restoration activities (e.g., painting, plastering, welding, and glazing) and maintenance activities (e.g., bulb replacement and automation of the light system), and human presence, may have the potential to cause the pinnipeds hauled out on NWSR to flush into the surrounding water or to cause a short-term behavioral disturbance. These types of disturbances are the principal means of marine mammal taking associated with these activities and the SGRLPS has requested an authorization to take 204 California sea lions (*Zalophus californianus*); 36 Pacific Harbor seals (*Phoca vitulina*); 172 Steller sea lions (*Eumetopias jubatus*); and six northern fur seals

(*Callorhinus ursinus*) by Level B harassment.

Description of the Specified Activity

SGRLPS will conduct the activities (helicopter operations, lighthouse restoration and light maintenance activities) on NWSR between January 27, 2010 and April 30, 2010, at a maximum frequency of one work session per month. The duration of each work session will be no more than three days (e.g., Friday, Saturday, and Sunday).

NMFS provided a detailed overview of the activity in the notice of the proposed IHA (74 FR 49852, September 29, 2009) and in Chapter 3 of NMFS' Environmental Assessment (EA). No changes have been made to the proposed activities.

Helicopter Operations

The SGRLPS will transport personnel and equipment from the California mainland to NWSR by a small helicopter. The helicopter will depart from Crescent City Airport and will transit to NWSR where it will land on top of the engine room (caisson). Acoustic tests on the helicopter's noise output measured a sound pressure level of 81.9 decibels (dB) re: 20 Pa (peak) (A-weighted) approximately 150 m from the ground. However, the helicopter has two-bladed main and tail rotors which are fitted with noise-attenuating blade tip caps that would decrease flyover noise.

The SGRLPS estimates that each work session would require no more than 36 helicopter landings. During landing, the work crew members will disembark from the helicopter and retrieve their equipment located in a basket attached to the underside of the aircraft. The helicopter would then return to the mainland to pick up additional personnel and equipment.

As a means of funding support for the restoration activities, the SGRLPS will conduct public tours of the Station during the last day of the restoration and maintenance activities. SGRLPS will transport visitors to the Station on Sunday. Although some of these flights would be conducted solely for the transportation of tourists, the SGRLPS will conduct those flights later in the day when no pinnipeds are expected to be on NWSR due to the animals dispersal from the haulout area caused by previous helicopter landings earlier in the day. No additional allowance is included for marine mammals that might be affected by additional flights for the transportation of tourists.

Lighthouse Restoration and Light Maintenance

Restoration activities will involve light construction (e.g., sanding, hammering, or use of hand drills) to: remove peeling paint and plaster; restore interior plaster and paint; refurbish and replace structural and decorative elements; replace glass; upgrade the present electrical system; replace the PATON beacon light; and automate the light system. Noise generated from these activities have the potential to disturb pinnipeds hauled out on NWSR.

Emergency Repair Event

If the PATON beacon light fails during the period January 27, 2010, through April 30, 2010, the SGRLPS would transport a small work crew to the Station by helicopter to repair the PATON beacon light. For each emergency repair event, the SGRLPS would conduct a maximum of four flights (two arrivals and two departures) to transport equipment and supplies. As in the case of helicopter operations and lighthouse restoration and maintenance conducted during the three-day work sessions, flights conducted for emergency repairs would have the potential to disturb pinnipeds hauled out on NWSR.

Comments and Responses

NMFS published a notice of receipt of the SGRLPS application and proposed IHA in the **Federal Register** on September 29, 2009 (74 FR 49852). During the 30–day comment period, NMFS received a letter from the Marine Mammal Commission (Commission) which recommended that NMFS issue the requested authorization, provided that the required monitoring and mitigation measures are carried out (e.g., restrictions on the timing and frequency of activities, restrictions on helicopter approaches, timing measures for helicopter landings, and measures to minimize acoustic and visual disturbances) as described in NMFS' September 29, 2009 (74 FR 49852), notice of the proposed IHA and the application. All measures proposed in the initial **Federal Register** notice are included in the authorization and NMFS has determined that they will effect the least practicable impact on the species or stocks and their habitats.

Marine Mammals Affected by the Activity

The marine mammal species most likely to be harassed incidental to helicopter operations, lighthouse restoration, and lighthouse maintenance on NWSR are the California sea lion, the Pacific Harbor seal, the eastern U.S. stock of Steller sea lion, and the eastern Pacific stock of northern fur seal. California sea lions and Pacific harbor seals are not listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. Northern fur seals are not listed as threatened or endangered under the ESA. However, they are categorized as depleted under the MMPA.

Last, the Steller sea lion, eastern U.S. stock is listed as threatened under the ESA and is categorized as depleted under the MMPA. General information of these species can be found in the notice of the proposed IHA (74 FR 49852, September 29, 2009). The nearest Steller sea lion breeding area relative to the project site is at Southwest Seal Rock (41 49 00 N, 124 21 00 W) about 4 km (2.49 miles (mi)) south of NWSR. Although the rookery is just south of the Station, animals may continue to increase their use of NWSR over time; possibly as a pupping area, at some point in the future (R. Brown, pers. comm., 2006).

There are several endangered cetaceans that have the potential to transit in the vicinity of NWSR including the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), north Pacific right (*Eubalena japonica*), sperm (*Physeter macrocephalus*), and southern resident killer (*Orcinus orca*) whales. These species are typically found farther offshore of NWSR and are not considered further in this IHA.

California (southern) sea otters (*Enhydra lutris nereis*) usually range in coastal waters within two km of shore. However, sea otters are not present on NWSR (Crescent Coastal Research (CCR), 2001). This species is managed by the U.S. Fish and Wildlife Service and is not considered further in this IHA.

Potential Effects of the Activities on Marine Mammals

Level B harassment of pinnipeds has the potential to occur during helicopter approaches and departures from NWSR due to acoustic disturbances caused by the helicopters rotors and engine. It is likely that the initial helicopter approach to the Station would cause a subset, or all of the marine mammals hauled out on NWSR to depart the rock and flush into the water. The pinnipeds' movement into the water is expected to be gradual due to the required controlled helicopter approaches (see Mitigation), the small size of the helicopter, its relatively quiet rotors, and behavioral habituation on the part

of the animals as helicopter trips continue throughout the day.

According to the CCR Report (2001), while up to 40 percent of the California and Steller sea lions present on the rock have been observed to enter the water on the first of a series of helicopter landings, as few as zero percent have flushed on subsequent landings on the same date.

During the sessions of helicopter activity, some animals may be temporarily displaced from the island and either raft in the water or relocate to other haul-outs. Sea lions have shown habituation to helicopter flight within a day at the project site and most animals are expected to return soon after helicopter activities cease for that day. By clustering helicopter arrivals and departures within a short time period, the pinnipeds are expected to show less response to subsequent landings (NMFS, 2010).

NMFS provided a detailed overview of: (1) the sound levels produced by the helicopter; (2) behavioral reactions of pinnipeds to helicopter operations and light construction noise; (3) hearing impairment and other non-auditory physical effects; (4) behavioral reactions to visual stimuli; (5) and specific observations gathered during previous monitoring of the marine mammals present on NWSR in the notice of the proposed IHA (74 FR 49852, September 29, 2009) and in Chapter 3 of NMFS' Environmental Assessment (EA).

Possible Effects of Activities on Marine Mammal Habitat

The SGRLPS does not anticipate any loss or modification to the habitat used by California sea lions, Steller sea lions, Pacific harbor seals, and northern fur seals that haul-out on NWSR. The SGRLPS will conduct helicopter operations and restoration and maintenance activities at elevations high enough to not disturb the geology and the water surrounding NWSR.

NMFS has designated EFH for groundfish species (or species assemblages) along more than 130,000 square miles of marine waters off the West Coast. EFH consists of both the water column and the underlying surface (e.g. seafloor) of a particular area. Although NWSR is located adjacent to the EFH (water column), the restoration and maintenance activities will occur from 11 m (37 ft) to 44.5m (146 ft) above the designated EFH for groundfish species. Hence, the effects of restoration and maintenance activities as well as the elevation and route of the helicopter operations would not occur in the surrounding water column and would not significantly impact fish populations or habitat. These activities are not likely to adversely affect EFH.

NMFS also considered the effects of issuing an IHA on target and non-target species, including invertebrates, fish, sea turtles, seabirds, sea otters, and marine mammals and their habitats. NMFS does not expect the action to affect an animal's susceptibility to predation, alter dietary preferences or foraging behavior, or change distribution or abundance of predators or prey.

Mitigation and Monitoring

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, the SGRLPS and/or its designees will undertake the following marine mammal mitigation and monitoring measures:

(1) Conduct restoration and maintenance activities at the St. George Reef Light Station at a maximum of one session per month between January 27, 2010, and April 30, 2010. Each restoration session would be no more than three days in duration. Maintenance of the light beacon will occur only in conjunction with the monthly restoration activities;

(2) Ensure that helicopter approach patterns to the St. George Reef Light Station will be such that the timing techniques are least disturbing to marine mammals. To the extent possible, the helicopter should approach Northwest Seal Rock when the tide is too high for the marine mammals to haul-out on Northwest Seal Rock;

(3) Avoid rapid and direct approaches by the helicopter to the Station by approaching Northwest Seal Rock at a relatively high altitude (e.g., 800 - 1,000 ft, or 244 - 305 m). Before the final approach, the helicopter shall circle lower, and approach from area where the density of pinnipeds is the lowest. If for any safety reasons (e.g., wind conditions or visibility) such helicopter approach and timing techniques cannot be achieved, the SGRLPS must abort the restoration and maintenance session for that day;

(4) Provide instructions to SGRLPS members, the restoration crew, and if applicable, to tourists, on appropriate conduct when in the vicinity of hauled-out marine mammals. The SGRLPS members, the restoration crew, and if applicable, tourists, will avoid making unnecessary noise while on Northwest Seal Rock and must not view pinnipeds around the base of the Station;

(5) Ensure that the door to the Station's lower platform shall remain closed and barricaded at all times;

(6) At least once during the period between November 1 and April 30 annually, a qualified, NMFS-approved biologist shall be present during all three workdays at the Station. This requirement may be modified depending on the results of the monthly monitoring reports. The biologist shall document use of the island by the marine mammals (i.e., dates, time, tidal height, species, numbers present, frequency of use, weather conditions, and any disturbances), and note any responses to potential disturbances;

(7) In the case of an emergency repair event (i.e., failure of the PATON beacon light) between January 27, 2010 and April 30, 2010, the SGRLPS must consult with the Assistant Regional Administrator (ARA) for Protected Resources, Southwest Region, NMFS, to best determine the timing of an emergency repair trip to the Station. The Southwest Region NMFS fishery biologist will make a decision regarding when the SGRLPS can schedule helicopter trips to the Station during the emergency repair time window and will ensure that such operations will have the least practicable adverse impact to marine mammals. The ARA for Protected Resources, Southwest Region, NMFS will ensure that the SGRLPS' request for incidental take during an emergency repair event will not exceed the number of incidental take authorized in this IHA;

(8) The SGRLPS will employ a skilled, aerial photographer to document marine mammals hauled out on Northwest Seal Rock for comparing marine mammal presence on Northwest Seal Rock pre- and post-restoration. The photographer will complete a photographic survey of Northwest Seal Rock using the same helicopter that will transport SGRLPS personnel to the island during restoration trips. For a pre-restoration survey, photographs of all marine mammals hauled-out on the island shall be taken at an altitude greater than 300 m (984 ft) during the first arrival flight to Northwest Seal Rock. For the post-restoration survey, photographs of all marine mammals hauled-out on the island shall be taken at an altitude greater than 300 m (984 ft) during the

last departure flight from Northwest Seal Rock;

(9) The SGRLPS and/or its designees will forward the photographs to a biologist capable of discerning marine mammal species. Data shall be provided to NMFS in the form of a report with a data table, any other significant observations related to marine mammals, and a report of restoration activities (see Reporting). The SGRLPS will make available the original photographs to NMFS or to other marine mammal experts for inspection and further analysis.

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another: (1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals; (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and (3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the required mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking". The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

The SGRLPS is required to submit an interim report on all activities and monitoring results to the ARA for Protected Resources, Southwest Region, NMFS, and to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, no later than 30 days after the conclusion of each monthly work session. This report must contain the following information: (1) a summary of the dates, times, and weather during all helicopter operations, and restoration and maintenance activities; (2) species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities; (3) an estimate of the number (by species) of marine mammals that are known to have been exposed to visual and acoustic stimuli associated with the helicopter operations, restoration and maintenance activities; and (4) a description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

The SGRLPS is required to submit a final monitoring report to NMFS no later than 90 days after the project is completed to the ARA for Protected Resources, Southwest Region, NMFS, and to the Chief, Permits, Conservation, and Education Division, Office of Protected Resources, NMFS. The report must contain the following information: (1) a summary of the dates, times, and weather during all helicopter operations, restoration, and maintenance activities; (2) species, number, location, and behavior of any marine mammals, observed throughout all monitoring activities; (3) an estimate of the number (by species) of marine mammals that are known to have been exposed to visual and acoustic stimuli associated with the helicopter operations, restoration, and maintenance activities; (4) a description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the event of any observed Steller sea lion injury, mortality, or the presence of newborn pup (which is highly unlikely), SGRLPS and/or its designees must immediately cease operations and notify the ARA for Protected Resources, Southwest Region, NMFS at (562) 980–4020; and the Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, at (301) 713–2289.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Only take by Level B harassment is anticipated and authorized as a result of the helicopter operations, restoration, and maintenance activities. Acoustic and visual stimuli generated by helicopter landings/takeoffs; noise generated during restoration activities and maintenance activities have the potential to cause the pinnipeds hauled out on NWSR to flush into the surrounding water or to cause a short-term behavioral disturbance. There is no evidence that the planned activities could result in serious injury or mortality. The required mitigation and monitoring measures will minimize any potential risk to injury or mortality.

NMFS estimates that a maximum of 204 California sea lions, 172 Steller sea lions, 36 Pacific harbor seals, and 6 northern fur seals could be potentially affected by Level B harassment over the course of the IHA. Estimates of the numbers of marine mammals that might be affected are based on consideration of 100 percent of the pinnipeds present on NWSR that could be disturbed by approximately 42 hrs of helicopter operations each month, during the course of the activity. These estimates are also based on pinniped survey counts conducted by CCR on NWSR in the spring of 1997, 1998, 1999, and 2000 (CCR, 2001), calculated for the population variance (Steller sea lions) or for the average monthly abundance (California sea lions, Pacific harbor seals, and northern fur seals) between November 1 and April 30 annually. These incidental harassment take numbers represent 0.14 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.06 percent of the San Miguel Island stock of northern fur seal.

NMFS expects that the individual animals hauled out and harassed upon exposure to the first helicopter flight of the day will be the same animals hauled out on NWSR over the course of each three-day work period, due to high site fidelity, which is defined herein as an individual animal's continued use of the same haul out area over a specific period of time.

Take estimates for the California sea lions, Pacific harbor seals, and northern fur seals are based on the average

monthly abundance (CCR, 2001) of the total number of animals expected to be hauled out on NWSR. The average monthly abundance for each species is then multiplied by six to account for the monthly sessions of restoration and maintenance activities conducted between November 1st and April 30th to arrive at the total take number for each species. Each animal has the potential to be exposed and potentially harassed multiple times on the same day (i.e., 12 harassment events on the first day, two harassment events on the second day, and 22 harassment events on the final day). However, NMFS' take numbers represent the total number of individual marine mammals expected to be harassed by the helicopter operations, and restoration and maintenance activities, not the total number of exposure/harassment events.

Estimates of the number of Steller sea lions that might be present on NWSR during the three-day work period do not exist. Therefore, to account for variability of Steller sea lion presence throughout the six months of the restoration and maintenance activities, NMFS estimated the population variance for Steller sea lions hauled out during the six month period by using a two-tailed test statistical test (at a 95 percent confidence level) to infer the upper range of Steller sea lions present on NWSR (i.e., 172 individuals). NMFS expects the haul out areas on NWSR to be inundated by waves during the winter months thereby reducing the available haul out space and as a result, the number of Steller sea lions hauled out. Accordingly, these take estimates are likely a gross overestimate of the number of animals expected to be hauled out at Northwest Seal Rock, during the six monthly sessions of restoration and maintenance activities conducted between November 1st and April 30th.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." In making a negligible impact determination, NMFS considers: (1) the number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, and intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

As mentioned previously, NMFS estimates that a maximum of 204 California sea lions, 172 Steller sea lions, 36 Pacific harbor seals, and 6 northern fur seals could be potentially affected by Level B harassment over the course of the IHA. These incidental harassment take numbers represent 0.14 percent of the U.S. stock of California sea lion, 0.42 percent of the eastern U.S. stock of Steller sea lion, 0.11 percent of the California stock of Pacific harbor seals, and 0.06 percent of the San Miguel Island stock of northern fur seal. For each species, these numbers are small relative to the population size.

No injuries or mortalities are anticipated to occur as a result of the SGRLPS' planned helicopter operations, restoration, and maintenance activities, and none are authorized. Takes will be limited to Level B behavioral harassment over a three-day period at maximum frequency of one session a month.

NMFS does not expect the activity to impact rates of recruitment or survival of the pinnipeds since no mortality (which would remove individuals from the population) or injury is anticipated to occur. Only short-term Level B harassment is anticipated to occur over a very short period of time (maximum of three days), occurring at very limited times of the day. Additionally, the activity will occur at a time of year when breeding does not occur.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting helicopter operations, restoration, and maintenance activities on St. George Reef Light Station located on NWSR may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the lighthouse restoration and maintenance period, may be made by these species to avoid the resultant helicopter landing/takeoff and visual disturbance from human presence, the availability of alternate areas within these areas and haulout sites, and the short and sporadic duration of the restoration and maintenance activities, have led NMFS to determine that this action will have a negligible impact on Steller sea lions, California sea lions, Pacific harbor seals, and northern fur seals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that the SGRLPS' planned helicopter operations, restoration, and maintenance activities will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from helicopter operations, restoration, and maintenance activities exercise will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

The Steller sea lion, eastern Distinct Population Segment (DPS) is listed as threatened under the ESA and occurs in the planned action area. NMFS Headquarters' Office of Protected Resources, Permits, Conservation, and Education Division conducted a formal section 7 consultation under the ESA with the Southwest Region, NMFS. On January 27, 2010, the Southwest Region issued a Biological Opinion (BiOp) and concluded that the issuance of an IHA is likely to adversely affect, but not likely to jeopardize the continued existence of Steller sea lions. NMFS has designated critical habitat for the eastern Distinct Population Segment of Steller sea lions in California at Año Nuevo Island, Southeast Farallon Island, Sugarloaf Island and Cape Mendocino, California pursuant to section 4 of the ESA (see 50 CFR 226.202(b)). Northwest Seal Rock is neither within nor nearby these designated areas. Finally, the BiOp included an incidental take statement (ITS) for Steller sea lions. The ITS contains reasonable and prudent measures implemented by terms and conditions to minimize the effects of this take.

National Environmental Policy Act (NEPA)

To meet NMFS' NEPA requirements for the issuance of an IHA to the SGRLPS, NMFS has prepared an Environmental Assessment (EA) that is specific to conducting aircraft operations and restoration and maintenance work on the St. George Reef Light Station. NMFS has prepared an Environmental Assessment (EA) titled Issuance of an Incidental Harassment Authorization to Take Marine Mammals by Harassment Incidental to Conducting Aircraft Operations, Lighthouse Restoration and Maintenance Activities on St. George Reef Lighthouse Station in Del Norte County, California, that evaluates the

impacts on the human environment of NMFS' authorization of incidental Level B harassment resulting from the specified activity in the specified geographic region. The NMFS has made a Finding of No Significant Impact (FONSI) and, therefore, it is not necessary to prepare an environmental impact statement for the issuance of an IHA to SGRLPS for this activity. A copy of the EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**). A copy of the EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

Authorization

As a result of these determinations, NMFS has issued an IHA to the SGRLPS to conduct helicopter operations and restoration and maintenance work on the St. George Reef Light Station on Northwest Seal Rock in the northeast Pacific Ocean during January 27, 2010 through April 30, 2010, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: January 25, 2010.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by an interested party, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products from Italy. This review covers one producer/exporter of the subject merchandise, Evraz Palini Bertoli S.p.A. (Palini). The period of review (POR) is February 1, 2008 through January 31, 2009.

The Department has preliminarily determined that Palini made U.S. sales at prices less than normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results of review. We intend to issue the final results of review no later than 120 days from the publication date of this notice.

DATES: Effective Date: January 29, 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 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2000, the Department published in the **Federal Register** an antidumping duty order on certain cut-to-length carbon-quality steel plate products (steel plate) from Italy. See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea,* 65 FR 6585 (February 10, 2000) *(Order).* On February 4, 2009, the Department published in the **Federal Register** a notice of "Opportunity To Request Administrative Review" of the order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 6013 (February 4, 2009).

In accordance with 19 CFR 351.213(b)(2), on March 2, 2009, Palini requested that the Department conduct an administrative review of its sales and entries of subject merchandise into the United States during the POR.[1] On March 24, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on steel plate from Italy with respect to Palini. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 12310 (March 24, 2009). On October 8, 2009, we extended the due date for the preliminary results of review by 86 days to January 25, 2010. See *Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 53215 (October 16, 2009).

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in the scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15

[1] The notice of "Opportunity To Request Administrative Review" stated that all requests for a review must be submitted no later than the last day of February 2009, or the next business day if the deadline falls on a weekend, federal holiday, or any other day when the Department is closed. Because February 28, 2009 fell on the weekend, Palini submitted its request for an administrative review on Monday, March 2, 2009.

percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (i.e., USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Imports of steel plate are currently classified in the HTSUS under subheadings 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, and 7226.99.0000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products described by the "Scope of the Order" section above produced and sold by Palini in the comparison market during the POR to be foreign like product for the purposes of determining appropriate product comparisons to U.S. sales of subject merchandise. Specifically, in making our comparisons, we used the following methodology. If an identical comparison-market model was reported, we made comparisons to weighted-average comparison-market prices that were based on all sales which passed the cost-of-production (COP) test of the identical product during the relevant or contemporary month. We calculated the weighted-average comparison-market prices on a level of trade-specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar comparison-market model. To determine the most similar model, we matched the foreign like product based on the physical characteristics reported by the respondent in the following order of importance: Whether painted, quality, specification/grade, heat treatment, thickness, width, patterns in relief, and descaling.

Date of Sale

Although the Department normally uses the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale, the Department's regulations provide that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.,* price and quantity). See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090–92 (CIT 2001). In this case, the information on the record indicates that the material terms of sale were finalized at the time of the confirmation of the purchase order. Palini asserted that the invoice date better reflects the date of sale because the material terms of sale were subject to change and, in fact, did change when Palini's affiliated trading company and its unaffiliated U.S. customer agreed to a price adjustment. Accordingly, Palini reported the invoice date as the date of sale in its U.S. sales list.

We examined the information on the record and found that the material terms of U.S. sales did not change between the date of the purchase-order confirmation and the date of commercial invoices and that the price adjustment to which Palini refers is a post-sale adjustment because it occurred after the invoices were issued and the product was shipped. See Palini's June 3, 2009, questionnaire response at Exhibit A–8 and its August 14, 2009, supplemental questionnaire at page 4 and Exhibit 5. As the information on the record indicates that the material terms of sale (*e.g.,* price and quantity) were not subject to change after the date of the purchase-order confirmation we preliminarily determine that this date better reflects the date on which the producer/exporter established and formalized the material terms of sale. Therefore, for purposes of the preliminary results of review, we have used the date of the purchase-order confirmation as the date of sale for Palini's U.S. sales. See memorandum from Dmitry Vladimirov to the File, "Administrative Review of Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy: Preliminary Results Analysis Memorandum for Evraz Palini Bertoli S.p.A.," dated concurrently with this notice (Palini Analysis Memorandum), for additional information.

Fair-Value Comparison

To determine whether Palini's sales of the subject merchandise from Italy to the United States were at prices below normal value, we compared the export price to the normal value as described in the "Export Price" and "Normal Value" sections of this notice. Therefore, pursuant to section 777A(d)(2) of the Act, we compared the export price of individual U.S. transactions to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade.

In its questionnaire response, Palini stated that the home-market sales, home-market price adjustments, and cost information were reported on the basis of actual weight whereas the U.S. sales and U.S. price adjustments were reported on the basis of theoretical weight. It is our practice to make all price comparisons using the same weight basis. See *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan,* 64 FR 24329 (May 6, 1999). In *Nippon Steel Corp.* v. *United States,* 25 CIT 1405, 1406 (CIT 2001), and *Persico Pizzamiglio, S.A.* v. *United States,* 18 CIT 299, 302 (CIT 1994), the courts upheld the necessity of the conversion to the consistent weight basis in order to enable proper price comparisons. Further, the objective of comparing export price and normal value on a consistent weight basis does not dictate the preference of converting certain information reported on the basis of actual weight to theoretical weight in lieu of converting certain information reported on the basis of theoretical weight to the actual weight. See *Light-Walled Rectangular Pipe and Tube From Mexico: Notice of Final Determination of Sales at Less Than Fair Value,* 69 FR 53677, 53681 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 16. Accordingly, we converted the U.S. sales and price adjustments that were reported on the basis of theoretical weight to an actual-weight basis. See the Palini Analysis Memorandum for additional information.

Export Price

The Department based the price of Palini's U.S. sales of subject merchandise on export price as defined in section 772(a) of the Act because the merchandise was sold, before

importation, by a third country-based seller affiliated with the producer to unaffiliated purchasers in the United States. We calculated export price based on the packed, delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions to the starting price for billing adjustments and, in accordance with section 772(c)(2)(A) of the Act, movement expenses.

Normal Value

A. Universe of Sales

In its questionnaire responses, Palini reported that, in the normal course of business, it identifies certain sales as having a final destination outside Italy. Palini reported such sales as home-market sales. Palini asserted in its questionnaire responses that the sales in question were made to Italian customers, delivered within Italy, and Palini does not know the final destination for these sales except that they are to be exported. Where a respondent has no knowledge as to the destination of merchandise, except that it is for export, the Department classifies such sales as export sales and excludes them from the home-market sales database. See *Stainless Steel Sheet and Strip in Coils from Taiwan: Preliminary Results and Preliminary Rescission in Part of Antidumping Duty Administrative Review,* 73 FR 45393, 45396 (August 5, 2008) (*Coils from Taiwan*), unchanged in *Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review,* 73 FR 74704 (December 9, 2008). Further, in *Coils from Taiwan* we stated that, in *Tung Mung Dev. Co., Ltd.* v. *United States,* 25 CIT 752, 783 (CIT 2001), the court, quoting *INA Walzlager Schaeffler KG* v. *United States,* 957 F. Supp. 251 (CIT 1997), found that sales should be reported as home-market sales if the producer "knew or should have known that the merchandise it sold was for home consumption based upon the particular facts and circumstances surrounding the sales."

Based on Palini's knowledge at the time of sale that the sales in question were destined for export, notwithstanding its lack of knowledge of the specific export destination, we have preliminarily determined that the sales in question were not for consumption in the home market. Therefore, we have excluded these sales from Palini's home-market sales database for these preliminary results of review. See the Palini Analysis Memorandum for additional information.

B. Home-Market Viability

In accordance with section 773(a)(1)(c) of the Act, in order to determine whether there was a sufficient volume of sales of steel plate in the comparison market to serve as a viable basis for calculating normal value, we compared the volume of the respondent's home-market sales of the foreign like product to its volume of the U.S. sales of the subject merchandise. Palini's quantity of sales in the home market was greater than five percent of its sales to the U.S. market. Based on this comparison of the aggregate quantities sold in the comparison market (*i.e.,* Italy) and to the United States and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we preliminarily determine that the quantity of the foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. Thus, we determine that Palini's home market was viable during the POR. *Id.* Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value for the respondent on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the U.S. sales.

C. Cost-of-Production Analysis

In the less-than-fair-value investigation the Department determined that Palini sold the foreign like product at prices below the cost of producing the merchandise and, as a result, excluded such sales from the calculation of normal value. See *Preliminary Determinations of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy,* 64 FR 41213 (July 29, 1999), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products from Italy,* 64 FR 73234 (December 29, 1999).[2] Therefore, in this review, we have reasonable grounds to believe or suspect that Palini's sales of the foreign like product under consideration for the determination of normal value may have been made at prices below COP as provided by section 773(b)(2)(A)(ii) of the Act and, pursuant to section 773(b)(1) of the Act, we have conducted a COP investigation of Palini's sales in the comparison market.

1. *Calculation of Cost of Production*

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials, fabrication, and labor employed in producing the foreign like product plus the amounts for the selling, general, and administrative (SG&A) expenses, financial expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the comparison-market sales and COP information provided by Palini in its supplemental questionnaire responses. We recalculated Palini's financial expenses by including the net value of foreign-exchange losses, consistent with our practice, as this better reflects the results of Palini's foreign-exchange management. See, *e.g., Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review,* 69 FR 13813 (March 24, 2004) and accompanying Issues and Decision Memorandum at Comment 14. See the Palini Analysis Memorandum for additional information.

2. *Test of Comparison-Market Sales Prices*

After calculating the COP and in accordance with section 773(b)(1) of the Act, we tested whether comparison-market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. See section 773(b)(2) of the Act. We compared model-specific COPs to the reported comparison-market prices less, where applicable, any billing adjustments, movement charges, commissions, indirect selling expenses, and packing expenses.

3. *Results of the COP Test*

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of Palini's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales

[2] We made a facts-available determination with an adverse inference in the most recently concluded administrative review (*i.e.,* the 2004–2005 review). See *Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 11178 (March 6, 2006), unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 71 FR 39299 (July 12, 2006).

were not made in substantial quantities within an extended period of time. When 20 percent or more of Palini's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

In this case, we found that, for certain products, more than 20 percent of Palini's home-market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales as the basis for determining normal value in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison-Market Prices

We based normal value for Palini on packed, ex-works or delivered prices to unaffiliated customers in the home market. We made an adjustment to the starting price, where appropriate, for billing adjustments in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, for movement expenses, limited to inland freight, under section 773(a)(6)(B)(ii) of the Act.

We made circumstance-of-sale adjustments by deducting home-market direct selling expenses from, and adding U.S. direct selling expenses to, normal value under section 773(a)(6)(C)(iii) of the Act. We also made adjustments, when applicable, for home-market indirect selling expenses incurred for U.S. sales to offset home-market commissions. See 19 CFR 351.410(e).

We made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. We also deducted home-market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

When possible, we calculated normal value at the same level of trade as the export price. See below.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the export price. Pursuant to 19 CFR 351.412(c)(1), the normal-value level of trade is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive SG&A expenses and profit. For export price sales, the U.S. level of trade is based on the starting price of the sales in the U.S. market, which is usually from the exporter to the importer.

To determine whether comparison-market sales are at a different level of trade than export-price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. See 19 CFR 351.412(c)(2). If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and the comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

In this review, we obtained information from Palini regarding the marketing stages involved in making its reported home-market and U.S. sales, including a description of the selling activities Palini (or, where applicable, its affiliate(s)) performed for each channel of distribution.

During the POR, Palini reported that it sold steel plate in the home market to end-users and service centers. We found that the selling activities associated with these channels of distribution did not differ significantly.[3] Specifically, we found that the provision of technical assistance and arrangement for freight delivery were the only selling activities differentiating home-market channels of distribution. Accordingly, we found that the home-market channels of distribution constituted a single level of trade.

Palini reported that its export-price sales were made using one channel of distribution, sales by an affiliated trading company not based in the United States to U.S. trading companies/distributors. Accordingly, we found that the single export-price channel of distribution constituted a single level of trade. We found that the export-price level of trade was similar to the home-market level of trade in terms of selling activities. Specifically, we found that technical assistance and the arrangement for freight delivery were the only two selling functions Palini provided for both levels of trade. Accordingly, we considered the export-price level of trade to be similar to the home-market level of trade and not at a less advanced stage of distribution than the home-market level of trade. Therefore, we matched export-price sales to sales at the same level of trade in the home market. See section 773(a)(7)(A) of the Act.

Currency Conversion

Pursuant to 19 CFR 351.415, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the relevant U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 17.75 percent exists for Palini for the period February 1, 2008, through January 31, 2009.

Disclosure and Public Comment

We will disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the publication of this notice in the **Federal Register**. If a hearing is requested, the Department will notify interested parties of the hearing schedule.

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**. Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments.

We intend to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within

[3] Although Palini designated the provision of cash discounts and commission for one home-market channel of distribution and no provision of such services for the others, we did not consider them in our level-of-trade analysis because we adjust the starting price in the comparison market for these direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act.

120 days of publication of these preliminary results in the **Federal Register**.

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 an importer-specific assessment rate for these preliminary results of review. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for the importer. We will instruct CBP to assess the importer-specific rate uniformly, as appropriate, on all entries of subject merchandise made by the relevant importer during the POR. See 19 CFR 351.212(b). The Department intends to issue instructions to CBP 15 days after the publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the POR produced by Palini for which Palini did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of merchandise produced by Palini at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties.*

Cash-Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of steel plate from Italy entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for Palini will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash-deposit rate will be 7.85 percent, the all-others rate established in the *Order.* 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) 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 25, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–1908 Filed 1–28–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Villa Marina Yacht Harbour, Inc.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of stay—closure of administrative appeal decision record.

SUMMARY: This announcement provides notice that the Secretary of Commerce has stayed, for a period of 60 days, closure of the decision record in an administrative appeal filed by Villa Marina Yacht Harbour, Inc. (Villa Marina).

DATES: The decision record for the Villa Marina Federal Consistency Appeal will now close on April 2, 2010.

ADDRESSES: NOAA, Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gladys P. Miles, Attorney-Advisor, NOAA, Office of the General Counsel, 301–713–7384 or at *gcos.inquiries@noaa.gov.*

SUPPLEMENTARY INFORMATION: On July 24, 2009, Villa Marina filed a notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR Part 930, Subpart H. The appeal is taken from an objection by Puerto Rico Planning Board (PRPB) to Villa Marina's consistency certification for a U.S. Army Corps of Engineers permit for a marina expansion in Fajardo, Puerto Rico. Notice of this appeal was published in the **Federal Register** on August 24, 2009. *See* 74 FR 42,650.

Under the CZMA, the Secretary must close the decision record in an appeal 160 days after the notice of appeal is published in the **Federal Register.** 16 U.S.C. 1465. The CZMA, however, authorizes the Secretary to stay closing of the decision record for up to 60 days when the Secretary determines it necessary to receive, on an expedited basis, any supplemental information specifically requested by the Secretary to complete consistency review. 16 U.S.C. 1465(b)(3).

The decision record currently is scheduled to close on February 1, 2010. After reviewing the decision record developed to date, the Secretary has requested supplemental and clarifying information. In order to allow receipt of this information, the Secretary hereby stays closure of the decision record until April 2, 2010.

Additional information on this appeal is available on the following Web site: *http://www.ogc.doc.gov/czma.htm;* and during business hours, at the NOAA, Office of General Counsel for Ocean Services.

Dated: January 25, 2010.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services, NOAA.

[FR Doc. 2010–1802 Filed 1–28–10; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: 3/1/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely

Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to provide the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the products and services to the Government.

2. If approved, the action will result in authorizing small entities to provide the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

M.R. Laundry Products

NSN: MR 1103—Heavy Duty Laundry Bag.
NSN: MR 1104—Pop Up Mesh Hamper.
NSN: MR 1105—Utility Pop Up Basket.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C–List items for the requirements of the Military Resale, Defense Commissary Agency.

Services

Service Type/Locations: Develop Rapid Prototypes
Alphapointe Association for the Blind, 7501 Prospect, Kansas City, MO.
Northeastern Association of the Blind at Albany, 301 Washington Avenue, Albany, NY.
Association for the Blind and Visually Impaired & Goodwill Ind. of Greater Rochester, Rochester, NY, 422 South Clinton Avenue, Rochester, NY.
Blind Industries and Services of Maryland, 3345 Washington Blvd., Baltimore, MD.
Industries of the Blind, Inc., 920 West Lee Street, Greensboro, NC.
Winston-Salem Industries for the Blind, 7730 North Point Drive, Winston-Salem, NC.
LC Industries, 4500 Emperor Blvd., Durham, NC.
Lions Services, Inc., 4600 North Tryon Street, Charlotte, NC.
San Antonio Lighthouse for the Blind, 2305 Roosevelt Avenue, San Antonio, TX.
The Lighthouse for the Blind, Inc. (Seattle Lighthouse), 2501 South Plum Street, Seattle, WA.
Arkansas Lighthouse for the Blind, 6918 Murray Street, Little Rock, AR.
NPAs: National Industries for the Blind, Alexandria, VA (Prime Contractor).
Alphapointe Association for the Blind, Kansas City, MO.
Northeastern Association of the Blind at Albany, Inc., Albany, NY.
Association for the Blind and Visually Impaired & Goodwill Ind. Of Greater Rochester, Rochester, NY.
Blind Industries & Services of Maryland, Baltimore, MD.
Industries of the Blind, Inc., Greensboro, NC.
Winston-Salem Industries for the Blind, Winston-Salem, NC.
L.C. Industries For The Blind, Inc., Durham, NC.
Lions Services, Inc., Charlotte, NC.
San Antonio Lighthouse for the Blind, San Antonio, TX.
The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
The Arkansas Lighthouse for the Blind, Little Rock, AR.
Contracting Activity: Department of Homeland Security, U.S. Coast Guard, CG–9, Washington, DC.
Service Type/Locations: Shredding & Destruction of Document & Recycling, U.S. Army Corps of Engineers, Middle East District: 201 Prince Frederick Dr., Winchester, VA.
Records Holding Area (RHA): 205 Brooke Rd., Winchester, VA.
Transatlantic Division: 255 Fort Collier Rd., Winchester, VA.
NPA: Athelas Institute, Inc., Columbia, MD.
Contracting Activity: Dept of the Army, XU W31R USAEN TRANSATL PGN CTR, Winchester, VA.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2010–1815 Filed 1–28–10; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 3/1/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On 11/16/2009 (74 FR 58949–58950), the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to furnish a service and impact of that addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Custodial Service, MC Smith Post Federal Bldg & Courthouse, 202 Harlow Street, Bangor, ME.

NPA: Northern New England Employment Services, Portland, ME.

Contracting Activity: GSA/Public Buildings Service Region 1, Boston, MA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–1816 Filed 1–28–10; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Wednesday, February 3, 2010, 10 a.m.–11:30 a.m.

PLACE: Corporation for National and Community Service, 1201 New York Avenue, NW., Suite 8312, Washington, DC 20525 (Please go to 10th floor reception area for escort).

STATUS: Open.

MATTERS TO BE CONSIDERED:

10–10:45 a.m.

I. Chair's Opening Comments
II. Consideration of Previous Meeting's Minutes
III. CEO Report
IV. Committee Reports: Oversight, Governance, and Audit Committee; Program, Budget, and Evaluation Committee; and External Relations Committee

10:45–11:30 a.m.

V. Public Comments

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5 p.m., February 1, 2010.

CONTACT PERSON FOR MORE INFORMATION: Emily Samose, Office of the CEO, Corporation for National and Community Service, 10th Floor, Room 9613C, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–7564. Fax (202) 606–3460. TDD: (202) 606–3472. E-mail: *esamose@cns.gov.*

Dated: January 26, 2010.

Frank R. Trinity,

General Counsel.

[FR Doc. 2010–2013 Filed 1–27–10; 4:15 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 09–79]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

Dated: January 26, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 09–79 with attached transmittal, and policy justification.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JAN 22 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 09-79, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to India for defense articles and services estimated to cost $647 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Beth M. McCormick
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 09-79

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: India

(ii) Total Estimated Value:

Major Defense Equipment*	$476 million
Other	$171 million
TOTAL	$647 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 145 M777 155mm Light-Weight Towed Howitzers with Laser Inertial Artillery Pointing Systems (LINAPS), warranty, spare and repair parts, support and test equipment, publications and technical documentation, maintenance, personnel training and training equipment, U.S. Government and contractor representatives' technical assistance, engineering and logistics support services, and other related elements of logistics support.

(iv) Military Department: Army (UAD and UAF))

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None

(viii) Date Report Delivered to Congress: JAN 22 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India – M777 155mm Light-Weight Towed Howitzers

The Government of India has requested a possible sale of 145 M777 155mm Light-Weight Towed Howitzers with Laser Inertial Artillery Pointing Systems (LINAPS), warranty, spare and repair parts, support and test equipment, publications and technical documentation, maintenance, personnel training and training equipment, U.S. Government and contractor representatives' technical assistance, engineering and logistics support services, and other related elements of logistics support. The estimated cost is $647 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to strengthen the U.S.-India strategic relationship and to improve the security of an important partner which continues to be an important force for political stability, peace, and economic progress in South Asia.

India intends to use the howitzers to modernize its armed forces and enhance its ability to operate in hazardous conditions. The howitzers will assist the Indian Army to develop and enhance standardization and to improve interoperability with U.S. Soldiers and Marines who use the M777 as their primary means of indirect fire. India will have no difficulty absorbing these weapons into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be, BAE of Hattiesburg, Mississippi; Watervliet Arsenal of Watervliet, New York; Seiler Instrument Company of St Louis, Missouri; Triumph Actuation Systems of Bloomfield, Connecticut; Taylor Devices of North Tonawanda, New York; Hutchinson Industries of Trenton, New Jersey; and Selex, Edinburgh, United Kingdom. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require annual trips to India involving up to eight (8) U.S. Government and contractor representatives for technical reviews/support, training, and in-country trials for a period of approximately two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2010–1829 Filed 1–28–10; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

FY 2010 Grant Competition Announcement; Promoting Student Achievement at Schools Impacted by Military Force Structure Changes

AGENCY: Department of Defense Education Activity, DoD.

ACTION: Grant competition announcement; amendment.

SUMMARY: The Department of Defense Education Activity (DoDEA) is amending the Promoting Student Achievement at Schools Impacted by Military Force Structure Changes grant competition announcement, which published in the **Federal Register** on November 24, 2009 (74 FR 61335–61337). Marion County Schools has been added as a local educational agency associated with Fort Benning.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Pritchard, Contracts and Grants Liaison, Department of Defense Education Activity (DoDEA), e-mail: *brian.pritchard@hq.dodea.edu.*

Dated: January 26, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–1830 Filed 1–28–10; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0007]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Office of the Secretary of Defense is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on March 1, 2010, unless comments are received that would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on January 22, 2010, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: January 26, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPR 37

SYSTEM NAME:

DoD Employer Support of Guard and Reserve Volunteer Rosters.

SYSTEM LOCATION:

Defense Information Systems Agency, Computing Directorate, 5450 Carlisle Pike, Mechanicsburg, PA 17050–2411.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian volunteers and ombudsmen serving on field committees supporting the Employer Support of the Guard and Reserve program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name; mailing address for home and work; telephone numbers for home, work, and mobile devices; e-mail addresses for home and work; role and field committee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 43, Uniformed Service Employment and Reemployment Rights Act; and DoD Directive 1250.01, National Committee for Employer Support of the Guard and Reserve (NCESGR).

PURPOSE(S):

To collect, validate status, and maintain an official roster of individuals who are civilian volunteers and ombudsmen with the DoD Employer Support of the Guard and Reserve national, state and local committees and facilitate communication between volunteers, ombudsman and Employer Support of the Guard and Reserve Staff.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD "Blanket Routine Uses" published at the beginning of the Office of the Secretary of Defense's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name, role and field committee.

SAFEGUARDS:

Servers are housed in a secure facility. Access to information is role-based and requires Common Access Card (CAC) and limited to those headquarters staff requiring access to service the record in performance of their official duties. State and local committee members must have an RSA token issued by the Employer Support of the Guard and Reserve with limited access. CAC or RSA token secure access is required for PII information display.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the retention and disposal of these records, treat them as permanent.

SYSTEM MANAGER AND ADDRESS:

Deputy Director Resources—IT, 1555 Wilson Boulevard, Suite 319, Wilson Boulevard, Arlington, VA 22209–2405.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Deputy Director Resources—IT, 1555 Wilson Boulevard, Suite 319, Wilson Boulevard, Arlington, VA 22209–2405.

Individuals should provide their full name and field committee.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center at Office of Freedom of Information 1155 Defense Pentagon, Washington, DC 20301–1155.

Requests should include the individual's full name and field committee, the name and number of this system of records notice and be signed.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–1831 Filed 1–28–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0006]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: Defense Threat Reduction Agency proposes to amend a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 1, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://*

www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the contact under **FOR FURTHER INFORMATION CONTACT.**

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 26, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 020

SYSTEM NAME:

Human Radiation Research Review (August 9, 2005; 70 FR 46155).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Defense Threat Reduction Information Analysis Center, 1680 Texas St., SE., Kirtland AFB NM 87117–5669."

* * * * *

HDTRA 020

SYSTEM NAME:

Human Radiation Research Review.

SYSTEM LOCATION:

Defense Threat Reduction Information Analysis Center, 1680 Texas St., SE., Kirtland AFB NM 87117–5669.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were or may have been the subject of tests involving ionizing radiation or other human-subject experimentation; individuals who have inquired or provided information to the Department of Energy Helpline or the Department of Defense Human Radiation Experimentation Command Center concerning such testing.

Military and DoD civilian personnel who participated in atmospheric nuclear testing between 1945 and 1962 or the occupation of Hiroshima and Nagasaki are already included in the Defense Threat Reduction Agency Privacy Act system of records notice HDTRA 010, Nuclear Test Participants, are not part of this effort. However, inquiries referred from the Helpline determined to fall within this category will be included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN) or service number, last known or current address, occupational information, dates and extent of involvement in an experiment, exposure data, medical data, medical history of subject and relatives, case or study control number and other documentation of exposure to ionizing radiation or other agents.

The system contains information abstracted from historical records. Records include human radiation experimentation conducted from 1944 to the present. However, experiments conducted after May 20, 1974 may be covered by other Privacy Act systems of records notices.

Common and routine medical practices, such as established diagnostic and treatment methods involving incidental exposures to ionizing radiation are not included within this system. Examples of such methods are panorex radiographs for dental evaluations and thyroid scans for the evaluation and treatment of hypo/hyperthyroidism.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

45 CFR part 46, Protection of Human Subject; 10 U.S.C. 133, Under Secretary of Defense for Acquisitions, Technology and Logistics; E.O. 12891, Committee on Human Radiation Experiments; and E.O. 9397 (SSN), amended.

PURPOSE(S):

For use by agency officials and employees, or authorized contractors, and other DoD components in the preparation of the histories of human radiation experimentation; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the exposure of individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the National Aeronautics and Space Administration, Department of Justice, Department of Energy, Department of Health and Human Services, Department of Veterans Affairs, Central Intelligence Agency, and Office of Management and Budget for purposes of performing official activities or requirements related to the Department of Defense's managing of the human radiation research program.

The 'Blanket Routine Uses' published at the beginning of DTRA's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in files and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by case number, name, study control number, Social Security Number (SSN), or service number.

SAFEGUARDS:

Access to or disclosure of information is limited to authorized personnel. Paper records and computer systems are located in areas accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Access to computer programs are controlled through software applications that require validation prior to use.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the Defense Threat Reduction Agency until all claims have been settled and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Nuclear Test Personnel Review Program Manager, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individual should provide full name, Social Security Number, or service number, and if known, a case or study control number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should provide full name, Social Security Number, or service number, and if known, a case or study control number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11B; 32 CFR part 318; or may be obtained from the Nuclear Test Personnel Review, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

RECORD SOURCE CATEGORIES:

Information will be collected directly from individuals, as well as extracted from historical records to include personnel files and lists, training files, medical records, legal case files, radiation and other hazard exposure records, occupational and industrial accident records, employee insurance claims, organizational and institutional administrative files, and related sources. The specific types of records used are determined by the nature of an individual's exposure to radiation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–1832 Filed 1–28–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of the Final Environmental Impact Statement (FEIS) for the Relocation of New River Inlet Ebb Tide Channel Between North Topsail Beach and Onslow Beach, and the Placement of the Dredged Material Along the Ocean Shoreline of North Topsail Beach in Onslow County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (COE) Wilmington District, Wilmington Regulatory Field Office announces the availability of a Regulatory Program Final EIS for the North Topsail Beach Shoreline Protection Project. The applicant, The Town of North Topsail Beach, is requesting Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, to protect residential homes and town infrastructures by nourishing approximately 11.1 miles of beachfront via repositioning the New River Inlet channel, implementing an inlet management plan to control the positioning of the new inlet channel, and utilizing an offshore borrow area. The new channel will be centrally located and the proposal will be to maintain that position, which essentially will be located perpendicular to the adjacent shorelines of North Topsail Beach and Onslow Beach. The proposed sources of the material for the beach nourishment will come from the repositioning of the inlet and an identified offshore borrow area. The projected amount of material needed to initially nourish the oceanfront shoreline is approximately 3.11 million cubic yards. The placement of beach fill along the Town's shoreline would result in the initial widening of the beach by 50 to 100 feet. The widened beach would be maintained through a program of periodic beach nourishment events with the material extracted from the maintenance of the newly relocated channel. All work will be accomplished using a hydraulic cutterhead dredge. The proposed project construction will be conducted in a five phase approach to correspond with the Town's anticipated annual generation of funds.

The ocean shoreline of the Town of North Topsail Beach encompasses approximately 11.1 miles along the northern end of Topsail Island. Of the 11.1 miles, approximately 7.25-miles of the shoreline in the project area, with the exception of two small areas, is located within the Coastal Barrier Resource System (CBRS), which prohibits the expenditure of Federal funds that would encourage development.

The channel through New River Inlet has been maintained by the COE for commercial and recreational boating interest for over 55 years. The COE is authorized to maintain the channel in the inlet to a depth of 6 feet mean low water (mlw) over a width of 90 feet, following the channel thalweg.

DATES: The Public commenting period on the FEIS will end on March 1, 2010. Written comments must be received at the address listed below no later than 5 p.m.

ADDRESSES: Copies of comments and questions regarding the FEIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division, ATTN: File Number 2005–0344, 69 Darlington Avenue, Wilmington, NC 28403.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the FEIS can be directed to Mr. Mickey Sugg, Wilmington Regulatory Field Office, telephone: (910) 251–4811, facsimile (910) 251–4025, or e-mail at *mickey.t.sugg@saw02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Town of North Topsail Beach, located along the north-northeast 11.1 miles of Topsail Island in North Carolina, is proposing to nourish the oceanfront shoreline and reposition New River Inlet channel as a means to address a severe erosion problem in order to preserve the Town's tax base, protect its infrastructure, and maintain its tourist oriented economy. The entire stretch of the Town's shoreline has experienced a considerable amount of erosion over the last 20 years due primarily to the impact of numerous tropical storms and hurricanes during the mid to late 1990's and due to impacts of the uncontrolled movement of the main ebb channel in New River Inlet. The Town has stated that the shoreline erosion and residual effects of the storms have left North Topsail Beach in an extremely vulnerable position with regard to its ocean front development and infrastructure. They have estimated that over $250 million in property tax value as well as roads, water and sewer lines, and other utilities are at risk. The stated overall goals and objectives of the project are the following: (1) Long-term stabilization of the oceanfront shoreline located immediately south of New River Inlet, (2) Provide short-term protection to the 31 imminently threatened residential structures over the next zero to five years, (3) Provide long-term protection to Town infrastructure and approximately 1,200 homes, (4) Reduce or mitigate for property damage associated with shoreline erosion along 11.1 miles of oceanfront shoreline of North Topsail Beach, (5) Improve recreational opportunities along the Town's oceanfront shoreline, (6) Ensure material utilized for shore protection is beach compatible, (7) Maintain the Town's tax base by protecting existing development and infrastructure on the oceanfront shoreline of North Topsail Beach, and (8) Balance the needs of the human environment by minimizing and

avoiding negative effects to natural resources.

The project is divided into three sections; North, Central, and South. The North Section starts from the inlet shoulder and runs approximately 21,000 linear feet along the ocean shoreline. The Central Section is located both north and south of NC Hwy 210/55 Bridge and is approximately 16,500 linear feet, while the South Section, which is outside of the CBRS designation, includes approximately 20,320 linear feet of shoreline. The Town is proposing to undertake the nourishment along the 11.1 miles of oceanfront in a five phase approach within a dredging window between November 16 and March 31 of any year. The first phase will include the relocation of the inlet channel with the dredged material being used to nourish approximately 9,000 linear feet of shoreline in the North Section. Construction timeline for Phase One will be within the 2010–2011 dredging window. Phase Two would take place during the 2012–2013 dredging window using the offshore borrow source, and will nourish approximately 10,120 linear feet in the North Section. The third phase will include an inlet channel maintenance event and the use of the offshore borrow material to place material along approximately 11,500 linear feet within the southern part of the Central Section. This phase is proposed during the 2014–2015 dredging window. For Phase Four, offshore material will be used to nourish 6,880 linear feet of shoreline in the north part of the Central Section and part of the southern tip of the North Section. This construction will take place in the 2016–2017 dredging window. The final phase of nourishment will encompass the entire South Section, using the offshore borrow site and material from an inlet channel maintenance event, and will be conducted in the 2018–2019 dredging window.

Within the Town's preferred alternative, the relocation of the inlet channel is a main component in the protection of the North Section of the project area. The inlet management plan includes the repositioning the main ocean bar channel to a more southerly alignment along an approximate 150 degree azimuth and maintaining that position and alignment approximately every four years. Maintenance events will be initiated only when established thresholds have been triggered. These maintenance thresholds include the shoaling of 85% of the new channel and/or when the thalweg migrates outside of the constructed 500-foot wide corridor. Initial construction of the new channel and subsequent maintenance events will result in a channel width of 500 feet at −18 foot NAVD depth. The new channel will start within the inlet gorge and will extend approximately 3,500 linear feet southeast breaching through the ocean bar. The amount of material to be extracted during the realignment of the channel is approximately 635,800 cubic yards. The composite mean grain size of the dredged material is approximately 0.32mm, compared to the native beach material at 0.23mm. During additional investigations, it was discovered that an estimated 91,400 cubic yards of the total extracted material is not beach compatible, consisting of clay and shell. This incompatible material will be relocated during the dredging operation to an existing dredge disposal island located at the intersection of the New River and the Atlantic Intracoastal Waterway, approximately 3.0 miles north of the project site.

To supplement the initial beach nourishment construction, material will be dredged from an offshore borrow area. The borrow area is located directly off of the Central Section, and just southwest of the NC Highway 210 bridge. Due to the presence of nearby hardbottom areas, the site is irregularly shaped, with its closest point to the shoreline at approximately 0.4 miles and its furthest offshore point at 1.6 miles. The site is approximately 482 acres in size and is divided into 16 cuts to separate coarse and fine materials. The division of the borrow site into coarser and finer materials resulted in the use of the Point of Intercept Concept or "perched beached" for the placement of material in areas where nearshore hard bottom communities were present. For nourishment in areas within close proximity to nearshore hard bottoms, the beach profiles were designed to use coarser material in order to reduce the fill toe of equilibrium.

The FEIS examines potential impacts to Essential Fish Habitat (EFH), Threatened and Endangered Species, and includes a comprehensive mitigation and monitoring plan and the implementation of specific design measures to minimize potential impacts and to evaluate unforeseen effects of the projects. Several components in the plan include incorporating the Point of Intercept design to reduce the equilibrium beach profile for areas where hardbottom habitats are in close proximity of the shoreline, incorporation of a monitoring plan to verify the Point of Intercept design to ensure its effectiveness, compliance to North Carolina Sediment Criteria Rule for sand compatibility, winter construction period to occur during lower biological activities and to avoid nesting turtle season, use of hydraulic cutterhead dredge and selected pipeline corridors (which will be GPS) to avoid impacts to hardbottom features, monitoring protocol during the placement of dredge material onto the beach to comply with sand compatibility requirements, implementation of a bird and sea turtle monitoring plan, funding of a research initiative for infaunal communities conducted by Carteret County Community College, implementation of an aerial habitat mapping effort for New River Inlet to survey any short- and long-term effects, and the execution of a hardbottom monitoring plan which consists of a geophysical survey using sidescan sonar, underwater investigations that includes habitat characterization and documentation, and sediment monitoring.

Several alternatives have been identified and evaluated through the scoping process, and further detailed description of all alternatives is disclosed in Section 3.0 of the Draft EIS. The applicant's preferred alternative is to relocate the main ocean bar channel to a southerly alignment, implement an inlet management plan, nourish approximately 11.1 miles of ocean shoreline, and to construct the work in a five phase approach.

The COE has initiated consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act, and with the National Marine Fisheries Service under the Magnuson-Stevens Act and Endangered Species Act. Additionally, the EIS assesses the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and is coordinated with the North Carolina Division of Coastal Management (DCM) to insure the projects consistency with the Coastal Zone Management Act. The COE has coordinated closely with DCM in the development of the EIS to ensure the process complies with State Environmental Policy Act (SEPA) requirements, as well as the NEPA requirements. The Final EIS has been designed to consolidate both NEPA and SEPA processes to eliminate duplications.

Copies of the Final EIS will also be available on our regulatory homepage at *http://www.saw.usace.army.mil/WETLANDS/.* Locate North Topsail Beach Shoreline Protection Project under heading "News from the Regulatory Program", and click on *ftp.coastalplanning.net.* Type the

username: ntb and password: ftp4me to pull up the document.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–1819 Filed 1–28–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Availability of a Draft Environmental Impact Statement To Consider Issuance of a Department of the Army Permit Pursuant to Section 404 of the Clean Water Act for the Angelina & Neches River Authority's Proposal to Construct Lake Columbia, a Proposed 10,133-Surface-Acre Water Supply Reservoir in Cherokee and Smith Counties, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with the requirements of the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE) Fort Worth District has prepared a Draft Environmental Impact Statement (DEIS). This DEIS evaluates potential impacts to the natural, physical and human environment as a result of the Angelina & Neches River Authority's proposal to construct Lake Columbia. The USACE regulates this proposed project pursuant to Section 404 of the Clean Water Act. The proposed activity would involve the discharge of dredged and fill material into waters of the United States associated with the proposed construction of Lake Columbia.

DATES: Submit comments by March 30, 2010. An informal public information meeting (open house format) regarding this DEIS will be held on March 1, 2010, and a formal public hearing regarding this DEIS will be held on March 2, 2010 (see **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Send written comments and suggestions concerning this proposal to Mr. Brent Jasper, Regulatory Project Manager, Regulatory Branch, CESWF–PER–R, U.S. Army Corps of Engineers, Fort Worth District, P.O. Box 17300, Fort Worth, TX 76102–0300 or via e-mail: *Brent.J.Jasper@usace.army.mil.* Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Jasper, Regulatory Project Manager at (817) 886–1733 or via e-mail: *Brent.J.Jasper@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Discharges of fill material into waters of the United States are regulated under Section 404 of the Clean Water Act, with the permitting responsibility administered by the USACE. The proposed project must also address environmental impacts relative to the Clean Air Act, Clean Water Act, Endangered Species Act and the Fish and Wildlife Coordination Act (FWCA). In accordance with the NEPA, the DEIS evaluates practicable alternatives for the USACE's decision making process. As required by NEPA, the USACE also analyzes the "no action" alternative as a baseline for gauging potential impacts.

As part of the public involvement process, notice is hereby given by the USACE Fort Worth District of an informal public information meeting (open house format) to be held at the Norman Activity Center, 526 East Commerce Street, Jacksonville, TX, from 5 to 7:30 p.m. on March 1, 2010. This meeting will afford interested parties the opportunity to engage in a dialog with the USACE regarding the EIS process and the analyses performed to date. The USACE Fort Worth District will also be holding a formal public hearing to be held at the Norman Activity Center, 526 East Commerce Street, Jacksonville, TX, from 5 to 7:30 p.m. on March 2, 2010. The public hearing will allow participants the opportunity to comment on the DEIS prepared for the proposed Lake Columbia. Written comments should be sent to Mr. Brent Jasper (*see* **ADDRESSES**). The comments are due no later than 60 days from the date of publication of this notice. Copies of the DEIS may be obtained by contacting USACE Fort Worth District Regulatory Branch at (817) 886–1731 or printed from the Fort Worth District USACE internet home page at *http://www.swf.usace.army.mil.*

Copies of the DEIS are also available for inspection at the locations identified below:

(1) Jacksonville Public Library, 502 South Jackson St., Jacksonville, TX 76766.

(2) Kurth Memorial Library, 706 South Raguet St., Lufkin, TX 75904.

(3) Nacogdoches Public Library, 1112 North Street, Nacogdoches, TX 75961.

(4) Rusk County Library, 106 East Main St., Henderson, TX 75652.

(5) Tyler Public Library, 201 South College Avenue, Tyler, TX 75702.

(6) Henderson City Hall, 400 West Main Street, Henderson, TX 75652.

(7) Jacksonville City Hall, 301 East Commerce Street, Jacksonville, TX 75766.

(8) Lufkin City Hall, 300 East Shepherd Avenue, Lufkin, TX 75901.

(9) Nacogdoches City Hall, 202 East Pilar Street, Nacogdoches, TX 75961.

(10) Rusk City Hall, 205 South Main St., Rusk, TX 75785.

(11) Tyler City Hall, 212 North Bonner Avenue, Tyler, TX 75702.

After the public comment period ends, the USACE will consider all comments received, revise the DEIS as appropriate, and issue a Final Environmental Impact Statement.

Stephen L Brooks,

Chief, Regulatory Branch.

[FR Doc. 2010–1820 Filed 1–28–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Blast Wave Sensor

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/292,095 entitled "Blast Wave Sensor," filed January 4, 2010. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to blast wave sensors and their use to detect blast induced pressure changes, and, in particular, a blast wave over pressure threshold. The invention may be used to measure blast wave exposure.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–1818 Filed 1–28–10; 8:45 am]

BILLING CODE 3710–08–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Draft Revised Strategic Plan for FY 2010–2015

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: In accordance with OMB Circular No. A–11, the Defense Nuclear Facilities Safety Board is soliciting comments from all interested and potentially affected parties on its draft revised strategic plan. The Board will consider all comments received as a result of this outreach effort. The draft plan is available for review on the Board's Web site—*http://www.dnfsb.gov.* Comments may be sent to the General Manager at *mailbox@dnfsb.gov* or the address below. The Board will accept comments through March 5, 2010.

DATES: Comments will be accepted during the period February 1, 2010 through March 5, 2010.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Grosner, General Manager, 202–694–7060.

SUPPLEMENTARY INFORMATION: This draft strategic plan will replace the Board's FY 2003–2009 Strategic Plan, dated November 17, 2003.

Dated: January 25, 2010.

John E. Mansfield,

Vice Chairman.

[FR Doc. 2010–1803 Filed 1–28–10; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting 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 March 1, 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 send e-mail to *oira_submission@omb.eop.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 Acting Direction, 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: January 21, 2010.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title: Federal Family Education Loan (FFEL) Program: Federal Consolidation Loan Application and Promissory Note and Related Documents.

Frequency: On Occasion.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 84,705.

Burden Hours: 117,527.

Abstract: The Federal Consolidation Loan Application and Promissory Note serves as the means by which a borrower applies for a Federal Consolidation Loan and promises to repay the loan. Related documents included as part of this collection are (1) Additional Loan Listing Sheet (provides additional space for a borrower to list loans that he or she wishes to consolidate, if there is insufficient space on the Federal Consolidation Loan Application and Promissory Note); (2) Request to Add Loans (serves as the means by which a borrower may add other loans to an existing Federal Consolidation Loan within a specified time period); and (3) Loan Verification Certificate (serves as the means by which a consolidating lender obtains the information needed to pay off the holders of the loans that the borrower wants to consolidate).

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 4175. 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. 2010–1484 Filed 1–28–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Cancellation of public hearing.

SUMMARY: The National Assessment Governing Board published a document in the **Federal Register** of January 15, 2010, FR DOCID: fr15ja10–47, Volume 75, Number 10 [pages 2529–2530] announcing a public hearing on January 28, 2010 to obtain comment on the draft Technological Literacy Assessment Framework for the National Assessment of Educational Progress. The public hearing is hereby cancelled.

Written testimony may be sent by mail, fax or e-mail for receipt at the following address, no later than January 28, 2010.

National Assessment Governing Board, 800 North Capitol Street, NW.—Suite

825, Washington, DC 20002. Attention: Tessa Regis. *FAX:* (202) 357–6945. *E-mail: tessa.regis@ed.gov.*

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu at (202) 357–6906.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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: January 25, 2010.

Munira Mwalimu,

Operations Officer, U. S. Department of Education, National Assessment Governing Board.

[FR Doc. 2010–1798 Filed 1–28–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Case No. CAC–026]

Energy Conservation Program for Certain Industrial Equipment: Publication of the Petition for Waiver From Daikin AC (Americas), Inc. and Granting of the Interim Waiver From the Department of Energy Commercial Package Water-Source Air Conditioner and Heat Pump Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of petition for waiver, granting of application for interim waiver, and request for comments.

SUMMARY: This notice announces receipt of and publishes a petition for waiver from Daikin AC (Americas), Inc. (Daikin). The petition for waiver (hereafter "petition") requests a waiver from the U.S. Department of Energy (DOE) test procedure applicable to commercial package water-source central air conditioners and heat pumps. The petition is specific to the Daikin variable capacity VRV–WIII (commercial) multi-split heat pumps. Through this document, DOE solicits comments, data, and information with respect to the Daikin Petition, and announces the grant of an interim waiver to Daikin from the existing DOE test procedure for the subject commercial water-source, multi-split air conditioners and heat pumps.

DATES: DOE will accept comments, data, and information with respect to the Daikin Petition until, but no later than March 1, 2010.

ADDRESSES: You may submit comments, identified by case number "CAC–026," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov.* Include either the case number [CAC–026], and/or "Daikin Petition" in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza, SW., (Resource Room of the Building Technologies Program), Washington, DC 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar central air conditioning and heat pump equipment. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. E-mail: *AS_Waiver_Requests@ee.doe.gov.*

Ms. Francine Pinto or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. Telephone: (202) 586–7432 or (202) 586–5827, respectively. E-mail: *Francine.Pinto@hq.doe.gov* or *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III of the Energy Policy and Conservation Act (EPCA) sets forth a variety of provisions concerning energy efficiency, including Part A of Title III, which establishes the "Energy Conservation Program for Consumer Products Other Than Automobiles." (42 U.S.C. 6291–6309) Similar to the program in Part A, Part A–1 of Title III provides for an energy efficiency program titled, "Certain Industrial Equipment," which includes commercial air conditioning equipment, package boilers, water heaters, and other types of commercial equipment. (42 U.S.C. 6311–6317)

Today's notice involves commercial equipment under Part A–1. Part A–1 specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, Part A–1 authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that "the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992." (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning

and heating equipment, effective January 8, 2007. 71 FR 71340. DOE adopted the International Organization for Standardization (ISO) Standard 13256–1–1998, "Water-source heat pumps—Testing and rating for performance—Part 1: Water-to-air and brine-to-air heat pumps," for small commercial package water-source heat pumps with capacities < 135,000 British thermal units per hour (Btu/h). *Id.* at 71371. Pursuant to this rulemaking, DOE's regulations under Title 10 of the Code of Federal Regulations (10 CFR) 431.95(b)(2) incorporate by reference ARI Standard 340/360–2004, and Table 1 to 10 CFR 431.96 directs manufacturers of commercial package water-source air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of Daikin's commercial VRV–WIII multi-split heat pump products at issue in the waiver petition filed by Daikin range from 72,000 Btu/hr to 252,000 Btu/hr. The Daikin products with capacities greater than 135,000 Btu/hr are not covered by this waiver because there is no DOE test procedure for water-source heat pumps with capacities greater than 135,000 Btu/hr.

DOE's regulations for covered products permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first, and it may be extended by DOE for an additional 180 days, if necessary. 10 CFR 431.401(e)(4).

II. Petition for Waiver

On November 9, 2009, Daikin filed a petition for waiver from the test procedures at 10 CFR 431.96 applicable to commercial package water-source central air conditioners and heat pumps, as well as an application for interim waiver. The capacities of the Daikin VRV–WIII multi-split heat pumps range from 72,000 Btu/hr to 252,000 Btu/hr, making the applicable test procedure for Daikin's commercial VRV–WIII multi-split heat pumps with capacities less than 135,000 Btu/hr ISO Standard 13256–1 (1998), which manufacturers are directed to use pursuant to Table 1 of 10 CFR 431.96.

Daikin seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its VRV–WIII multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Daikin asserts that the two primary factors that prevent testing of its multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. 69 FR 52660 (August 27, 2004) (Mitsubishi waiver); 72 FR 17528 (April 9, 2007) (Mitsubishi waiver); 72 FR 71387 (Dec. 17, 2007) (Samsung waiver); 72 FR 71383 (Dec. 17, 2007) (Fujitsu waiver); 73 FR 39680 (July 10, 2008) (Daikin waiver); 74 FR 15955 (April 8, 2009) (Daikin waiver); 74 FR 16193 (April 9, 2009) (Sanyo waiver); 74 FR 16373 (April 10, 2009) (Daikin waiver)

The VRV–WIII systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu and Sanyo. As indicated above, DOE has already granted waivers for these products. The VRV–WIII system can be connected to the complete range of Daikin ceiling mounted, concealed, ducted, corner, cassette, wall-mounted and floor-mounted and other indoor fan coil units. Each of these units has nine different indoor static pressure ratings as standard, with additional pressure ratings available. There are over one million combinations possible with the Daikin VRV–WIII system. Accordingly, Daikin requested that DOE grant a waiver from the applicable test procedures for its VRV–WIII product designs, until a suitable test method can be prescribed.

III. Application for Interim Waiver

On November 9, 2009, in addition to its petition for waiver, Daikin submitted to DOE an application for interim waiver. DOE determined that Daikin's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship Daikin might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that absent an interim waiver, Daikin's products would not be tested and rated for energy consumption on an equal basis with equivalent products where DOE previously granted waivers, placing Daikin at a competitive disadvantage. Furthermore, DOE has determined that it appears likely that Daikin's Petition for Waiver will be granted and that is desirable for public policy reasons to grant Daikin immediate relief pending a determination on the petition for waiver. DOE believes that it is likely Daikin's petition for waiver for the new VRV–WIII multi-split models will be granted because, as noted above, DOE has previously granted a number of waivers for similar product designs.[1] The two principal reasons supporting the grant of the previous waivers also apply to Daikin's VRV–WIII products: (1) Test laboratories cannot test products with so many indoor units; and (2) it is impractical to test so many combinations of indoor units with each outdoor unit. In addition, DOE believes that similar products should be tested

[1] DOE notes that it has also previously granted interim waivers to Fujitsu (70 FR 5980 (Feb. 4, 2005)), Samsung (70 FR 9629 (Feb. 28, 2005)), Mitsubishi (72 FR 17533 (April 9, 2007)), and Daikin (72 FR 35986 (July 2, 2007)), for comparable commercial multi-split air conditioners and heat pumps.

and rated for energy consumption on a comparable basis. For these same reasons, DOE also determined that it is desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

Therefore, *it is ordered that:*

The application for interim waiver filed by Daikin is hereby granted for Daikin's VRV–WIII water-source multi-split heat pumps, subject to the specifications and conditions below.

1. Daikin shall not be required to test or rate its VRV–WIII commercial water-source multi-split products on the basis of the existing test procedure under 10 CFR 431.96, which incorporates by reference ISO Standard 13256–1 (1998).

2. Daikin shall be required to test and rate its VRV–WIII commercial water-source multi-split products according to the alternate test procedure as set forth in section IV(3), "Alternate test procedure."

The interim waiver applies to the following basic model groups:

VRV–WIII Series Outdoor Units:

• Models RWEYQ72PTJU, RWEYQ84PTJU

• Compatible Indoor Units For Above Listed Outdoor Units:

○ FXAQ Series wall mounted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.

○ FXLQ Series floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.

○ FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.

○ FXDQ Series low static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.

○ FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr.

○ FXMQ–M Series high static ducted indoor units with nominally rated capacities of 30,000, 36,000, 48,000, 72,000 and 96,000 Btu/hr.

○ FXMQ–P Series high static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,0000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr.

○ FXMQ–MF Series Outdoor Air Processing indoor units with nominally rated capacities of 48,000, 72,000 and 96,000 Btu/hr.

○ FXTQ–P Series Vertical Air Handler indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000, 48,000 and 54,000 Btu/hr.

○ FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.

○ FXFQ Series recessed cassette indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000 and 36,000 Btu/hr.

○ FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 24,000 and 36,000 Btu/hr.

This interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

IV. Alternate Test Procedure

Responding to two recent petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis from which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI products, as well as for its R22 multi-split products. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. See 72 FR 17528 and 72 FR 17533. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

DOE understands that existing testing facilities have a limited ability to test multiple indoor units simultaneously, and the large number of possible combinations of indoor and outdoor units for some variable refrigerant flow zoned systems makes it impractical for manufacturers to test. We further note that subsequent to the waiver that DOE granted for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss the issue and to work on developing an appropriate testing protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by AHRI–AHRI Standard 1230—2009: "Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment." This test procedure has not yet been adopted by ASHRAE 90.1, so it cannot yet be considered for adoption by DOE.

Therefore, as discussed below, as a condition for granting this interim waiver to Daikin, DOE is including an alternate test procedure similar to those granted to Mitsubishi for its R22 and R410A products. DOE plans to consider the same alternate test procedure in the context of the subsequent Decision and Order pertaining to Daikin's petition for waiver. Use of this alternate test procedure will allow Daikin to test and make energy efficiency representations for its VRV–WIII products. DOE has applied a similar alternate test procedure to other waivers for similar residential and commercial central air conditioners and heat pumps manufactured by Mitsubishi (72 FR 17528, April 9, 2007); Samsung (72 FR 71387, Dec. 17, 2007); Fujitsu (72 FR 71383, Dec. 17, 2007); Daikin (73 FR 39680, July 10, 2008); Daikin (74 FR 15955, April 8, 2009); Sanyo (74 FR 16193, April 9, 2009); and Daikin (74 FR 16373, April 10, 2009).

The alternate test procedure developed in conjunction with the Mitsubishi waiver permits Daikin to designate a "tested combination" for each model of outdoor units. The indoor units designated as part of the tested combination must meet specific requirements. For example, the tested combination must have from two to five indoor units so that it can be tested in available test facilities. The tested combination must be tested according to the applicable DOE test procedure, as modified by the provisions of the alternate test procedure as set forth below. The alternate test procedure also allows manufacturers of such products to make valid and consistent representations of energy efficiency for their air-conditioning and heat pump products.

DOE plans to consider inclusion of the following waiver language in the Decision and Order for Daikin's VRV–WIII commercial multi-split water-source heat pump models:

(1) The "Petition for Waiver" filed by Daikin Electronics, Inc. is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its VRV–WIII variable capacity multi-split heat pump products listed above in section III, on the basis of the existing test procedures, but shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

(3) *Alternate test procedure.*

(A) Daikin shall be required to test the products listed in section III above according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Daikin shall test a "tested combination" selected in accordance

with the provisions of subparagraph (B) of this paragraph. For every other system combination using the same outdoor unit as the tested combination, Daikin shall make representations concerning the VRV–WIII products covered in this waiver according to the provisions of subparagraph (C) below.

(B) Tested combination. The term "tested combination" means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between 2 and 5 indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, subpart B, appendix M.

(C) *Representations.* In making representations about the energy efficiency of its VRV–WIII variable capacity water-source multi-split heat pump products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure, doing so in a manner consistent with the provisions outlined below:

(1) For VRV–WIII combinations tested in accordance with this alternate test procedure, Daikin may make representations based on these test results.

(2) For VRV–WIII combinations that are not tested, Daikin may make representations based on the testing results for the tested combination at the same energy efficiency level as the tested combination with the same outdoor unit and which is consistent with either of the two following methods:

(i) Representation of non-tested combinations according to an Alternative Rating Method (ARM) approved by DOE; or

(ii) Representation of non-tested combinations at the same energy efficiency level as the tested combination with the same outdoor unit.

V. Summary and Request for Comments

Through today's notice, DOE announces receipt of the Daikin petition for waiver from the test procedures applicable to Daikin's VRV–WIII commercial multi-split heat pump products. For the reasons articulated above, DOE also grants Daikin an interim waiver from those procedures. As part of this notice, DOE is publishing Daikin's petition for waiver in its entirety. The petition contains no confidential information. Furthermore, today's notice includes an alternate test procedure that Daikin is required to follow as a condition of its interim waiver and that DOE is considering including in its subsequent Decision and Order. In this alternate test procedure, DOE is defining a "tested combination" that Daikin could use in lieu of testing all retail combinations of its VRV–WIII multi-split heat pump products.

DOE is interested in receiving comments on the issues addressed in this notice. Pursuant to 10 CFR 431.401(d), any person submitting written comments must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Mr. Akinori Atarashi, President, Daikin AC (Americas), Inc., 1645 Wallace Drive, Suite 110, Carrollton, Texas 75006. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on January 22, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

Daikin AC (Americas), Inc., 1645 Wallace Drive, Suite 110, Carrollton, TX 75006 USA. TEL: 866–4DAIKIN, FAX: 972–245–1038, *http://www.daikinac.com*

November 9, 2009.

Ms. Catherine Zoi, Assistant Secretary for Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0121.

Re: Petition for Waiver of Test Procedure

Dear Assistant Secretary Zoi:

Daikin AC (Americas) Inc. (DACA) respectfully petitions the Department of Energy (DOE) pursuant to 10 CFR 431.401(a)(1) (2009) for a waiver of the test procedures applicable to commercial air conditioners and heat pumps, as established in 10 CFR 431.96 (2009) and ARI Standard 340/360–2004 [2] and ISO Standard 13256–1 (1998) [3], for the Daikin VRV–WIII system. The specific models for which DACA requests this waiver in the Daikin VRV–WIII product class are listed below in this Petition. DACA seeks a waiver from the existing central air conditioner and central air conditioning heat pump test procedure for the listed Daikin VRV–WIII systems because the basic models contain design criteria that prevent testing of the basic models according to the prescribed test procedures. We are simultaneously requesting an interim waiver for the same systems pursuant to 10 CFR 431.401(a)(2) (2009).

Background

DACA is a leading manufacturer of variable speed and Variable Refrigerant Volume (VRV) zoning systems that DACA offers for sale in the North American market. These products combine advanced technologies such as high efficiency variable speed compressors and fan motors with electronic expansion valves and other devices to insure peak operating

[2] The AHRI has updated this standard from version ARI 340/360–2004 to version AHRI 340–360–2007. However, DOE has not yet updated the reference to the standard in 10 CFR part 431.

[3] Detailed citations to the test procedures for which DACA is requesting a waiver are included on page 3 of this petition.

performance of the overall system and to optimize energy efficiency. DACA has designed the VRV–WIII systems to operate in commercial applications, and this product class employs zoning to provide users with peak utility of the system and with significant energy savings compared to competing technologies.

General Characteristics of DACA's Water Source VRV–WIII Products

DACA's VRV–WIII system has the following characteristics and applications:

- DACA's water source VRV–WIII is an air conditioning system that includes numerous individually controllable discrete indoor units utilizing water as a heat source. In this unique system, water is piped from a cooling tower or boiler to the VRV–WIII (which is the equivalent of the outdoor unit of an air cooled conditioning system). After heat exchange, refrigerant is piped from the VRV–WIII to each indoor unit.
- The VRV–WIII system consists of multi-split, multi-zone units utilizing one or multiple outdoor units that serve up to twenty indoor units.
- The VRV–WIII system employs variable speed technology that matches system capacity to the current load thereby utilizing the minimum amount of energy required for optimal system operation.
- Due to its multi-zone applications, each VRV–WIII indoor unit can be independently controlled with a local controller allowing the occupant to alter their environmental condition to meet their needs. Individually controlled system functions include temperature, fan speed and mode of operation.
- The VRV–WIII system can efficiently operate the compressor at loads as small as 10% of the rated capacity of the system, resulting in significant energy savings.
- Some VRV–WIII products offer a "heat recovery" mode that allows heat that is absorbed from one indoor zone (operating in the cooling mode) to be discharged into another indoor zone that is calling for heat. This function reduces the load on the outdoor unit and improves overall system performance and utility.
- The VRV–WIII system employs variable speed indoor and outdoor high efficiency fan motors to precisely control operating pressures and airflow rates.
- The VRV–WIII system uses electronically controlled expansion valves to precisely control refrigerant flow, superheat, sub-cooling, pump down functions and even oil flow throughout the system.
- The VRV–WIII can be applied into a Geothermal or Ground Source application for additional energy savings and use of the renewable energy in the earth.

Particular Basic Models for Which a Waiver Is Requested

DACA requests a waiver from the test procedures for the following VRV–WIII basic model groups:

- VRV–WIII Series Outdoor Units:
  - Models RWEYQ72PTJU, RWEYQ84PTJU, RWEYQ144PTJU, RWEYQ168PTJU, RWEYQ216PTJU, and RWEYQ252PTJU with capacities ranging from 72,000 to 252,000 Btu/hr.
- Compatible Indoor Units For Above Listed Outdoor Units:
  - FXAQ Series wall mounted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.
  - FXLQ Series floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.
  - FXNQ Series concealed floor mounted indoor units with nominally rated capacities of 12,000, 18,000 and 24,000 Btu/hr.
  - FXDQ Series low static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.
  - FXSQ Series medium static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr.
  - FXMQ–M Series high static ducted indoor units with nominally rated capacities of 30,000, 36,000, 48,000, 72,000 and 96,000 Btu/hr.
  - FXMQ–P Series high static ducted indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr
  - FXMQ–MF Series Outdoor Air Processing indoor units with nominally rated capacities of 48,000, 72,000 and 96,000 Btu/hr.
  - FXTQ–P Series Vertical Air Handler indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000, 48,000 and 54,000 Btu/hr
  - FXZQ Series recessed cassette indoor units with nominally rated capacities of 7,000, 9,000, 12,000, 18,000 and 24,000 Btu/hr.
  - FXFQ Series recessed cassette indoor units with nominally rated capacities of 12,000, 18,000, 24,000, 30,000 and 36,000 Btu/hr.
  - FXHQ Series ceiling suspended indoor units with nominally rated capacities of 12,000, 24,000 and 36,000 Btu/hr.

Design Characteristics Constituting the Grounds for DACA's Petition

DACA's VRV–WIII product offering consists of multiple indoor units being connected to a water-cooled outdoor unit. The indoor units for these products are available in a very large number of potential configurations, including but not limited to the following: 4–Way Cassette, Wall Mounted, Ceiling Suspended, and Floor Standing. DACA is currently developing additional indoor unit models for future market introduction. Each of these units has nine different indoor static pressure ratings as standard, with additional pressure ratings available.

There are over one million combinations possible with the current DACA VRV–WIII product offering. It is completely impractical for testing laboratories to test a product such as the VRV–WIII with multiple indoor units because of the astronomical number of potential system configurations.

DACA's VRV–WIII products share many of the design characteristics and features of DACA's VRV, VRV–S and VRV–WIII product lines, and of Mitsubishi Electric and Electronics USA, Inc.'s (MEUS) CITY MULTI product class, for all of which DOE has previously granted waivers.[4] The principal design characteristic difference between DACA's VRV and VRV–S products, and its VRV–WIII products, is the method of heat rejection. Similarly, the method of heat rejection is the most significant design characteristic that distinguishes the basic operation of the VRV–WIII product class and the MEUS CITY MULTI product class that has received a waiver from DOE. Like the VRV–W–II products for which DOE granted a waiver, the VRV–WIII products use water instead of air to reject heat. In contrast, the VRV and VRV–S products, as well as MEUS' CITY MULTI products use air to reject heat. The same testing constraints and limitations apply to all of these products.

The DOE relied on similar rationales to grant MEUS' petition for waiver and DACA's VRV–WII waiver. DOE stated the following in the notice granting DACA a waiver for VRV–WII:

DOE believes that the VRV–WII Daikin equipment and equipment for which waivers have previously been granted [MEUS, Fujitsu General Ltd. and Samsung] are alike with respect to

[4] DOE granted DACA a waiver for its VRV and VRV–S product lines on July 10, 2008. 73 FR 39,680. DOE granted MEUS a waiver for its CITY MULTI VRFZ class of products. 69 FR 52,660 (August 27, 2004). DOE also granted DACA a waiver for its VRV–WII product lines on January 7, 2008. 73 FR 1,213.

the factors that make them eligible for test procedure waivers.

74 FR 16,375. Based on these conclusions, the DOE proceeded to grant DACA's VRV–WII waiver request. *Id.*

The DACA VRV–WIII system operates in the same configurations as the VRV–WII system. The reasons and rationale that DOE has already articulated to support previous DACA, MEUS, Sanyo, and Fujitsu waivers for multi-split, multi-zoned air conditioners (including the DACA VRV W–II system) also apply to the DACA VRV–WIII products. Therefore, DOE should conclude that the design characteristics of DACA's VRV–WIII product class prevent testing of the basic VRV–WIII model according to the prescribed test procedures.

Specific Testing Requirements Sought To Be Waived

The test procedures from which DACA is requesting a waiver are ARI Standard 340/360–2004 and ISO Standard 13256–1 (1998). These standards, which are applicable to large commercial and industrial unitary air conditioning and heat pump equipment with a capacity of ≥65,000 Btu/hr to <240,000 Btu/hr, are referenced in Table 2 to 10 CFR 431.96, and are made applicable to DACA's large commercial water source VRV–WIII products in 10 CFR 431.96(a).

Detailed Discussion of Need for Requested Waiver

Although the capacity of DACA's VRV–WIII product class is within the scope of ARI 340/360–2004 and ISO Standard 13256–1 (1998), the design characteristics of the VRV–WIII product class prevent testing of the basic model according to the prescribed test procedures. The testing procedures outlined in these standards do not provide for:

- The testing of multi-split products when all connected indoor units physically cannot be located in a single room.
- The operation of indoor units at several different static pressure ratings during a single test.
- The precise number of part load tests that ARI Standard 340/360–2004 requires for fully or infinitely variable speed products.

DACA especially requires the requested waiver because ARI Standard 340/360–2004 and ISO Standard 13256–1 (1998) provide no direction or guidance about how to test systems with millions of combinations of indoor units configurable to a single outdoor unit.

A further reason that DACA needs the requested waiver is that ARI Standard 340/360–2004 and ISO Standard 13256–1 (1998) do not provide a test method to measure part load performance of a system operating in simultaneous cooling and heating modes (i.e., performing both heating and cooling functions at the same time).

Yet another problem that prevents testing of the VRV–WIII product class under these two standards, and another major reason why DACA requires the requested waiver, is the wide variety of indoor unit static pressure ratings available with these and other multi-split products. Testing facilities cannot effectively control multiple indoor static pressures as would be required to test many of the indoor unit combinations available. To accomplish such testing, a testing lab would be required to use a large number of test rooms simultaneously, and each test room would have to be networked into the data recording instrumentation. Also, extensive piping configurations would need to be routed throughout the various test rooms. This process would be extraordinarily expensive, and the logistical challenges presented by the testing might be insurmountable.

Manufacturers of Other Basic Models Incorporating Similar Design Characteristics

DACA is aware of the following manufacturers that produce basic models incorporating similar design characteristics to the VRV–WIII in the United States market:

- Sanyo Fisher (USA) Corp.
- Mitsubishi Electric & Electronics USA, Inc.
- Fujitsu General America, Inc.

Alternative Test Procedures

DACA proposes that DOE apply the same alternate test procedure to the covered VRV–WIII products as DOE applied to DACA's VRV–WII products in the waiver that DOE granted for those products on April 10, 2009. 74 FR 16,373. The alternate test method appears on pages 16,375–76 of the VRV–WII waiver.

Application for Interim Waiver

DACA also hereby applies pursuant to 10 CFR 431.401(a)(2) for an interim waiver of the applicable test procedure requirements for the VRV–WIII product class models listed above. The basis for DACA's Application for Interim Waiver follows.

DACA is likely to succeed in its Petition for Waiver because there is no reasonable argument that ARI Standard 340/360 can be properly applied to DACA's VRV–WIII product class. As explained above in the DACA's Petition for Waiver, the design characteristics of the VRV–WIII product class clearly prevent testing of the basic model according to the prescribed test procedures. The likelihood of DOE approving DACA's Petition for Waiver is buttressed by the DOE's history of approving previous waiver requests from DACA and from several other manufacturers for other products that are similar to the VRV–WIII product class, based on the same rationale put forth by DACA in this Petition for Waiver. See preceding discussion of waivers granted by DOE to MEUS, Fujitsu General, and Sanyo Fisher (USA) Corp.

Additionally, DACA is likely to suffer economic hardship and competitive disadvantage if DOE does not grant its interim waiver request. DACA is now preparing to introduce its VRV–WIII product class in a matter of months. If we must wait for completion of the normal waiver consideration and issuance process, DACA will be forced to delay the opportunity to begin recouping through product sales its research, development and production costs associated with the VRV–WIII product class. In addition to these economic hardship costs, DACA will lose market share to MEUS, especially if DOE grants MEUS' pending interim waiver application for its CITY MULTI WR2 and WY product classes, which will compete directly with DACA's VRV–WIII product class.

DOE approval of DACA's interim waiver application is also supported by sound public policy reasons. As DOE stated in its August 14, 2006 approval of DACA's interim waiver for the VRV and VRV–S product classes:

> [I]n those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

The VRV–WIII product class will provide superior comfort to the end user, will allow for independent zoning of facilities from a single outdoor unit, and will incorporate state of the art technology such as variable speed compressors utilizing neodymium magnets to increase efficiency and electronic control of compressor speed, fan speed and even metering device opening positions. The VRV–WIII product class includes technologies that will increase system efficiency and reduce national energy consumption, and that will also offer a new level of comfort and control to end users.

DACA requests that DOE grant our Application for Interim Waiver so we

can bring the new highly energy efficient technology represented by the VRV–WIII product class to the market as soon as possible, thereby allowing the U.S. consumer to benefit from our high technology and high efficiency product, and from competition for other manufacturers who may have already received waivers.

Confidential Information

DACA makes no request to DOE for confidential treatment of any information contained in this Petition for Waiver and Application for Interim Waiver.

Conclusion

Daikin AC (Americas), Inc. Corporation respectfully requests DOE to grant its Petition for Waiver of the applicable test procedure to DACA for the VRV–WIII product design, and to grant its Application for Interim Waiver. DOE's failure to issue an interim waiver from test standards would cause significant economic hardship to DACA by preventing DACA from marketing these products even though DOE has previously granted a waiver to other products currently being offered in the market with similar design characteristics.

We would be pleased to respond to any questions you may have regarding this Petition for Waiver and Application for Interim Waiver. Please contact Lee Smith, Director of Product Marketing at 972–245–1510 or by e-mail at *Lee.smith@daikinac.com.*

Sincerely,

Akinori Atarashi,

President.

[FR Doc. 2010–1759 Filed 1–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of the Draft Long-Term Management and Storage of Elemental Mercury Environmental Impact Statement and Notice of Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the *Draft Long-Term Management and Storage of Elemental Mercury Environmental Impact Statement* (DOE/EIS–0423D, "Draft Mercury Storage EIS" or "Draft EIS") for public review and comment during a public comment period that extends through March 30, 2010. This Draft EIS has been prepared in accordance with the implementing regulations under the National Environmental Policy Act (NEPA) and evaluates the potential health and environmental effects of storing a projected total of up to 10,000 metric tons (11,000 tons) of elemental mercury. Seven alternative sites across the U.S. are evaluated. DOE invites the public to comment through the several avenues listed under **ADDRESSES** and **SUPPLEMENTARY INFORMATION.** The U.S. Environmental Protection Agency (EPA) and the Mesa County (Colorado) Board of Commissioners are cooperating agencies on this Draft EIS.

DATES: The public is invited to submit oral and/or written comments on this Draft EIS during the public comment period, which extends through March 30, 2010. DOE will consider all comments received or postmarked by that date in preparing the Final EIS, expected in fall 2010, and will consider late comments to the extent practicable. DOE will hold public hearings on the dates and at the times and locations listed under **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Written comments on the Draft Mercury Storage EIS may be submitted by U.S. mail to the following address. Mr. David Levenstein, EIS Document Manager, U.S. Department of Energy, Draft Mercury Storage EIS Comments, P.O. Box 2612, Germantown, Maryland 20874.

Comments may be submitted electronically via the Mercury Storage EIS Web site at *http://www.mercurystorageeis.com,* where the Draft EIS can be found, or by faxing toll-free to (877) 274–5462. The Draft EIS is also available on DOE's NEPA Web site at *http://www.gc.energy.gov/nepa.*

FOR FURTHER INFORMATION CONTACT: For further information about this Draft EIS, please contact Mr. Levenstein at the mailing address or EIS Web site listed above.

For information regarding the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U. S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION: The Mercury Export Ban Act (the Act) prohibits the export of elemental mercury from the U.S., effective January 1, 2013 (subject to certain essential use exemptions). Section 5 of the Act, *Long-Term Storage,* directs DOE to designate a facility or facilities for the long-term management and storage of elemental mercury generated within the U.S. and, by January 1, 2013, to have the facility or facilities operational and ready to accept custody of such elemental mercury delivered there.

DOE thus needs to develop a capability for the safe and secure long-term management and storage of elemental mercury generated within the U.S. as required by the Act. To this end, DOE proposes to select one or more existing (including modifications if needed) or new facilities for this purpose. Facilities to be constructed as well as existing or modified facilities must comply with applicable requirements of Section 5(d) of the Act, *Management Standards for a Facility,* including the requirements of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). DOE is using the NEPA process to identify and evaluate candidate sites for the facility or facilities. EPA and the Mesa County (Colorado) Board of Commissioners are cooperating agencies on the EIS, which has been prepared pursuant to Council on Environmental Quality NEPA implementing regulations at 40 CFR Parts 1500–1508 and DOE NEPA Implementing Procedures at 10 CFR Part 1021.

DOE issued a Notice of Intent to prepare the EIS on July 2, 2009 (74 FR 31723). Comments received during the subsequent scoping period were considered in preparing the Draft EIS. Based on a structured process described in the Draft EIS, DOE identified seven government and commercial sites as the range of reasonable alternatives to be evaluated in the EIS: DOE Grand Junction Disposal Site, Grand Junction, Colorado; DOE Hanford Site, Richland, Washington; Hawthorne Army Depot, Hawthorne, Nevada; DOE Idaho National Laboratory, Idaho Falls, Idaho; DOE Kansas City Plant, Kansas City, Missouri; DOE Savannah River Site, Aiken, South Carolina; and Waste Control Specialists, LLC, Andrews, Texas. As required under NEPA, the Draft EIS also analyzes a No Action Alternative to serve as a basis for comparison.

DOE's evaluation includes the facilities themselves and their locations, their construction, facility operations, and transportation to the storage facility(ies). Consideration of potential location includes climate, proximity of human populations, and environmental resource areas for each alternative, along with the potential human health and socioeconomic impacts. DOE has identified the Waste Control Specialists, LLC facility as its preferred alternative.

Public Hearings

DOE invites the public to present oral and/or written comments during public hearings on the Draft Mercury Storage EIS. Participants may register at the door to provide oral comments, and speakers will be recognized in order as registered. Speakers may be asked to limit their oral comments to five minutes. Speakers may be given an opportunity to take the floor a second time after all those who wish to speak have been given an opportunity to do so.

During the first hour, the public may review information materials and speak informally with technical staff and DOE representatives. This will be followed by the formal hearing, which will be opened with a brief DOE presentation about the Draft EIS and a review of the hearing procedure. A court reporter will record all oral comments, which later will be publicly available. The dates, times and locations of all hearings are as follows:

Two Rivers Convention Center,
159 Main Street,
Grand Junction, CO 81501,
February 23,
5:30 p.m.–8:30 p.m.

El Capitan,
540 F Street,
Hawthorne, NV 89415,
February 23,
5:30 p.m.–8:30 p.m.

Shilo Inn/O'Callahan's Convention Center,
780 Lindsay Blvd,
Idaho Falls, ID 83402,
February 25,
5:30 p.m.–8:30 p.m.

Courtyard by Marriott,
500 East 105th Street,
Kansas City, MO 64131,
March 2,
5:30 p.m.–8:30 p.m.

Doubletree Hotel Portland—Lloyd Center,
1000 NE Multnomah Street,
Portland, OR 97232, March 2,
5:30 p.m.–8:30 p.m.

Red Lion Hotel Richland Hanford House,
802 George Washington Way,
Richland, WA 99352,
March 3,
5:30 p.m.–8:30 p.m.

North Augusta Municipal Center,
100 Georgia Avenue,
North Augusta, SC 29841,
March 4,
5:30 p.m.–8:30 p.m.

Eunice Community Center
1115 Avenue I
Eunice, NM 88231
March 8
5:30 p.m.–8:30 p.m.

James Roberts Civic Center,
855 E. Broadway,
Andrews, TX 79714,
March 9,
5:30 p.m.–8:30 p.m.

Public Reading Rooms

Copies of the Draft EIS and supporting technical reports are available for public review at the locations listed below:

Colorado

Mesa County Library,
530 Grand Avenue,
Grand Junction, CO 81502–5019,
(970) 243–4442.

U.S. Department of Energy,
Office of Legacy Management,
2597 B ¾ Road,
Grand Junction, CO 81503,
(970) 248–6089.

District of Columbia

U.S. Department of Energy,
Freedom of Information Act Public Reading Room,
1000 Independence Avenue, SW.,
Room 1G–033,
Washington, DC 20585,
(202) 586–5955.

Georgia

Augusta State University,
Reese Library,
2500 Walton Way,
Augusta, GA 30904,
(706) 737–1745.

Savannah State University,
Asa H. Gordon Library,
2200 Tompkins Road,
Savannah, GA 31404,
(912) 356–2183.

Idaho

U.S. Department of Energy,
Public Reading Room,
1776 Science Center Drive,
Idaho Falls, ID 83402,
(208) 526–0833.

Missouri

Mid-Continent Public Library,
Blue Ridge Branch,
9253 Blue Ridge Boulevard,
Kansas City, MO 64138,
(816) 761–3382.

Nevada

Mineral County Library,
First & "A" Street,
Hawthorne, NV 89415,
(775) 945–2778.

New Mexico

Eunice Public Library,
1039 10th Street,
Eunice, NM 88231,
(575) 394–2336.

Oregon

Portland State University,
Government Information,
Branford Price Millar Library,
1875 SW Park Avenue,
Portland, OR 97201,
(503) 725–5874.

South Carolina

University of South Carolina–Aiken,
Gregg-Graniteville Library,
471 University Parkway,
Aiken, SC 29801,
(803) 641–3320.

South Carolina State Library,
1500 Senate Street,
Columbia, SC 29211,
(803) 734–8026.

Texas

Andrews County Library,
109 NW 1st Street,
Andrews, TX 79714,
(432) 523–9819.

Washington

U.S. Department of Energy,
Public Reading Room,
Consolidated Information Center,
2770 University Drive,
Room 101L,
Richland, WA 99352,
(509) 372–7443.

University of Washington,
Suzzallo-Allen Library,
Government Publications Division,
Seattle, WA 98195,
(206) 543–1937.

Gonzaga University,
Foley Center Library,
101–L East 502 Boone,
Spokane, WA 99258,
(509) 313–5931.

Next Steps

Following the end of the public comment period on the Draft EIS described above, DOE will consider the environmental impact analysis presented in the Final EIS, along with other information in making its decision(s) related to the management and storage of elemental mercury generated within the U.S.

Issued in Washington, DC on January 25, 2010.

William M. Levitan,

Director, Office of Environmental Compliance, Office of Environmental Management.

[FR Doc. 2010–1826 Filed 1–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of the Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center* (DOE/EIS–0226) (referred to as the *Final Decommissioning and/or Long-Term Stewardship EIS* or "Final EIS").

The Final EIS was prepared in accordance with the Council on Environmental Quality's National Environmental Policy Act (NEPA) Implementing Regulations (40 CFR Parts 1500–1508) and the DOE NEPA Implementing Procedures (10 CFR Part 1021). DOE and the New York State Energy Research and Development Authority (NYSERDA) are joint lead agencies for preparing the EIS, while the U.S. Nuclear Regulatory Commission (NRC), the U.S. Environmental Protection Agency (EPA), and the New York State Department of Environmental Conservation (NYSDEC) are cooperating agencies. NYSDEC and the New York State Department of Health (NYSDOH) are involved agencies under the New York State Environmental Quality Review Act (SEQR).

The Proposed Action is the completion of the West Valley Demonstration Project (WVDP) and the decommissioning and/or long-term management or stewardship of Western New York Nuclear Service Center (WNYNSC). The Proposed Action includes the decontamination and decommissioning of the waste storage tanks and facilities used in the solidification of high-level radioactive waste, and any material and hardware used in connection with the WVDP. The EIS analyzes three action alternatives for decommissioning and/or long-term stewardship of the WNYNSC, and a No Action Alternative as required by NEPA and SEQR.

DATES: DOE will announce its decision regarding future actions at WNYNSC in a Record of Decision to be published in the **Federal Register** no sooner than 30 days after the Environmental Protection Agency (EPA) publishes a Notice of Availability for the *Final Decommissioning and/or Long-Term Stewardship EIS.* NYSERDA will publish its decisions regarding actions at the WNYNSC in a Findings Statement in the *New York State Environmental Notice Bulletin* no sooner than 10 days after the Final EIS is issued.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for addresses at which copies of the Final EIS are available for viewing, as well as addresses for use in requesting copies of the document.

FOR FURTHER INFORMATION CONTACT: For information regarding WVDP or the Final EIS, contact Catherine Bohan, EIS Document Manager, West Valley Demonstration Project, U.S. Department of Energy, Ashford Office Complex, 9030 Route 219, West Valley, NY 14171. The following Web sites may also be accessed for additional information on the Final EIS or the West Valley Site: *http://www.westvalleyeis.com or http://www.wv.doe.gov*. Requests for information may also be submitted via e-mail at *http://www.westvalleyeis.com* or by faxing toll-free to 866–306–9094.

For general information on DOE's NEPA process contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; e-mail *AskNEPA@hq.doe.gov;* telephone 202–586–4600; or leave a message at 800–472–2756. The Final EIS is also accessible through the DOE's NEPA Web site at *http://www.gc.energy.gov/NEPA*.

For general questions and information about NYSERDA's role in the EIS, contact Paul Bembia, Program Director, West Valley Site Management Program, New York State Energy Research and Development Authority, Ashford Office Complex, 9030 Route 219, West Valley, NY 14171; telephone 716–942–9960, extension 4900; fax 716–942–9961; or e-mail *pjb@nyserda.org*.

SUPPLEMENTARY INFORMATION: WNYNSC is a 1,351-hectare (3,338-acre) site located 48 kilometers (30 miles) south of Buffalo, New York, and owned by NYSERDA. In 1982, DOE assumed control but not ownership of the 68-hectare (167-acre) Project Premises portion of the site in order to conduct the WVDP, as required under the 1980 West Valley Demonstration Project Act. In 1990, DOE and NYSERDA entered into an agreement to prepare a joint EIS to address both the completion of WVDP and closure or long-term management of WNYNSC. A Draft EIS was issued for public comment in January 1996: the *Draft Environmental Impact Statement for Completion of the West Valley Demonstration Project and Closure or Long-Term Management of Facilities at the Western New York Nuclear Service Center,* also referred to as the 1996 *Cleanup and Closure Draft EIS* (DOE/EIS–0226D).

DOE and NYSERDA issued the *Revised Draft Decommissioning and/or Long-Term Stewardship EIS* on December 5, 2008, revising the 1996 Draft EIS. This revised draft considered the decommissioning criteria for WVDP issued by NRC since the publication of the 1996 *Cleanup and Closure Draft EIS* and public comments on that EIS. The public comment period on the Revised Draft Decommissioning and/or Long-Term Stewardship EIS, originally scheduled to end June 8, 2009, was extended through September 8, 2009, in response to requests from the public. Four public hearings on the Revised Draft EIS were held in locations in New York State and on the Seneca Nation of Indians Reservation during this time. DOE and NYSERDA have considered comments received and have incorporated both the comments and the agencies' responses in the EIS.

Key changes between the Draft and Final EIS include: Incorporation of updated environmental and site-specific information, changes made in response to the NYSERDA View on the Revised Draft EIS, and revision of the description of alternatives, particularly that of the Phased Decisionmaking Alternative (described in the Draft EIS as encompassing 30 years) to specify that a Phase 2 decision would be made no later than 10 years after issuance of the initial DOE Record of Decision and NYSERDA Findings Statement, if the Phased Decisionmaking Alternative is selected.

The *Final Decommissioning and/or Long-Term Stewardship EIS* has been prepared in accordance with NEPA (40 CFR Parts 1500–1508 and 10 CFR Part 1021) and the SEQR to examine the potential environmental impacts of the range of reasonable alternatives to decommission and/or maintain long-term stewardship at WNYNSC. The alternatives analyzed in the EIS include the Sitewide Removal Alternative, the Sitewide Close-In-Place Alternative, the Phased Decisionmaking Alternative (Preferred Alternative), and the No Action Alternative. The analysis and information contained in the EIS are intended to assist DOE and NYSERDA with consideration of potential environmental impacts prior to making decommissioning or long-term management decisions.

The Final Decommissioning and/or Long-Term Stewardship EIS will

support DOE and NYSERDA decisions regarding the Proposed Action: Completion of WVDP and decommissioning and/or long-term management or stewardship of WNYNSC. This includes the disposition of the high-level radioactive waste storage tanks, the former spent nuclear fuel reprocessing plant, the North Plateau Groundwater Plume, the Cesium Prong, the NRC–Licensed Disposal Area (NDA), and the State-Licensed Disposal Area (SDA). The three action alternatives evaluated for the Proposed Action are as follows:

Sitewide Removal: Under this alternative, all site facilities identified in the Final EIS would be removed; contaminated soil, sediment, and groundwater would be removed to meet criteria that would allow unrestricted release of WNYNSC; and all radioactive, hazardous, and mixed waste would be characterized, packaged as necessary, and eventually shipped off site for disposal. This alternative is expected to generate waste for which there is currently no offsite disposal location (e.g., potential non-defense transuranic waste, commercial Class B and C low-level radioactive waste, and Greater-Than-Class C waste). This orphan waste would be stored on site until an appropriate offsite facility is available. Completion of these activities would allow unrestricted use of the site (i.e., the site could be made available for any public or private use). The Sitewide Removal Alternative includes temporary onsite storage of canisters of high-level radioactive waste previously vitrified under WVDP and currently in storage at WVDP until the waste can be shipped offsite.

Sitewide Close-In-Place: Under this alternative, most facilities would be closed in place. Major facilities and sources of contamination such as the Waste Tank Farm, NDA, and SDA would be managed at their current locations. Residual radioactivity in facilities with larger inventories of long-lived radionuclides would be isolated by specially designed closure structures and engineered barriers. These structures would be designed to meet regulatory requirements both to retain hazardous and radioactive constituents and to ensure they would be resistant to long-term degradation. This approach would allow large areas of the site to be released for unrestricted use. The NRC license for remaining portions of WNYNSC could be terminated under restricted conditions, or could be converted to a long-term license. Long-term stewardship would be provided for facilities that are closed in place and any buffer areas around them.

Phased Decisionmaking (the Preferred Alternative): Under this alternative, decommissioning would be completed in two phases. This alternative involves substantial removal actions in the first phase. In addition, during the first phase, this alternative provides for site characterization and scientific studies to facilitate decisionmaking for the remaining facilities or areas.

Phase 1 would include removal of the Main Plant Process Building and the source area of the North Plateau Groundwater Plume. In addition, the lagoons and all facilities in Waste Management Area (WMA) 2 (except the permeable treatment wall) would be removed. The Vitrification Facility, the Remote Handled Waste Facility, and a number of facilities in WMAs 5, 6, 9, and 10 would also be removed. Foundations, slabs or pads from these facilities, as well as those from previously demolished facilities, would also be removed. During Phase 1, several facilities would continue under active management. These facilities include the Waste Tank Farm and its support facilities, the Construction and Demolition Debris Landfill, the non-source area of the North Plateau Groundwater Plume, the NDA, and the SDA. Activities undertaken in Phase 1 would make use of proven technologies and available waste disposal sites to reduce the potential short-term health and safety risks from residual radioactivity and hazardous contaminants at the site. Phase 1 activities are expected to take 8 to 10 years to complete. During this 8 to 10 year period, DOE and NYSERDA would conduct a number of activities to facilitate determination of the best technical approach to complete decommissioning of the remaining facilities. These activities would include further characterization of site contamination and additional scientific studies. These additional studies would be conducted to possibly reduce technical uncertainties related to the decision on final decommissioning and long-term management of the balance of WNYNSC. In particular, these studies may address uncertainties associated with the long-term performance models, the viability and cost of exhuming buried waste and tanks, the availability of waste disposal sites, and technologies for in-place containment.

While Phase 1 activities are being conducted, DOE and NYSERDA would assess the results of site-specific studies as they become available, along with other emerging information such as applicable technology development. In consultation with NYSERDA and cooperating and involved agencies on the EIS, DOE would determine whether new information would warrant preparation of a Supplemental EIS. NYSERDA also would assess the results of site-specific studies and other information during Phase 1. NYSERDA expects to prepare and issue for public comment an EIS, or a supplement to the existing EIS, to evaluate Phase 2 decisions for the SDA and the balance of WNYNSC for which NYSERDA has responsibility.

Phase 2 decisions would be made within 10 years of the initial DOE Record of Decision and NYSERDA Findings Statement, if the Phased Decisionmaking Alternative is selected. NYSERDA and DOE would strive to make a comprehensive Phase 2 decision for the entire site that is protective of public health and safety and the environment. For WVDP, Phase 2 actions would complete decommissioning or long-term management decisionmaking according to the approach determined most appropriate during the additional Phase 1 evaluations for each remaining facility. For the SDA, alternatives that would be considered for Phase 2 actions would include at least: complete exhumation, close-in-place, and continued active management consistent with SDA permit and license requirements.

No Action Alternative: Under this alternative, no decommissioning actions would be taken. The No Action Alternative would involve the continued management and oversight of all facilities located on WNYNSC property as of the starting point for this EIS. The No Action Alternative does not meet the purpose and need for agency action, but analysis of the No Action Alternative is required under NEPA and SEQR.

Preferred Alternative: DOE and NYSERDA have identified the Phased Decisionmaking Alternative as the Preferred Alternative. DOE will announce its decision regarding future actions at WNYNSC in a Record of Decision to be published in the **Federal Register** no sooner than 30 days after publication of the EPA Notice of Availability for the Final EIS. NYSERDA will publish its decisions regarding actions at the WNYNSC in a Findings Statement in the *New York State Environmental Notice Bulletin* no sooner than 10 days after the Final EIS is issued.

Paper copies of the Final EIS are available at the Concord Public Library, 18 Chapel Street, Springville, NY 14141, (716) 592–7742; the WVDP Public Reading Room, U.S. Department of Energy, Ashford Office Complex, 9030

Route 219, West Valley, NY 14171, (716) 942–4555; and the U.S. Department of Energy, FOIA Reading Room, 1G–033, Forrestal Bldg., 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–5955. Written requests for copies of the document should be directed to: Catherine Bohan, EIS Document Manager, West Valley Demonstration Project, U.S. Department of Energy, Ashford Office Complex, 9030 Route 219, West Valley, NY 14171. This Final EIS is also available electronically at *http://www.westvalleyeis.com* and the DOE's NEPA Web site at *http://www.gc.energy.gov/NEPA*.

Signed in Washington, DC, this 20th day of January 2010.

Frank Marcinowski,

Acting Chief Technical Officer for Environmental Management.

[FR Doc. 2010–1725 Filed 1–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth (known locally as the Portsmouth Site-Specific Advisory Board [PORTS SSAB]), Decontamination and Decommissioning (D&D) and Future Land Use Subcommittees. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, February 9, 2010—4:30 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3822, *Joel.Bradburne@lex.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Purpose of the D&D Subcommittee: The purpose of the subcommittee is to focus on waste disposition and recycling issues at the Portsmouth site.

Purpose of the Future Land Use Subcommittee: The purpose of the subcommittee is to focus on reuse incentives, reindustrialization, and technology development at the Portsmouth site.

Tentative Agenda

4:30 p.m.—D&D Subcommittee Session

- Review of January Summary
- Waste Disposition Option Updates
  - Shipping, Transporting, and Contamination Levels
- Public Comment Period
- Review of Action Items

6:30 p.m.—Future Land Use Subcommittee Session

- Review of January Summary
- Discussion of Priorities
- Public Comment Period
- Review of Action Items

Adjourn

Public Participation: The EM SSAB, Portsmouth, welcomes the attendance of the public at its meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least five days in advance of the meetings at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html*.

Issued at Washington, DC, on January 22, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–1684 Filed 1–28–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–12–000; 130 FERC ¶61,039]

Electricity Market Transparency Provisions of Section 220 of the Federal Power Act

January 21, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission's Electric Quarterly Report (EQR) filing requirements should be applied to market participants that are excluded from the Commission's jurisdiction under section 205 of the Federal Power Act (FPA). This Notice of Inquiry will assist the Commission in determining what changes, if any, should be made to its regulations under the electric market transparency provisions of section 220 of the FPA, as adopted in the Energy Policy Act of 2005 (EPAct 2005).

DATES: Comments are due March 30, 2010.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

- *Agency Web Site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Raymond Montini, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8714. *Raymond.Montini@ferc.gov.*

Christina Switzer (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6379. *Christina.Switzer@ferc.gov.*

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Notice of Inquiry

Issued January 21, 2010

1. In this Notice of Inquiry, the Federal Energy Regulatory Commission (Commission) seeks comments on whether the Commission's Electric Quarterly Report (EQR) [1] filing requirements should be applied to market participants that are excluded from the Commission's jurisdiction under section 205 of the Federal Power Act (FPA).[2] Section 201(f) of the FPA excludes certain entities (*i.e.,* Federal entities, municipalities, and certain cooperatives with Rural Electrification Act financing and that sell less than 4,000,000 MWh of electricity per year) from the Commission's jurisdiction.[3] However, section 201(b)(2) states that, notwithstanding section 201(f), several sections of the FPA, including section 220,[4] shall apply to the entities described in those sections and such entities shall be subject to the Commission's jurisdiction for the purposes of carrying out those particular provisions. Section 220 of the FPA directs the Commission "to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce * * *" and states that the Commission may obtain "information about the availability and prices of wholesale electric energy and transmission service" from "any market participant." Thus, section 220 of the FPA, when read in conjunction with section 201(b)(2), provides the Commission with jurisdiction to require information regarding the availability and prices of wholesale electric energy and transmission service from market participants, including those that are typically beyond the Commission's jurisdiction for other purposes.

2. This Notice of Inquiry will assist the Commission in determining what changes, if any, should be made to its regulations under the electric market transparency provisions of section 220 of the FPA, as adopted in the Energy Policy Act of 2005 (EPAct 2005).[5] In addition, the Commission is considering other refinements to the existing EQR filing requirements that may significantly enhance the effectiveness of the information gathered.

I. Background

A. Commission Authority

3. EPAct 2005's transparency provisions [6] enhance the Commission's authority to collect "information about the availability and prices" of natural gas and electricity sold at wholesale in interstate commerce "to facilitate price transparency." [7] EPAct 2005 requires that the Commission consider the degree of price transparency provided by existing price publishers and trade processing services, and rely on such publishers and services to the maximum extent possible.[8] However, if the Commission determines that existing price publications do not adequately provide price discovery or market transparency, the Commission may establish an electronic information system.[9] EPAct 2005 also permits the Commission to require "any market participant," except for entities with a *de minimis* market presence, to provide information with "due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers." [10]

4. In 2006, Commission staff conducted an extensive outreach effort to formulate options for implementing EPAct 2005's transparency provisions for wholesale natural gas and electric markets. As a result, the Commission used its new transparency authority to adopt additional filing and posting requirements for the sale or transportation of physical natural gas in interstate commerce. Specifically, Order No. 704 requires buyers and sellers of more than a *de minimis* volume of natural gas to report aggregate volumes of relevant transactions in an annual filing.[11]

5. In exercising its new market transparency authority, the Commission explained that it required information from a market participant regardless of whether it is subject to the Commission's traditional jurisdiction because "[p]rice formation in natural gas markets makes no distinction between transactions that are jurisdictional." The Commission further explained that the "final rule will facilitate transparency of the price formation process in natural gas markets by collecting information to understand in broad terms the size of the natural gas market and the use of fixed prices and of index prices." In turn, this information

> further[s] the Commission's efforts to monitor price formation in the wholesale natural gas markets, which supports the Commission's market-oriented policies for the wholesale natural gas industries. [Such] policies require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that

[1] At present, all public utilities, including power marketers, must file EQRs summarizing contractual terms and conditions in their agreements for all jurisdictional power sales. In addition to other requirements, EQR filers must provide detailed transactional information, including product type, price, quantity, duration and receipt and delivery points.

[2] 16 U.S.C. 824d (2006).

[3] 16 U.S.C. 824(f) (2006).

[4] 16 U.S.C. 824t (2006).

[5] EPAct 2005, Public Law 109–58, 119 Stat. 594. EPAct 2005 § 1281(a)(1)–(2) states:

> (1) The Commission is directed to facilitate price transparency in markets for the sale and transmission of electric energy in interstate commerce, having due regard for the public interest, the integrity of those markets, fair competition, and the protection of consumers.
>
> (2) The Commission may prescribe such rules as the Commission determines necessary and appropriate to carry out the purposes of this section. The rules shall provide for the dissemination, on a timely basis, of information about the availability and prices of wholesale electric energy and transmission service to the Commission, State commissions, buyers and sellers of wholesale electric energy, users of transmission services, and the public.

[6] *See* EPAct 2005 § 316 (*codified as* 15 U.S.C. 717t–2) (amending the Natural Gas Act (NGA) to add the Natural Gas Market Transparency Rules in section 23); EPAct 2005 § 1281 (*codified as* 16 U.S.C. 824t) (amending the FPA to add the Electricity Market Transparency Rules in section 220).

[7] *Id.*

[8] *Id.*

[9] EPAct 2005 § 1281(a)(4).

[10] EPAct 2005 § 1281(d). In addition, EPAct 2005 § 1281(b)(1–2) directs the Commission to exempt from disclosure information that is "detrimental to the operation of an effective market or [that would] jeopardize system security," and "to ensure that consumers and competitive markets are protected from the adverse effects of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of proprietary trading information."

[11] *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, FERC Stats. & Regs. ¶ 31,260, at P 32 (2007), *order on reh'g,* Order No. 704–A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008), *order dismissing reh'g and clarification,* Order No. 704–B, 125 FERC ¶ 61,302 (2008) ("Without confidence in the basic processes of price formation, market participants cannot have faith in the value of their transactions, the public cannot believe that the prices they see are fair, and it is more difficult for the Commission to ensure that jurisdictional prices are 'just and reasonable.' "); *see also, Pipeline Posting Requirements under Section 23 of the Natural Gas Act,* Order No. 720, 73 FR 73494 (Dec. 2, 2008), FERC Stats. & Regs. ¶ 31,283, at P 3 (2008), *order on reh'g,* Order No. 720–A, 130 FERC ¶ 61,040 (2010). In addition, if a market participant buys or sells less than a *de minimis* volume, but operates under blanket sales certificate authority pursuant to section 284.402 or section 284.284 of the Commission's regulations, then it must make a filing with the Commission for identification and reporting purposes. However, it is not required to report aggregate volumes of relevant transactions. A market participant that buys or sells less than a *de minimis* volume and does not operate under blanket sales certificate authority is not required to make an annual filing with the Commission.

jurisdictional prices are "just and reasonable."[12]

6. In Order No. 720, the Commission required major non-interstate pipelines to post scheduled flow information and information for each receipt and delivery point with a design capacity greater than 15,000 MMBtu per day.[13] Order No. 720 also requires interstate pipelines to post information regarding no-notice service.[14] Similar to the Commission's reasoning in Order No. 704, the Commission explained that Order No. 720's

> posting requirements . . . are grounded in the Commission's authority under section 23 of the NGA (as added by EPAct 2005), which directs the Commission, in relevant part, to obtain and disseminate 'information about the availability and prices of natural gas at wholesale and in interstate commerce.' This provision enhances the Commission's authority to ensure confidence in the nation's natural gas markets. The Commission's market-oriented policies for the wholesale natural gas industry require that interested persons have broad confidence that reported market prices accurately reflect the interplay of legitimate market forces. Without confidence in the efficiency of price formation, the true value of transactions is very difficult to determine.[15]

7. In the Natural Gas Transparency Notice of Proposed Rulemaking (NOPR), the Commission declined to extend such requirements to wholesale electric markets because, at the time, the Commission was considering other reforms to its regulation of electric markets.[16] In particular, the Commission referred to its open access transmission service reforms and the more general review of competition in wholesale electric markets.[17] These efforts eventually led to two final rules. In Order No. 890, the Commission exercised its remedial authority "to limit further opportunities for undue discrimination, by minimizing areas of discretion, addressing ambiguities and clarifying various aspects of the *pro forma* [Open Access Transmission Tariff]."[18] Moreover, in Order No. 719, the Commission made reforms "to improve the operation [and competitiveness] of organized wholesale electric power markets" in connection with "fulfilling its statutory mandate to ensure supplies of electric energy at just, reasonable and not unduly discriminatory or preferential rates."[19] Nonetheless, these final rules did not specifically address the facilitation of price transparency in electric markets. As a result, the Commission now seeks comments on whether the EQR filing requirements should be applied to market participants that are excluded from the Commission's jurisdiction under section 205 of the FPA.

B. Current Collection and Uses of EQR Data

8. At present, market participants that fall within the Commission's jurisdiction under section 205(c) of the FPA must file EQRs summarizing contractual terms and conditions in their agreements for all jurisdictional services, including market-based rate power sales, cost-based rate power sales and transmission service sales that are part of power sales. EQR filers also must provide detailed transactional information, including product type, price, quantity, duration and receipt and delivery points for all power sales.

9. As explained in Order No. 2001, one goal of the EQR is to ensure that customers and the Commission have the information "to identify situations that indicate the possible exercise of market power that warrant specific investigation."[20] Requiring EQR information from market participants that are excluded from the Commission's section 205 jurisdiction will enhance the Commission's ability to effectively examine and monitor: (1) Price formation; (2) the number of sales; and (3) the market concentration occurring in electric markets where market participants that are excluded from the Commission's section 205 jurisdiction play a large role.[21] Because numerous market participants that are excluded from the Commission's section 205 jurisdiction do not file EQRs, a jurisdictional seller's market presence (*i.e.,* its role in price formation) is difficult to determine.[22] Obtaining more complete price and volume information for sales of electricity will increase the Commission's ability to monitor power sales for indications of market power and manipulation.

10. In addition, the EQR assists the Commission's analysis of whether to grant a seller market-based rate authority (*ex ante* analysis) and provides an after the fact look at market-based rate authorization (*ex post* analysis).[23] Collecting information from market participants that are excluded from the Commission's section 205 jurisdiction would strengthen the Commission's regulatory scheme and enhance its oversight of the market-based rate program.

11. For instance, the Commission's *ex ante* analysis of whether to grant a seller market-based rate authority[24] may

[12] Order No. 704, FERC Stats. & Regs. ¶ 31,260 at P 7.

[13] Order No. 720, FERC Stats. & Regs. ¶ 31,283 at P 1. Issued contemporaneously with this order is Order No. 720–A, which broadly affirms Order No. 720, but grants certain requests for rehearing and clarification, including a finding that major non-interstate pipelines must post scheduled flow data for virtual or pooling points, subject to certain conditions.

[14] *Id.*

[15] *Id.* P 3.

[16] *See Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act,* Notice of Proposed Rulemaking, FERC Stats. & Regs. 32,614, at P 9–11 (2007) (Natural Gas Transparency NOPR) ("The Commission does not propose action with respect to electric markets at this time. The Commission has recently addressed and is currently addressing electric market transparency in other proceedings.").

[17] *Id.*

[18] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 40, *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification,* Order No. 890–B, 73 FR 39092 (Jul. 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[19] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 73 FR 64100 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31,281, at P 1 (2008), *order on reh'g,* Order No. 719–A, 74 FR 37776 (Jul. 29, 2009), FERC Stats. & Regs. ¶ 31,292 (2009), *order denying reh'g and providing clarification,* Order No. 719–B, 129 FERC ¶ 61,252 (2009).

[20] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, at P 1,4, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reh'g denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filing,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filing,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[21] The Energy Information Administration's Electric Power Industry Overview 2007 estimated that 29 percent of electric utility sales are made by publicly-owned electric utilities (municipals, public utility districts or public power districts, State authorities, irrigation districts, and joint municipal action agencies), consumer-owned rural electric cooperatives, and Federal electric utilities. Energy Information Administration, *Electric Power Industry Overview 2007* (March 2009), *http://www.eia.doe.gov/cneaf/electricity/page/prim2/toc2.html.*

[22] For example, obtaining the sales information from market participants that are excluded from the Commission's jurisdiction under section 205 of the FPA in the West and Southeast would enhance Commission staff's ability to assess market conditions and identify the sales volumes transacted at major trading hubs in these regions.

[23] *Ex post* analysis includes ongoing oversight (EQR post analysis) and a timely reconsideration of market-based rate authorization (triennial review). Ongoing EQR post analysis is conducted by Commission staff after each quarterly filing. A triennial review is an updated market power analysis filed every three years by large jurisdictional sellers that have been granted market-based rate authorization. The filing includes, among other things, representations of how the seller satisfies the Commission's concerns with regard to horizontal and vertical market power.

[24] The Commission's market-based rate program does not rely on an *ex ante* finding alone, but instead depends on a consistent review of transaction data to ensure that such rates are just and reasonable. In approving the Commission's market-based rate program, the Ninth Circuit upheld the Commission's program because it relies on a "system [that] consists of a finding that the

Continued

include, among other things, a detailed review of price data. One tool used by the Commission is the delivered price test (DPT),[25] a well-established test that has been used routinely to analyze market power for market-based rate authorizations and merger analyses. Commission staff and outside parties preparing a DPT analysis rely on proxy prices and published price indices to determine the price at which market participants that do not file EQRs may be able to deliver power. A better approach would be to obtain more complete price and volume information for sales of electricity to more accurately reflect market prices, improve the quality of the DPT results and assist the Commission in determinations regarding the ability of sellers to exercise market power. Further, market participants also will benefit as a result of having more transparency in the market because enhanced transparency will provide more information for market participants to make decisions regarding the value of transactions. In addition, with regard to mergers and acquisitions, because the DPT is a primary tool used to evaluate the effect on competition, obtaining power sales information from market participants that are excluded from the Commission section 205 jurisdiction will provide a better basis for consideration of whether to approve merger/acquisition proposals under section 203 of the FPA.[26]

12. *Ex post* analysis using market information from market participants that are excluded from the Commission's section 205 jurisdiction would provide the Commission with critical information to consider whether, based on actual sales data,[27] a seller with market-based rate authority has obtained an excessive market share since the original authorization to transact at market-based rates or since its last review of such rates. Ex post analyses that fail to include sales by all market participants, except for those with a *de minimis* market presence, are under-inclusive and may provide unreliable results. In addition, because market information from market participants that are excluded from the Commission's section 205 jurisdiction is not available, the Commission is not able to compare prices for power sold by section 205 jurisdictional sellers with those prices of certain sellers in the same market. The Commission's post-approval reporting requirements are a crucial aspect of the Commission's market-based rate program.[28] Thus, requiring market participants that are excluded from the Commission's section 205 jurisdiction to file market information would improve the quality of the information available to the Commission and enhance staff's ability to evaluate jurisdictional markets.

C. Refinements to Existing EQR Requirements

13. In combination with the broader effort to improve the Commission's access to information about the availability and prices of wholesale sales of electricity outlined above, the Commission is also considering other refinements to the existing EQR filing requirements that may significantly enhance the effectiveness of the information. The specific refinements include: (1) Reporting the trade date (*i.e.,* the date on which a transaction price is set) and the type of rate (*i.e.,* fixed price, a formula, or an index); (2) reporting resales of financial transmission rights in secondary markets; (3) standardizing the unit for reporting energy and capacity transactions (*i.e.,* dollars per MWh and dollars per MW/month); and (4) omitting the time zone from the contract section of the EQR.

II. Discussion

14. Applying the EQR filing requirements to all market participants that are excluded from the Commission's section 205 jurisdiction, except for those with a *de minimis* market presence, would aid the Commission's oversight and surveillance of wholesale electric markets and increase price transparency for market participants. The Commission requests comments on what EQR information should be obtained from these market participants for the Commission to ensure that electricity markets are transparent. Specifically, the Commission requests comments on the following questions:

(1) Should the Commission extend EQR filing requirements to market participants that are excluded from the Commission's section 205 jurisdiction?

(2) Should the Commission establish a threshold pursuant to which market participants (that are excluded from the Commission's jurisdiction under section 205 of the FPA) with a *de minimis* market presence would not be subject to the EQR filing requirements? If so, what should that threshold be and on what basis should it be established (*i.e.*, by total annual sales, total annual sales for resale, power exchanges delivered)?

(3) Would extending the EQR reporting requirements to market participants that are excluded from the Commission's section 205 jurisdiction impact liquidity (*e.g.*, the number of power sales) or the amount of power made available in the markets? If so how, and, to the extent possible, quantify it.

(4) What specific information should the Commission require to be filed? Include specific data elements from the Commission's EQR Data Dictionary, version 1.1 (issued October 28, 2008) and explain why the information with respect to these specific data elements should be required.

(5) Are there certain EQR filing requirements that should not extend to market participants that are excluded from the Commission's section 205 jurisdiction? If so, specify the data elements from the Commission's EQR Data Dictionary, version 1.1 (issued October 28, 2008) and explain why the information with respect to these specific data elements should not be required.

(6) What would the burden be on market participants that are excluded from the Commission's section 205 jurisdiction that must adapt their existing systems to be able to provide the information to comply with the Commission's EQR filing requirements?

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applicant lacks market power (or has taken sufficient steps to mitigate market power), coupled with strict reporting requirements to ensure that the rate is 'just and reasonable' and that markets are not subject to manipulation." *State of California, ex rel. Bill Lockyer* v. *FERC,* 383 F.3d 1006, 1013 (9th Cir. 2004), *cert. denied* (S. Ct. Nos. 06–888 and 06–1100, June 18, 2007)).

[25] The DPT defines the relevant market by identifying potential suppliers based on market prices, input costs and transmission availability, and then calculates each supplier's economic capacity and available economic capacity for each season/load condition. *Market-Based Rates For Wholesale Sales Of Electric Energy, Capacity And Ancillary Services By Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 106 (2007), *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, 73 FR 25832 (May 7, 2008), FERC Stats. & Regs. ¶ 31,268, *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009). The Commission requires the DPT if a seller fails one of the indicative screens. The indicative screens analyze the number of megawatts of capacity an applicant owns or controls, rather than analyzing actual price data. However, "sellers that do not pass the indicative screens are allowed to provide additional analysis for Commission consideration," including price data. *Id.* P 62.

[26] 16 U.S.C. 824b (2006).

[27] The use of actual sales information is consistent with the analysis used by the Department of Justice's Antitrust Division and the Federal Trade Commission.

[28] As noted above, the Ninth Circuit upheld the Commission's market-based rate regulatory scheme and found that it was valid due to the Commission's "dual requirement of an *ex ante* finding of the absence of market power and sufficient post-approval reporting requirements." *State of California, ex rel. Bill Lockyer, Attorney General of the State of California,* 125 FERC ¶ 61,016 (2008) (denying the California Parties' request for rehearing).

Please estimate the amount of time and resources that would be necessary for market participants that are excluded from the Commission's section 205 jurisdiction to comply with the Commission's EQR filing requirements and provide explanation and support for any estimate.

15. In addition, as described above in section I.C., the Commission is evaluating whether refinements are needed to improve the effectiveness and analytical potential of the existing EQR filing requirements. Accordingly, the Commission requests comments on the following additional questions:

(7) Should the EQR filing requirements include the date on which parties to a reported transaction agreed upon a price (trade date) and type of rate by which the price was set (*i.e.*, fixed price, a formula, or an index)? If so, how should the trade date be defined and are there any issues in determining the trade date for sales under master agreement or evergreen contracts?

(8) Should the Commission collect information about the resale of financial transmission rights in secondary markets? Would collecting this information enhance market transparency? If so, what current EQR filing requirements should be imposed on resales of financial transmission rights in secondary markets? Include data elements from the Commission's EQR Data Dictionary, version 1.1 (issued October 28, 2008) and explain how the information with respect to these specific data elements would improve market transparency. In addition, identify all other filing requirements that may be applicable to resales of financial transmission rights in secondary markets that are not current EQR filing requirements and explain whether and, if so, how collection of the information would improve market transparency.

(9) Should the Commission require market participants to use a standardized unit for reporting energy and capacity transactions (*i.e.*, $/MWh or $/MWmonth for energy and $/MW or $/KW for capacity)? Would requiring market participants to use a standardized unit enhance market transparency?

(10) Should the Commission eliminate the requirement to report the time zone in the contract section of the EQR? Would doing so be detrimental to the market as a whole?

III. Comment Procedures

16. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 30, 2010. Comments must refer to Docket No. RM10–12–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

17. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

18. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

19. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

20. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

21. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

22. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

By the Commission. Commissioner Norris voting present.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–1545 Filed 1–28–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0494; FRL–9108–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Tips and Complaints Regarding Environmental Violations; EPA ICR No. 2219.03, OMB Control No. 2020–0032

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 March 1, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2009–0494, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: The Enforcement and Compliance Docket and Information Center, Environmental Protection Agency, Mailcode 28221T, 1301 Constitution 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: Michael Le Desma; Legal Counsel Division; Office of Criminal Enforcement, Forensics, and Training; Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: (303) 462–9453; fax number: (303) 462–9075; e-mail address: *ledesma.michael@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 October 13, 2009 (74 FR 52486), 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–OECA–2009–0494, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1302 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 and Information Center is 202–566–1927.

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: Tips and Complaints Regarding Environmental Violations.

ICR Numbers: EPA ICR No. 2219.03, OMB Control No. 2009–0032.

ICR Status: This ICR is scheduled to expire on 2/28/2010. 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, 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 tips and complaints web form is intended to provide an easy and convenient means by which members of the public can supply information to EPA regarding suspected violations of environmental law. The decision to provide a tip or complaint is entirely voluntary and use of the web form when supplying a tip or complaint is also entirely voluntary. Tippers need not supply contact information or other personal identifiers. Those who do supply such information, however, should know that this information may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one-half hour 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: Anyone wishing to file a tip or complaint.

Estimated Annual Number of Respondents: 7,560.

Estimated Total Annual Hour Burden: 3,780.

Estimated Total Annual Cost: $75,146.

Changes in the Estimates: There is an increase of 1980 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects the fact that tips and complaints are being filed at a higher rate than originally anticipated, a strong indication of the success of this program. There has been no change in the information being reported or the estimated burden per respondent.

Dated: January 21, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–1855 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8987–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/.*

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register.**

Draft EISs

EIS No. 20080460, ERP No. D–FHW–J40186–CO, I–70 East Project, Transportation Improvement from I–70 East from 1–25 to Tower Road, Funding, City and County Denver, CO.

Summary: EPA expressed environmental concern about air quality impacts. EPA recommended additional mitigation for PM10 impacts, dispersion modeling and possible additional mitigation for MSAT impacts. Rating EC2.

EIS No. 20090058, ERP No. D–AFS–J65534–MT, Miller West Fisher Project, Proposes Land Management Activities, including Timber Harvest, Access Management, Road Storage and Decommissioning, Prescribed Burning and Precommercial Thinning, Miller Creek, West Fisher Creek and the Silver Butte Fisher River, Libby Ranger District, Kootenai National Forest, Lincoln County, MT.

Summary: EPA expressed environmental concern about channel stability in Miller Creek as a result of water yield increases from proposed timber harvests, and noted the need to assure project consistency with TMDL preparation in the watershed of the water quality impaired Fisher River. Rating EC2.

EIS No. 20090196, ERP No. D–SFW–J99043–MT, Montana Department of Natural and Resources and Conservation Plan (HCP), Forested State Trust Lands, Designed to Minimize and Mitigate any such Take of Endangered or Threatened Species, Application for an Incidental Take Permit, MT.

Summary: EPA expressed environmental concern about impacts to water quality, aquatic habitat, aquatic ecological functions, and recommended additional protections and commitments to provide more comprehensive protection. Rating EC2.

EIS No. 20090257, ERP No. D–BLM–J65545–SD, Dewey Conveyor Project, To Transport Limestone from a Future Quarry Location to a Rail Load-Out Facility near Dewey, Application for Transportation and Utility Systems and Facilities on Federal Lands, Custer County, SD.

Summary: EPA expressed environmental concern about air quality impacts, especially regarding connected action sources including the limestone quarry and subsequent mining activities that would likely have significant particulate emissions. EPA also requested additional information on water resources in the project and quarry areas. Rating EC2.

EIS No. 20090371, ERP No. D–NPS–E65086–KY, Cumberland Gap National Historical Park, General Management Plan, Implementation, Middlesboro, KY.

Summary: While EPA has no objection to the proposed action, EPA did recommend additional monitoring activities to ensure that the increase in hardened access areas and likely subsequent increase in recreational and educational usage of the park do not negatively impact natural and cultural resources. Rating LO.

EIS No. 20090388, ERP No. D–AFS–L65524–0R, Fremont-Winema National Forests Invasive Plant Treatment, Propose to Treat up to 8,700 Acres of Invasive Plant Infestation Per Year, Klamath and Lake Counties, OR.

Summary: EPA expressed environmental concern about monitoring and adaptive Management issues. Rating EC2.

EIS No. 20090407, ERP No. D–NOA–L91034–00, Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, Amendment 20, Implementation, WA, OR and CA.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20090418, ERP No. D–COE–E39078–NC, The Town of Nags Head Beach Nourishment Project, Propose to Utilize a Self-Contained Hooper Dredge and Other Feasible Dredging Equipment during a Proposed Construction Window from April through September, Dare County, NC.

Summary: EPA expressed environmental concerns about the use of hopper dredges and their potential effect on marine and threatened and endangered resources. EPA has requested that the Final SEIS include the finalized mitigation plan, the finalized sea turtle protocol, the map of the final borrow areas, and some representative boring logs from the selected final borrow areas. Rating EC2.

EIS No. 20090410, ERP No. DS–IBR–K36146–CA, Mormon Island Auxiliary Dam Modification Project, Addressing Hydrologic, Seismic, Static, and Flood Management Issues, Sacramento and El Dorado Counties, CA.

Summary: EPA expressed environmental concerns about construction air quality impacts, exposure to Naturally Occurring Asbestos, and impacts to vernal pools, wetlands, and riparian habitat. EPA recommended continued coordination with Air Quality Management Districts, inclusion of the Section 404 Permit for the Folsom Dam Safety/Flood Damage Reduction Project, and a description of the 404 permit amendments for the MIAD Modification Project. Rating EC2.

Final EISs

EIS No. 20090078, ERP No. F–NIH–J81013–MT, Rocky Mountain Laboratories (RML) Master Plan, Implementation, Hamilton, Ravalli County, MT.

Summary: EPA's previous concerns have been resolved; therefore, EPA has no objection to the proposed action.

EIS No. 20090339, ERP No. F–AFS–J65539–00, Ashley National Forest Motorized Travel Plan, To Improve Management of Public Summer Motorized Use by Designating Roads and Motorized Trails and Limiting Dispersed Camping to Areas, Duchesne, Daggett, Uintah Counties, Utah and Sweetwater County, Wyoming.

Summary: The preparing agencies responded adequately to EPA's comments on the DEIS. There are no continuing significant issues.

EIS No. 20090366, ERP No. F–FHW–J40177–CO, US–36 Corridor, Multi-Modal Transportation Improvements between I–25 in Adams County and Foothills Parkway/Table Mesa Drive in Boulder, Adams, Denver, Broomfield, Boulder and Jefferson Counties, CO.

Summary: EPA continues to express environmental concern about water quality impacts. EPA recommended long-term monitoring and maintenance of storm water best management practices. EPA requested clarification of air quality discussion related to particulate matter emissions be included in the record of decision.

EIS No. 20090416, ERP No. F–UMC–E11070–NC, U.S. Marine Corps Grow the Force at MCB Camp Lejeune, MCAS New River, and MCAS Cherry Point, To Provide the Infrastructure to Support the Permanent Increases at these three Installations, US Army Corps Section 404 and 10 Permits, City of Jacksonville, NC.

Summary: EPA recommended that a comprehensive alternative transportation program be developed to assist the area in meeting air quality standards in the future.

EIS No. 20090433, ERP No. F–AFS–K65366–CA, Lassen National Forest, Motorized Travel Management Plan, Implementation, Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama Counties, CA.

Summary: EPA continues to express environmental concerns about impacts to water quality and sensitive resources.

EIS No. 20090444, ERP No. F–USA–G11051–NM, White Sands Missile Range (WSMR), Development and Implementation of Range-Wide Mission and Major Capabilities, NM.

Summary: No formal comment letter was sent to the preparing agency. *EIS No. 20090441, ERP No. FS–FHW–E40768–TN,* Shelby Avenue/Demonbreun Street (Gateway Boulevard

Corridor, from I–65 North [I–24 West] to I–40 West in Downtown Nashville, To Address Transportation needs in the Study Area. Davidson County, TN.

Summary: EPA continues to have environmental concerns about MSAT impacts.

Dated: January 26, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–1860 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8987–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly Receipt of Environmental Impact Statements Filed 01/18/2010 Through 01/22/2010 Pursuant to 40 CFR 1506.9.

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html*. Including the entire EIS comment letters on the website satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

EIS No. 20100017, Draft EIS, NOAA, 00, Amendment 21 to the Pacific Coast Groundfish Fishery Management Plan, (FMP), Allocation of Harvest Opportunity between Sectors, Implementation, WA, OR and CA, Comment Period Ends: 03/15/2010, Contact: Barry A. Thom 206–516–6150.

EIS No. 20100018, Draft EIS, NPS, WV, New River Gorge National River Project, General Management Plan, Implementation, Fayette, Raleigh and Summers Counties, WV, Comment Period Ends: 03/29/2010, Contact: Deborah Darden 304–465–6509.

EIS No. 20100019, Final EIS, DOE, NY, West Valley Demonstration Project and Western New York Nuclear Service Center Decommissioning and/or Long-Term Stewardship, (DOE/EIS–0226–D Revised) City of Buffalo, Eric and Cattaraugus Counties, NY, Wait Period Ends: 03/01/2010, Contact: Catherine Bohan 716–942–4159.

EIS No. 20100020, Final EIS, FTA, TX, University Corridor Fixed Guideway Project, To Implement Transit Improvements from Hillcroft Transit Center to the Vicinity of the University of Houston (UH)—Central Campus or the Eastwood Transit Center, City of Houston, Harris County, TX, Wait Period Ends: 03/01/2010, Contact: Laura Wallace 817–978–0561.

EIS No. 20100021, Final EIS, BR, CA, Folsom Lake State Recreation Area & Folsom Powerhouse State Historic Park, General Plan/Resource Management Plan, Implementation, Placer County, CA, Wait Period Ends: 03/01/2010, Contact: Walter Clevenger 916–989–7173.

EIS No. 20100022, Draft EIS, DOE, 00, Long-Term Management and Storage of Elemental Mercury Storage Project, Designate a Facility or Facilities for Mercy Storage, Seven Alternative Sites, CO, ID, MO, NV, SC and WA, Comment Period Ends: 03/29/2010, Contact: David Levenstein 301–903–6500.

EIS No. 20100023, Final EIS, USFS, 00, Klamath National Forest Motorized Route Designation, Motorized Travel Management, (Formerly Motorized Route Designation), Implementation, Siskiyou County, CA and Jackson County, OR, Wait Period Ends: 03/01/2010, Contact: Jan Ford 530–841–4483.

Dated: January 26, 2010.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–1859 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0024; FRL–9107–8]

Inquiry To Learn Whether Businesses Assert Business Confidentiality Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: The Environmental Protection Agency (EPA) receives from time to time Freedom of Information Act (FOIA) requests for documentation received or issued by EPA or data contained in EPA database systems pertaining to the export and import of Resource Conservation and Recovery Act (RCRA) hazardous waste from/to the United States, the export of cathode ray tubes (CRTs) from the United States, and the export and import of RCRA universal waste from/to the United States. These documents and data may identify or reference multiple parties, and describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. The purpose of this notice is to inform "affected businesses" about the documents or data sought by these types of FOIA requests in order to provide the businesses with the opportunity to assert claims that any of the information sought that pertains to them is entitled to treatment as confidential business information (CBI), and to send comments to EPA supporting their claims for such treatment. Certain businesses, however, do not meet the definition of "affected business," and are not covered by today's notice. They consist of any business that actually submitted to EPA any document at issue pursuant to applicable RCRA regulatory requirements and did not assert a CBI claim as to information that pertains to that business in connection with the document at the time of its submission; they have waived their right to do so at a later time. Nevertheless, other businesses identified or referenced in the documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

DATES: Comments must be received on or before March 1, 2010. The period for submission of comments may be extended if, before the comments are due, you make a request for an extension of the comment period and it is approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under the FOIA is pending.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2010–0024, by one of the following methods:

• *http://www.regulations.gov:* Follow the online instructions for submitting comments.
• *E-mail: kreisler.eva@epa.gov.*
• *Address:* Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2010–0024. 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. Instructions about how to submit comments claimed as CBI are given later in this notice.

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. Please include your name and other contact information with any disk or CD–ROM you submit by mail. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index.

Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, 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 docket for this notice is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8186; e-mail address: *kreisler.eva@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's notice relates to any documents or data in the following areas: (1) Export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subparts E and H; (2) import of RCRA hazardous waste under 40 CFR part 262, subparts F and H; (3) transit of RCRA hazardous waste under 40 CFR part 262, subpart H, through the United States and foreign countries; (4) export of cathode ray tubes under 40 CFR part 261, subpart E; (5) export and import of RCRA universal waste under 40 CFR part 273, subparts B, C, D, and F; and (6) submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1).

I. General Information

EPA has previously published notices similar to this one in the **Federal Register**, at 74 FR 20293, May 1, 2009, and 72 FR 21006, April 27, 2007 that address issues similar to those raised by today's notice. The Agency did not receive any comments on the previous notices. Since the publication of the 2009 notice, the Agency has continued to receive FOIA requests for documents and data contained in the EPA Waste International Tracking System ("WITSnet") database and other EPA databases related to hazardous waste exports and imports.

II. Issues Covered by This Notice

Specifically, EPA receives FOIA requests from time to time for documentation or data related to hazardous waste exports and imports that may identify or reference multiple parties, and that describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. This notice informs "affected businesses," [1] which could include, among others, "transporters" [2] and "consignees," [3] of the requests for information in EPA database systems and/or contained in one or more of the following documents: (1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subparts E and H, including but not limited to the "notification of intent to export," [4] "manifests," [5] "annual reports," [6] "EPA acknowledgements of consent," [7] " any subsequent communication withdrawing a prior consent or objection," [8] "responses that neither consent nor object," "exception reports," [9] "transit notifications," [10] and "renotifications;" [11] (2) documents related to the import of hazardous waste under 40 CFR part 262, subparts F and H, including but not limited to notifications of intent to import hazardous waste into the U.S. from foreign countries; (3) documents related to the transit of hazardous waste under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.; (4) documents related to the export of cathode ray tubes (CRTs) under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs; and (5) documents related to the export and import of RCRA "universal waste" [12] under 40 CFR part 273, subparts B, C, D, and F.

[1] The term "affected business" is defined at 40 CFR 2.201(d), and is set forth in this notice, below.

[2] The term "transporter" is defined at 40 CFR 260.10.

[3] The term "consignee" is defined, for different purposes, at 40 CFR 262.51 and 262.81(c).

[4] The term "notification of intent to export" is described at 40 CFR 262.53.

[5] The term "manifest" is defined at 40 CFR 260.10.

[6] The term "annual reports" is described at 40 CFR 262.56.

[7] The term "EPA acknowledgement of consent" is defined at 40 CFR 262.51.

[8] The requirement to forward to the exporter "any subsequent communication withdrawing a prior consent or objection" is found at 42 U.S.C. 6938(e).

[9] The term "exception reports" is described at 40 CFR 262.55.

[10] The term "transit notifications" is described at 40 CFR 262.53(e).

[11] The term "renotifications" is described at 40 CFR 262.53(c).

[12] The term "universal waste" is defined at 40 CFR 273.9.

Certain businesses, however, do not meet the definition of "affected business," and are not covered by today's notice. They consist of any business that actually submitted information responsive to a FOIA request, under the authority of 40 CFR parts 260 through 266 and 268, and did not assert a claim of business confidentiality covering any of that information at the time of submission. As set forth in the RCRA regulations at 40 CFR 260.2(b), "if no such [business confidentiality] claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it." Thus, for purposes of this notice and as a general matter under 40 CFR 260.2(b), a business that submitted to EPA the documents at issue, pursuant to applicable regulatory requirements, and that failed to assert a claim as to information that pertains to it at the time of submission, cannot later make a confidentiality claim.[13] Nevertheless, other businesses identified or referenced in the same documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

[13] However, businesses having submitted information to EPA relating to the export and import of RCRA universal waste are not subject to 40 CFR 260.2(b) since they submitted information in accordance with 40 CFR part 273, and not parts 260 through 266 and 268, as set forth in 40 CFR 260.2(b). They are therefore affected businesses that could make a claim of CBI at the time of submission or in response to this notice.

In addition, EPA may develop its own documents and organize into its database systems information that was originally contained in documents from submitting businesses relating to exports and imports of hazardous waste. If a submitting business fails to assert a CBI claim for the documents it submits to EPA at the time of submission, not only does it waive its right to claim CBI for those documents, but it also waives its right to claim CBI for information in EPA's documents or databases that is based on or derived from the documents that were originally submitted by that business.[14]

[14] With the exception, noted above, of the submission of information relating to the export and import of RCRA universal waste.

In accordance with 40 CFR 2.204(c) and (e), this notice inquires whether any affected business asserts a claim that any of the requested information constitutes CBI, and affords such business an opportunity to comment to EPA on the issue. This notice also informs affected businesses that, if a claim is made, EPA would determine under 40 CFR part 2, subpart B, whether any of the requested information is entitled to confidential treatment.

1. Affected Businesses

EPA's FOIA regulations at 40 CFR 2.204(c)(1) require an EPA office that is responsible for responding to a FOIA request for the release of business information ("EPA office") "to determine which businesses, if any, are affected businesses * * *." "Affected business" is defined at 40 CFR 2.201(d) as, "* * * with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed."

2. The Purposes of This Notice

This notice encompasses two distinct steps in the process of communication with affected businesses prior to EPA's making a final determination concerning the confidentiality of the information at issue: The preliminary inquiry and the notice of opportunity to comment.

a. Inquiry To Learn Whether Affected Businesses (Other Than Those Businesses That Previously Asserted a CBI Claim) Assert Claims Covering Any of the Requested Information

Section 2.204(c)(2)(i) provides, in relevant part:

If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA office shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information.

b. Notice of Opportunity To Submit Comments

Sections 2.204(d)(1)(i) and 2.204(e)(1) of Title 40 of the Code of Federal Regulations require that written notice be provided to businesses that have made claims of business confidentiality for any of the information at issue, stating that EPA is determining under 40 CFR part 2, subpart B, whether the information is entitled to confidential treatment, and affording each business an opportunity to comment as to the reasons why it believes that the information deserves confidential treatment.

3. The Use of Publication in the **Federal Register**

Section 2.204(e)(1) of Title 40 of the Code of Federal Regulations requires that this type of notice be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. EPA, however, has determined that in the present circumstances the use of a **Federal Register** notice is the only practical and efficient way to contact affected businesses and to furnish the notice of opportunity to submit comments. The Agency's decision to follow this course was made in recognition of the administrative difficulty and impracticality of directly contacting potentially thousands of individual businesses.

4. Submission of Your Response in the English Language

All responses to this notice must be in the English language.

5. The Effect of Failure To Respond to This Notice

In accordance with 40 CFR 2.204(e)(1) and 2.205(d)(1), EPA will construe your failure to furnish timely comments in response to this notice as a waiver of your business' claim(s) of confidentiality for any information in the types of documents identified in this notice.

6. What To Include in Your Comments

If you believe that any of the information contained in the types of documents which are described in this notice and which are currently, or may become, subject to FOIA requests, is entitled to confidential treatment, please specify which portions of the information you consider confidential. Information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be

maintained as confidential, *e.g.,* until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question no. 1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, please explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response "CONFIDENTIAL" or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR part 2, subpart B. If you fail to claim the information as confidential, it may be made available to the requestor without further notice to you.

III. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Please submit this information by mail to the address identified in the **ADDRESSES** section of today's notice for inclusion in the non-public CBI docket. 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. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2, subpart B. In addition to the submission of 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.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the notice by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

Dated: January 13, 2010.

Susan E. Bromm,

Director, Office of Federal Activities.

[FR Doc. 2010–1857 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9106–1; Docket ID No. EPA–HQ–ORD–2007–0925]

Integrated Science Assessment for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA) .

ACTION: Notice of Availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of a final document titled, "Integrated Science Assessment for Carbon Monoxide" (EPA/600/R–09/019F). This document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for carbon monoxide.

DATES: The document will be available on January 29, 2010.

ADDRESSES: The "Integrated Science Assessment for Carbon Monoxide" will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Debbie Wales by phone (919–541–4731), fax (919–541–5078), or e-mail (*wales.deborah@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, "Integrated Science Assessment for Carbon Monoxide" (EPA/600/R–09/019F) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Thomas C. Long, NCEA; telephone: 919–541–1880; facsimile: 919–541–2985; or e-mail: *long.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108(a) of the Clean Air Act directs the EPA Administrator to identify certain pollutants that "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria for them. These air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air * * *." Under section 109 of the Act, EPA is to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to revise the

NAAQS, if appropriate, based on the revised air quality criteria.

Carbon monoxide (CO) is one of six "criteria" pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On September 13, 2007 (72 FR 52369), EPA formally initiated its current review of the air quality criteria for CO, requesting the submission of recent scientific information on specified topics. A workshop was held on January 28–29, 2008 (73 FR 2490) to discuss policy-relevant science to inform EPA's planning for the CO NAAQS review. In March 2008, a draft of EPA's "Plan for Review of the National Ambient Air Quality Standards for Carbon Monoxide" (EPA–452/D–08–001) was made available for public comment and was discussed by the CASAC via a publicly accessible teleconference consultation on April 8, 2008 (73 FR 12998). EPA finalized the plan and made it available in August 2008 (EPA/452/R–08/005; *http://www.epa.gov/ttn/naaqs/standards/co/s_co_cr_pd.html*). In November 2008, EPA held an authors' teleconference to discuss, with invited scientific experts, preliminary draft materials prepared during the ongoing development of the CO ISA and its supplementary annexes.

The First External Review Draft ISA for CO (EPA/600/R–09/019; *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=203935*) was released for public comment and CASAC review on March 12, 2009 (74 FR 10734). This document was reviewed by the CASAC review panel and discussed at a public meeting held May 12–13, 2009 (74 FR 15265). The CASAC held a follow-up public teleconference on June 17, 2009 (74 FR 25530) to review and approve the CASAC CO Review Panel's draft letter providing comments to EPA on the First External Review Draft ISA for CO. Following the teleconference, CASAC sent a final letter report to EPA on June 24, 2009 (*http://yosemite.epa.gov/sab/sabproduct.nsf/4620a620d0120f9385257241008 0d786/6E648129288BF930852575DF0070A528/$File/EPA-CASAC-09-011-unsigned.pdf*).

The Second External Review Draft ISA for CO (EPA/600/R–09/019B; *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=213229*), which took into consideration comments by CASAC and the public on the First External Review Draft, was released for public comment and CASAC review on September 23, 2009 (74 FR 48536). This document was reviewed by the CASAC review panel and discussed at a public meeting held November 16–17, 2009 (74 FR 54042). The CASAC held a follow-up public teleconference on December 22, 2009 to review and approve the CASAC CO Review Panel's draft letter providing comments to EPA on the Second External Review Draft ISA for CO. The final letter report can be obtained from the CASAC Web site (*http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC*). EPA has considered comments by CASAC and by the public in preparing this final ISA.

Dated: January 13, 2010.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2010–1359 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9108–2]

Science Advisory Board Staff Office; Notification of Two Public Teleconferences of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the Chartered Science Advisory Board to discuss EPA's requested research budget for Fiscal Year 2011.

DATES: The teleconference dates are February 19, 2010 from 1 p.m. to 4 p.m. (Eastern Time) and February 24, 2010 from 12:30 p.m. to 3:30 p.m. (Eastern Time).

ADDRESSES: The teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9981; fax: (202) 233–0643; or e-mail at *nugent.angela@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the chartered SAB will hold two public teleconferences to discuss the President's requested Fiscal Year 2011 Budget to support EPA research needs.

Background: The chartered SAB conducts a review of the EPA research budget annually and provides written comments to the EPA Administrator and to Congress, if requested, on the adequacy of EPA's requested research budget. At the teleconferences, the chartered SAB will receive briefings on the requested research budget for Fiscal Year 2011 and develop major comments on the budget, in light of EPA's research needs. Previous SAB budget advisories are on the SAB Web site at *http://www.epa.gov/sab*.

Availability of Meeting Materials: The agendas and other materials in support of the teleconferences will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider on the topics included in this advisory activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. Interested parties should contact Dr. Nugent, DFO, in writing (preferably via e-mail) at the contact information noted above for the February 19, 2010 teleconference by February 16, 2010 to be placed on a list of public speakers for the teleconference. Interested parties should

contact Dr. Nugent, for the February 24, 2010 teleconference by February 23, 2010 to be placed on the list of public speakers for the February 24, 2010 teleconference. *Written Statements:* Written statements for the February 19, 2010 teleconference should be received in the SAB Staff Office by February 16, 2010 and written statements for the February 24, 2010 teleconference should be received in the SAB Staff Office by February 23, 2010 so that the information may be made available to the chartered SAB members for their consideration and placed on the SAB Web site for public information. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981, or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact Dr. Nugent, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 25, 2010.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–1942 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0029; FRL–8809–2]

Beauveria Bassiana Strain GHA; Notice of Receipt of a Request for an Amendment to Delete a Use in a Pesticide Registration

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 a request for an amendment by a registrant to delete a use in a pesticide registration. 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 amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletion is effective,July 28, 2010 unless the Agency receives a written withdrawal request on or before July 28, 2010. The Agency will consider a withdrawal request postmarked no later than July 28, 2010.

Users of this product who desire continued use on the crop being deleted should contact the applicable registrant on or before July 28, 2010.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2010–0029, by one of the following methods:

- *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.

FOR FURTHER INFORMATION CONTACT: Jeannine Kausch, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8920; e-mail address: *kausch.jeannine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2010–0029. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of an application from a registrant to delete a use in a pesticide registration. This registration is listed in Table 1 of this unit by registration number, product name, active ingredient, and specific use deleted:

TABLE 1.—REQUEST FOR AN AMENDMENT TO DELETE A USE IN A PESTICIDE REGISTRATION

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
82074–1	Mycotrol® ES	*Beauveria bassiana* Strain GHA	Tomato

Users of this product who desire continued use on the crop being deleted should contact the applicable registrant before July 28, 2010 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with the registrant

prior to the Agency's approval of the deletion.

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING AN AMENDMENT TO DELETE A USE IN A PESTICIDE REGISTRATION

EPA Company Number	Company Name and Address
82074	Laverlam International Corporation, 117 South Parkmont, Butte, MT 59701

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 amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Jeannine Kausch using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than July 28, 2010.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrant to sell or distribute the product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 21, 2010.

Keith Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–1940 Filed 1–28–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

01/26/2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comment on this information collection should submit comments by March 30, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION: OMB Control Number: 3060–1101.

Title: Children's Television Requests for Preemption Flexibility.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for–profit.

Number of Respondents and Responses: 15 respondents; 15 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On September 26, 2006, the Commission adopted a Second Order on Reconsideration and Second Report and Order in MM Docket 00–167, FCC 06–143, In the Matter of Children's Television Obligations of Digital Television Broadcasters. The Second Order addressed several matters relating to the obligation of television licensees to provide educational programming for children and the obligation of television licensees and cable operators to protect children from excessive and inappropriate commercial messages. Among other things, the Second Order adopts a children's programming preemption policy. This policy requires all networks requesting preemption flexibility to file a request with the Media Bureau by August 1 of each year. The request identifies the number of preemptions the network expects, when the program will be rescheduled, whether the rescheduled time is the program's second home, and the network's plan to notify viewers of the schedule change. Preemption flexibility requests are not mandatory filings. They are requests that may be filed by networks seeking preemption flexibility.

Federal Communications Commission.

Alethea Lewis,

Information Specialist, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–1809 Filed 1–28–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[DA 10–121]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date and agenda of its Consumer Advisory Committee ("Committee"). The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The meeting of the Committee will take place on February 12, 2010, 3 p.m. to 4 p.m., at the Commission's Headquarters Building, Room TW–C305.

ADDRESSES: Federal Communications Commission, 445 12th Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *Scott.Marshall@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 10–121, released on January 22, 2010, announcing the agenda, date and time of the Committee's next meeting. At its February 12, 2010 meeting, the Committee will consider a recommendation regarding truth-in-billing to be filed in CG Docket 09–158, CC Docket 98–170 and WC Docket 04–36 (In the Matter of Consumer Information and Disclosure, Truth-in-billing and Billing Format, IP-enabled Services, Notice of Inquiry). The Committee may also consider other matters within the jurisdiction of the Commission. It is anticipated that a majority of Committee members will participate via teleconference. A limited amount of time on the agenda will be available for oral comments from the public attending at the meeting site. Meetings are open to the public and are broadcast live with open captioning over the Internet from the FCC Live Web page at *http://www.fcc.gov/live/.*

The Committee is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988). A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. Members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee. *scott.marshall@fcc.gov.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Simultaneous with the Webcast, the meeting will be available through Accessible Event, a service that works with your Web browser to make presentations accessible to people with disabilities. You can listen to the audio and use a screen reader to read displayed documents. You can also watch the video with open captioning. Accessible Event is available at *http://accessibleevent.com.* The Web page prompts for an Event Code which is 005202376. To learn about the features of Accessible Event, consult its User's Guide at *http://accessibleevent.com/doc/user_guide/.* Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Joel Gurin,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2010–1934 Filed 1–28–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals:

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 30, 2010.

ADDRESSES: You may submit comments, identified by FR 3033, FR 2436 FR 4031, or FR H–1, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *Fax:* 202–452–3819 or 202–452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the implementation of the following report:

Report title: Census of Finance Companies.

Agency form number: FR 3033p.

OMB control number: 7100–0277.

Frequency: One-time.

Reporters: Domestic finance companies and mortgage companies.

Estimated annual reporting hours: 6,000 hours.

Estimated average hours per response: 0.33 hours.

Number of respondents: 18,000.

General description of report: This information collection is authorized by law (12 U.S.C. 225a, 263, and 353–359) and is voluntary. Individual responses are exempt from disclosure pursuant to section (b)(4) of the Freedom of Information Act (5 U.S.C. 552).

Abstract: The FR 3033 information collection includes the Census of Finance Companies (FR 3033p) and the Quinquennial Finance Company Survey (FR 3033s). The survey will be reviewed in a separate proposal in 2010.

Since June 1955, the Federal Reserve System has surveyed the assets and liabilities of finance companies at five-year intervals. The census would ask a set of questions designed to identify the universe of finance companies eligible for potential inclusion in the survey and to enable the stratification of the sample for more statistically efficient estimation. The census would gather limited information including total assets, areas of specialization, and information on the corporate structure of the companies.

For purposes of this information collection, finance companies were defined as domestic companies (excluding commercial banks, cooperative banks, investment banks, savings banks, savings and loan institutions and industrial loan corporations or their subsidiaries) whose largest portion of assets is made up of consumer or business loans or leases.

Current actions: The Federal Reserve proposes to revise the census to improve the response rate and help staff identify respondents for the upcoming survey, once approved. The Federal Reserve proposes the following revisions to the census: (1) Change the title of the census from *Finance Company Questionnaire* to *Census of Finance Companies.* Board staff believes using the term 'census' in the title would stress that every response is important. (2) Modify and combine the Purpose of Report and the Scope of the Report sections. The modifications would make the survey easier to understand. (3) Change several questions to allow the Federal Reserve to gather information needed to determine whether a company is a finance company rather than asking whether it meets the definition. The Federal Reserve believes these changes would improve the accuracy of identifying finance companies. and (4) Increase the respondent panel size from 3,000 to 30,000. The Federal Reserve estimates that it would receive responses from 18,000 finance companies (60 percent response rate).

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Semiannual Report of Derivatives Activity.

Agency form number: FR 2436.

OMB control number: 7100–0286.

Frequency: Semiannually.

Reporters: U.S. dealers of over-the-counter derivatives.

Annual reporting hours: 2,100 hours.

Estimated average hours per response: 210 hours.

Number of respondents: 5.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a), 348(a), 263, and 353–359) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This voluntary report collects derivatives market statistics from the five largest U.S. dealers of over-the-counter (OTC) derivatives. Data are collected on the notional amounts and gross market values of the volumes outstanding of broad categories of foreign exchange, interest rate, and equity- and commodity-linked OTC derivatives contracts across a range of underlying currencies, interest rates, and equity markets. This collection of information complements the ongoing triennial Survey of Foreign Exchange and Derivatives Market Activity (FR 3036; OMB No. 7100–0285). The FR 2436 collects similar data on the outstanding volume of derivatives, but not on derivatives turnover. The Federal Reserve conducts both surveys in coordination with other central banks and forwards the aggregated data furnished by U.S. reporters to the Bank for International Settlements (BIS), which publishes global market statistics that are aggregations of national data.

Current Actions: The Federal Reserve proposes to revise the FR 2436 by collecting additional data on credit default swaps (CDSs). The large size of the credit derivatives market and the important role that credit derivatives play for financial institutions in managing their credit risk have increased the need for more detailed comprehensive data on CDS activity. As a result, the central banks of the Group of Ten Countries (G–10) would like to collect additional data on CDSs from their important derivatives dealers and report the aggregate data to the BIS (so that more detailed global statistics can be assembled). The proposed revisions would be implemented in two phases in order to balance the need for additional information quickly against the burden

associated with implementing changes relatively rapidly. Phase 1 would be effective with the June 30, 2010, report date and Phase 2 would be effective with the June 30, 2011, report date.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Notice of Branch Closure.

Agency form number: FR 4031.

OMB control number: 7100–0264.

Frequency: On occasion.

Reporters: State member banks.

Estimated annual reporting hours: 291 hours.

Estimated average hours per response: Reporting requirements, 2 hours; Disclosure requirements, customer mailing, 0.75 hours and posted notice, 0.25 hours; and Recordkeeping requirements, 8 hours.

Number of respondents: Reporting requirements, 70; Disclosure requirements, customer mailing, 70 and posted notice, 70; and Recordkeeping requirements, 10.

General description of report: This information collection is mandatory (12 U.S.C. 1831r–l(a)(1)) and may be given confidential treatment upon request (5 U.S.C.552(b)(4)).

Abstract: The mandatory reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991. There is no reporting form associated with the reporting portion of this information collection; state member banks notify the Federal Reserve by letter prior to closing a branch. The Federal Reserve uses the information to fulfill its statutory obligation to supervise state member banks.

2. *Report title:* Reports Related to Securities Issued by State Member Banks as Required by Regulation H.

Agency form number: FR H–1.

OMB control number: 7100–0091.

Frequency: Quarterly and on occasion.

Reporters: State member banks.

Estimated annual reporting hours: 1,230 hours.

Estimated average hours per response: 5.17 hours.

Number of respondents: 14.

General description of report: This information collection is mandatory (15 U.S.C. 781(i) and 78w (a)(1)) and is not given confidential treatment.

Abstract: The Federal Reserve's Regulation H requires certain state member banks to submit information relating to their securities to the Federal Reserve on the same forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission. The information is primarily used for public disclosure and is available to the public upon request.

Board of Governors of the Federal Reserve System, January 25, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–1774 Filed 1–28–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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 February 25, 2010.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Western Liberty Bancorp; to become a bank holding company by acquiring 100 percent of the voting shares of Service1st Bank of Nevada, both of Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, January 26, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–1833 Filed 1–28–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register.** A copy of the agreement is 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.: 011284–067.

Title: Ocean Carrier Equipment Management Association Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Atlantic Container Line; China Shipping Container Lines Co., Ltd; China Shipping Container Lines (Hong Kong) Co., Ltd.; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sudamericana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Maritime Corporation; Evergreen Line Joint Service Agreement; Hamburg-Süd; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mediterranean Shipping Company, S.A.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Norasia Container Lines Limited; Orient Overseas Container Line Limited; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Jeffrey F. Lawrence, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds the authority for parties to discuss, share information and reach agreement on processes relating to the return, maintenance, and repair of equipment, including processes necessary for compliance with state and federal safety regulations.

By Order of the Federal Maritime Commission.

Dated: January 26, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–1841 Filed 1–28–10; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

2010 Travel and Relocation Excellence Award

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is seeking candidates for the biennial 2010 Travel and Relocation Excellence Award, which honors excellence in federal travel and relocation policy.

FOR FURTHER INFORMATION CONTACT: Go to GSA's 2010 Travel and Relocation Excellence Award at *http://www.gsa.gov/travelrelocationaward* or contact Jane Groat, Travel Management Policy, Office of Travel, Transportation, and Asset Management (MT), General Services Administration, Washington, DC 20405, (202) 501–4318, *jane.groat@gsa.gov.*

SUPPLEMENTARY INFORMATION: The Federal Travel Regulation is contained in Title 41 Code of the Federal Regulations (41 CFR Chapters 300 through 304), and implements statutory requirements and Executive branch policies for travel and relocation by Federal civilian employees and others authorized to travel and relocate at Government expense.

GSA announces an award to recognize and honor excellence in Federal travel and relocation. This award, available to all Federal employees, will honor individuals and/or teams. Winners of the award will be publicly announced and presented at the National Travel Forum (June 29–July 1, 2010, Orlando, FL, *http://www2.nbta.org/ntf*). Entries must be received no later than March 31, 2010.

Patrick O'Grady,

Acting Director, Travel Management Policy.

[FR Doc. 2010–1862 Filed 1–28–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees for Linde Ceramics, Tonawanda, NY, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for Linde Ceramics, Tonawanda, New York, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Linde Ceramics.

Location: Tonawanda, New York.

Job Titles and/or Job Duties: All employees who worked in any area.

Period of Employment: November 1, 1947 through December 31, 1953.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–1939 Filed 1–28–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees for the Lawrence Livermore National Laboratory, Livermore, CA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees for the Lawrence Livermore National Laboratory, Livermore, California, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Lawrence Livermore National Laboratory.

Location: Livermore, California.

Job Titles and/or Job Duties: All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors.

Period of Employment: January 1, 1950 through December 31, 1973.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Interim Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2010–1938 Filed 1–28–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Advisory Council for Faith-Based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the President's Advisory Council for Faith-based and Neighborhood Partnerships announces the following meeting:

Name: President's Advisory Council for Faith-based and Neighborhood Partnerships Council Meeting.

Times and Dates: Tuesday, February 2nd from 4–6 p.m. EST and Thursday, February 4th from 4–6 p.m. EST.

Place: Meetings will be held via conference call. Please contact Mara Vanderslice for call-in information and further details at *mvanderslice@who.eop.gov.*

Status: Open to the public, limited only by the space available. Conference call line will be available.

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful

modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith- based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

Contact Person for Additional Information: Mara Vanderslice at *mvanderslice@who.eop.gov.*

SUPPLEMENTARY INFORMATION: Please contact Mara Vanderslice for more information about how to join the conference call.

Agenda: Topics to be discussed include final deliberations on draft Taskforce recommendations for Council report.

Dated: January 15, 2010.

Jamison Citron,

Special Assistant.

[FR Doc. 2010–1592 Filed 1–28–10; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–10–0539]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Estimating the Capacity for national and State-Level Colorectal Cancer Screening through a Survey of Endoscopic Capacity (SECAP II)—Reinstatement with Changes—Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Colorectal cancer (CRC) is the second leading cause of cancer-related deaths in the United States (U.S.). Removal of pre-cancerous polyps before they transform into cancer can prevent colorectal cancer from developing. Additionally, early asymptomatic cancers found through screening respond better to treatment than more advanced cancers that are detected once they become symptomatic. As a result, CRC is ideally suited for prevention and early detection through regular screening. Flexible sigmoidoscopy and colonoscopy, two lower gastrointestinal (GI) endoscopic procedures currently recommended as colorectal cancer screening tests, provide direct visualization of the colon, and allow qualified medical professionals to identify and remove polyps as well as to detect early cancers. Both of these tests require specialized training. Flexible sigmoidoscopy provides a view of only the lower half of the colon, but is still used widely. Colonoscopy, which provides a view of the entire colon, is both a primary screening test and the recommended follow-up procedure for any other positive colorectal cancer screening test.

Information regarding the capacity of the U.S. health care system to provide lower GI endoscopic procedures is critical to planning widespread CRC screening programs. In 2002, CDC conducted the *National Survey of Endoscopic Capacity (SECAP)* (OMB No. 0920–0539, exp. 3/31/2003) to obtain an estimate of the number of colorectal cancer screening and follow-up tests currently being performed, as well as the maximum number of screening and follow-up tests that could be performed in the event of widespread screening. In 2003–2005, CDC conducted similar surveys in 15 selected States to provide estimates at State and sub-State levels (*State Survey of Endoscopic Capacity,* OMB No. 0920–0590, exp. 6/30/2006). These capacity estimates provided critical information that helped in the planning of National and State colorectal cancer screening efforts. However, in light of recent trends in colorectal cancer screening (*e.g.,* increases in the percentage of public and private insurers that reimburse for screening colonoscopy, increased use of colonoscopy and decreased use of flexible sigmoidoscopy, availability of other colorectal cancer screening procedures), there is a need to update estimates of endoscopic capacity to guide continued screening initiatives.

CDC plans to request OMB approval for three years to conduct a national survey of endoscopic capacity again in 2010–2011, and additional State-level surveys over a three-year period. The proposed national survey will employ the same methodology used in the previous national survey, and the same—but updated—sampling frame. The proposed State-level information collection will include a census survey of selected States, based on methodology employed with the previously fielded State-based survey.

The target population for the national survey will be all facilities in the U.S. that use lower gastrointestinal flexible endoscopic equipment for the detection of colorectal cancer in adults. Information will be collected from a random sample of 1,440 facilities, stratified by U.S. Census region and urban/rural location. Similarly, information will be collected from a census of qualifying facilities in up to 18 selected States. An average of 200 facilities will be invited to participate in each State capacity survey. A total of approximately 1,680 completed State surveys will be collected over the three years of the project. The same survey instrument will be used for both information collections. Minor, non-substantive changes to the self-administered, paper-and-pencil survey instrument will be made to improve usability.

The specific aims of the information collection are to provide: (1) Current estimates of the number of colorectal cancer screening and follow-up procedures being performed; (2) current estimates of the maximum number of procedures that could be performed in the event of widespread screening; and (3) information regarding the types of facilities and providers that perform the procedures.

Facilities will be recruited and screened through a telephone interview. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Medical Facilities that Perform CRC Screening.	National Survey Recruitment Interview	700	1	5/60	58
	National SECAP Survey	480	1	35/60	280
	State Survey Recruitment Interview	800	1	5/60	67
	State SECAP Survey	560	1	35/60	327
Total					732

Dated: January 22, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1907 Filed 1–28–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; State Program Report

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) 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, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Title III and VII State Program Report.

DATES: Submit written or electronic comments on the collection of information by March 30, 2010.

ADDRESSES: Submit electronic comments on the collection of information to: *valerie.cook@aoa.hhs.gov.* Submit written comments on the collection of information to Administration on Aging, Office of Evaluation, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Valerie Cook at 202–357–3583.

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 request 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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Older Americans Act (OAA) requires annual program performance reports from States. In compliance with this OAA provision, AoA developed a State Program Report (SPR) in 1996 as part of its National Aging Program Information System (NAPIS). The SPR collects information about how State Agencies on Aging expend their OAA funds as well as funding from other sources for OAA authorized supportive services. The SPR also collects information on the demographic and functional status of the recipients, and is a key source for AoA performance measurement. This collection includes minor revisions of the format from the 2006 approved version. The proposed revised version will be in effect for the FY 2011 reporting year and thereafter, while the current reporting, OMB Approval Number 0985–0008, will be extended to the end of the FY 2010 reporting cycle. The proposed FY 2011 version may be found on the AoA Web site link entitled Draft State Reporting Tool for Review available at *http://www.aoa.gov/AoARoot/Program_Results/OAA_Performance.aspx#national.*

AoA estimates the burden of this collection of information as follows: 2,600 hours.

Dated: January 25, 2010.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2010–1909 Filed 1–28–10; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0234]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

National Ambulatory Medical Care Survey (NAMCS) (OMB No. 0920–0234) — Revision — National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on "utilization of health care" in the United States. NAMCS was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. NCHS is seeking OMB approval to extend this survey for three years. The major reason for this revision request is to add the collection of state level data on physician use of electronic medical records (EMRs), described in more detail below.

Ambulatory services are rendered in a wide variety of settings, including physician offices and hospital outpatient and emergency departments. The NAMCS target universe consists of all office visits made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care.

In 2006, physicians and mid-level providers (*i.e.,* nurse practitioners, physician assistants, and nurse midwives) practicing in community health centers (CHCs) were added to the NAMCS sample, and these data will continue to be collected. To complement NAMCS data, NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) in 1992 to provide data concerning patient visits to hospital outpatient and emergency departments. NAMCS and NHAMCS are the principal sources of data on ambulatory care provided in the United States.

NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics, reason(s) for visit, provider diagnoses, diagnostic services, medications, and visit disposition. In addition, information on cervical cancer screening practices in physician offices will continue to be collected through the Cervical Cancer Screening Supplement (CCSS), which was added in 2006. It will allow CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) to evaluate cervical cancer screening methods and the use of Human Papillomavirus DNA tests.

A supplemental mail survey on the adoption and use of EMR in physician offices was added to NAMCS in 2008, and will continue. These data were requested by the Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services, to measure progress toward goals for EMR adoption. The mail survey will collect information on characteristics of physician practices and the capabilities of EMRs used in those practices. Starting in 2010, the EMR mail survey will have a five-fold increase from the 2009 sample to collect state-level data.

Users of NAMCS data include, but are not limited to, Congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners.

There is no cost to respondents other than their time to participate. The total estimated annualized burden hours are 7,372.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Hours per response
Core NAMCS				
Office-based physicians/CHC providers	Physician Induction Interview (NAMCS–1)	3,657	1	28/60
Community Health Center Directors	Community Health Center Induction Interview (NAMCS–201).	104	1	20/60
Office-based physicians/CHC providers/staff.	Patient Record form (NAMCS–30)	738	30	9/60
Office/CHC staff	Pulling, re-filing Patient Record form (NAMCS–30).	650	30	1/60
Office-based physicians/CHC providers/staff.	Cervical Cancer Screening Supplement (NAMCS–CCS).	464	1	15/60
Office-based physicians	EMR/EHR Mail Survey	5,604	1	20/60

Dated: January 25, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–1937 Filed 1–28–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10184]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated

burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Eligibility Error Rate Measurement in Medicaid and the Children's Health Insurance Program; *Use:* The collection of information is necessary for CMS to produce national error rates for Medicaid and CHIP as required by Public Law 107–300, the IPIA of 2002. The collection of information is also necessary to implement provisions from the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) with regard to the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs. The information collected from the States selected for review will be used by CMS to ensure States use a statistically sound sampling methodology, to ensure the States complete reviews on all cases sampled, and will be used by the Federal contractor to calculate State and national Medicaid and CHIP eligibility error rates. *Form Number:* CMS–10184 (OMB#: 0938–1012); *Frequency:* Reporting—Occasionally; *Affected Public:* State, Local, Tribal Governments; *Number of Respondents:* 34; *Total Annual Responses:* 53; *Total Annual Hours:* 942,764. (For policy questions regarding this collection contact Jessica Woodard at 410–786–9249. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *March 1, 2010.* OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer. *Fax Number:* (202) 395–6974. *E-mail: OIRA_submission@omb.eop.gov.*

Dated: January 22, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–1918 Filed 1–28–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–2746]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification Public Law 95–292; 42 CFR 405.2133, 45 CFR 5–5b; 20 CFR Parts 401 and 422E *Use:* The ESRD Death Notification (CMS–2746) is completed by all Medicare-approved ESRD facilities upon the death of an ESRD patient. Its primary purpose is to collect fact of death and cause of death of ESRD patients. Certain other identifying information (*e.g.,* name, Medicare claim number, and date of birth) is required for matching purposes. Federal regulations require that the ESRD Networks examine the mortality rates of every Medicare-approved facility within its area of responsibility. The Death Form provides the necessary data to assist the ESRD Networks in making decisions that result in improved patient care and in cost-effective distribution of ESRD resources. The data is used by the ESRD Networks to verify facility deaths and to monitor facility performance. *Form Number:* CMS–2746 (OMB#: 0938–0448); *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 5,173; *Total Annual Responses:* 82,768; *Total Annual Hours:* 41,384. (For policy questions regarding this collection contact Connie Cole at 410–786–0257. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at: *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *March 30, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 22, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–1916 Filed 1–28–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request Clinical Trials Reporting Program (CTRP) Database (NCI)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 9, 2009, (Vol. 74, No. 215, p. 57684) and allowed 60-days for public comment. Two public comments were received. The first comment, received November 11, 2009, questioned the purpose and safety of clinical trials conducted outside of the United States. An e-mail response was sent on January 6, 2010, acknowledging the commenter's concern. The response noted that the NCI's Clinical Trials Reporting Program is an information collection activity intended to assist the NCI in management of the NCI's clinical trials portfolio, which is global in nature. The response further stated that while CTRP is not directly related to the conduct of a clinical trial, the NCI hopes to use the information to facilitate routine review of safety, efficacy, and administrative data reported from on-going cancer trials. On January 6, 2010, the same commenter sent a subsequent comment concerning corruption in clinical trials conducted by large pharmaceutical companies. The NCI sent an e-mail response on January 8, 2010, thanking the commenter for her additional comments and noting that they would be taken into consideration.

The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Clinical Trials Reporting Program (CTRP) Database. *Type of Information Collection Request:* REVISION of currently approved collection [OMB No. 0925–0600, expiration date 01/31/2010]. *Need and Use of Information Collection:* The NCI is developing an electronic resource, the NCI Clinical Trials Reporting Program (CTRP) Database, to serve as a single, definitive source of information about all NCI-supported clinical research, thereby enabling the NCI to execute its mission to reduce the burden of cancer and to ensure an optimal return on the nation's investment in cancer clinical research. Information will be submitted by clinical research administrators as designees of clinical investigators who conduct NCI-supported clinical research. Deployment and extension of the CTRP Database, which will allow the NCI to consolidate reporting, aggregate information and reduce redundant submissions, is an infrastructure development project that will be enabled by public funds expended pursuant to the American Recovery and Reinvestment Act of 2009, Public Law 111–5 ("Recovery Act"). This information collection adheres to The Public Health Service Act, Section 407(a)(4) (codified at 42 U.S.C. 285a–2(a)(2)(D)), which authorizes and requires the NCI to collect, analyze and disseminate all data useful in the prevention, diagnosis, and treatment of cancer, including the establishment of an international cancer research data bank to collect, catalog, store, and disseminate insofar as feasible the results of cancer research undertaken in any country for the use of any person involved in cancer research in any country. *Frequency of Response:* Once per initial trial registration; four amendments per trial annually; and four accrual updates per trial annually. *Affected Public:* Individuals, Business and other for-profits, and Not-for-Profit institutions. *Type of Respondents:* Clinical research administrators on behalf of clinical investigators. The annual reporting burden is estimated at 38,500 hours (see Table below). There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

A.12–1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Frequency of response	Average time per response (minutes/hours)	Annual burden hours
Clinical Trials	Initial Registration.	5,500	1	120/60	11,000
	Amendment	5,500	4	60/60	22,000
	Accrual Updates	5,500	4	15/60	5,500
Total	.....	16,500	.....	.....	38,500

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.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact John Speakman, Associate Director for Clinical Trials Products and Programs, Center for Biomedical Informatics and Information Technology, National Cancer Institute, NIH, DHHS, 2115 E. Jefferson Street, Suite 6000, Rockville, MD 20892 or call non-toll-free number 301–451–8786 or e-mail your request,

including your address to: *john.speakman@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: January 15, 2010.

Kristine Miller,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–1988 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel; The Ontogeny of Infant Detection of Inauthentic Emotion/ Emotional Memories in Children: Combining Behavior and ERP.

Date: February 25, 2010.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Carla T. Walls, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1910 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, Prenatal Events-Postnatal Consequences.

Date: February 25, 2010.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1915 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Initial Review Group, Biobehavioral and Behavioral Sciences Subcommittee.

Date: February 24–25, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1917 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Endocrinology and Metabolic Diseases.

Date: February 17–18, 2010.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041. *krishnak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diversity Fellowship Programs: Division of Clinical and Translational Sciences.

Date: February 23, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892. 301–435–2365. *aitouchea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurodegenerative Disorders.

Date: February 25, 2010.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892. 301–435–1254. *yakovleva@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Applications: HBPP.

Date: February 25, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Najma Begum, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892. 301–435–1243. *begumn@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 22, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1935 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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: Heart, Lung, and Blood Initial Review Group, Clinical Trials Review Committee.

Date: February 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Keary A Cope, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7190, Bethesda, MD 20892–7924, 301–435–2222, *copeka@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 22, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1933 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Development and Maintenance of a Multigenotypic Aged Mouse Colony.

Date: February 24, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Summer Research Training In Aging For Medical Students—NIA T35.

Date: March 5, 2010.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–402–7702, *Alfonso.Latoni@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1931 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Therapy.

Date: February 5, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Applications in Mechanisms of Emotion, Stress and Health.

Date: February 8, 2010.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1929 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases;

Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. Predictors of Genitourinary Disorders Studies.

Date: February 23, 2010.

Time: 3 p.m. to 3:45 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: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *Ls38z@Nih.Gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Small Grant Program.

Date: March 12, 2010.

Time: 2 p.m. to 3 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: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Collaborative Interdisciplinary Team Science.

Date: March 16, 2010.

Time: 1 p.m. to 2 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: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@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: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1928 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control (CDC) and Prevention—Ethics Subcommittee (ES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Times and Dates:

3 p.m.–4 p.m., February 18, 2010.

8:30 a.m.–12:30 p.m., February 19, 2010.

Place: CDC, Thomas R. Harkin Global Communication Center, Auditorium B–3, 1600 Clifton Road NE., Atlanta, Georgia 30333. This meeting is also available by teleconference. Please dial (877) 928–1204 and enter code 4305992.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people. To accommodate public participation in the meeting, a conference telephone line will also be available. The public is welcome to participate during the public comment periods. The public comment periods are tentatively scheduled for 4 p.m.–4:15 p.m. on

February 18, 2010 and 12 p.m.–12:15 p.m. on February 19, 2010.

Purpose: The ES provides counsel to the ACD, CDC, regarding a broad range of public health ethics questions and issues arising from programs, scientists, and practitioners.

Matter to be Discussed: Agenda items will include the following topics: status of ongoing ES activities; review of the CDC Director's organizational improvement activities; review of the Director's priorities; and discussion of the future direction for the ES. The agenda is subject to change as priorities dictate.

Contact Person for More Information: Drue Barrett, Ph.D., Designated Federal Officer, ACD, CDC–ES, 1600 Clifton Road, NE., M/S D–50, Atlanta, Georgia 30333. Telephone: (404) 639–4690. E-mail: dbarrett@cdc.gov. The deadline for notification of attendance is February 12, 2010.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 25, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–1811 Filed 1–28–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment and Cellular Metabolism.

Date: February 22–23, 2010.

Time: 7 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Carol Hamelink, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ZRG1 DKUS–F 02 M Member Conflict.

Date: February 25, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Computational Modeling and Sciences for Biomedical and Clinical Applications.

Date: March 1, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 08–139: Tools for Zebrafish Research.

Date: March 1, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Cathy Wedeen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–435–1191, *wedeenc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: B cell Regulation and Tolerance to Cancer Antigens.

Date: March 1, 2010.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bahiru Gametchu, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1225, *gametchb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: F07 Immunology Fellowship AREA.

Date: March 1–2, 2010.

Time: 9:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 08–138: Zebrafish Screens.

Date: March 1, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: John Burch, PhD, Scientific Review Officer, National Institute of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–435–1019, *burchjb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Electrical Signaling and Cardiac Function.

Date: March 2, 2010.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maqsood A. Wani, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270. *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Molecular Biology.

Date: March 2, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, MSC 7890, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems (F10A).

Date: March 3–4, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topic: Diet and Physical Activity Methodologies.

Date: March 3–4, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fungai Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk Prevention.

Date: March 3, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Anterior Eye Disease.

Date: March 3, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: George Ann McKie, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, 301–996–0993, *mckiegeo@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cardiovascular Sciences Small Business Activities.

Date: March 4–5, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton San Francisco Financial District, 750 Kearny Street, San Francisco, CA 94108.

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk and Intervention for Addictions.

Date: March 4–5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108 MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Diagnostics, Food Safety, Sterilization/Disinfection and Bioremediation.

Date: March 4–5, 2010.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street, NW., Washington, DC 20037.

Contact Person: John C. Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Healthcare Delivery and Methodologies.

Date: March 4–5, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–08–175: Millennium Promise Awards: Non-communicable Disease.

Date: March 5, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 S. Broadway, Baltimore, MD 21231.

Contact Person: Cathy Wedeen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892,301–435–1191, *wedeenc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Cognition, Language, and Perception.

Date: March 5, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1920 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, Epigenetic Processes in Development.

Date: February 25–26, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Blvd., Room 5B01G, Bethesda, MD 20892–7510, 301–435–6889.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1921 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Initial Review Group, Developmental Biology Subcommittee.

Date: February 25–26, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Norman Chang, PhD, Scientific Review Officer, Division Of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1923 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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: NIDCR Special Grants Review Committee. NIDCR Special Review Committee: Review of F, K, and R03.

Date: March 2–3, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points By Sheraton, 1201 K Street, NW., Washington, DC 20005.

Contact Person: Raj K. Krishnaraju, PhD, MS, Scientific Review Officer, Scientific Review Branch, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr., Rm 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1926 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel; Review R13.

Date: February 26, 2010.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

Contact Person: Mary Kelly, Scientific Review Officer, Scientific Review Branch, National Inst of Dental & Craniofacial Research, NIH 6701 Democracy Blvd, room 672, MSC 4878, Bethesda, md 20892–4878, 301–594–4809, *mary_kelly@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1927 Filed 1–28–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0156]

National Protection and Programs Directorate; Assessment Questionnaire—Voluntary Chemical Assessment Tool (VCAT)

AGENCY: National Protection and Programs Directorate, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; New Information Collection Request, 1670–NEW.

SUMMARY: The Department of Homeland Security, National Protection and Programs Directorate has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The National Protection and Programs Directorate is soliciting comments concerning new collection request, Assessment Questionnaire—Voluntary Chemical Assessment Tool (VCAT). DHS previously published this information collection request (ICR) in the **Federal Register** on September 14, 2009, at 74 FR 47010, for a 60-day public comment period. No comments were received by DHS. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until March 1, 2010. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: The Department of Homeland Security (DHS), Amanda Norman, Program Analyst, DHS/NPPD/IP/IICD, *Amanda.Norman@dhs.gov.*

SUPPLEMENTARY INFORMATION: The DHS Sector Specific Agency (SSA) for the Chemical Sector partnered with the Methodology Technical Implementation (MTI) office, within the Infrastructure Information Collection Division (IICD), in the Office of Infrastructure Protection (IP), National Protection and Program Directorate (NPPD), which supports the automation of sector-approved risk and vulnerability assessment methodologies that are compliant with the criteria outlined in the National Infrastructure Protection Plan (NIPP), to develop a Web-based, automated assessment tool for voluntary use by chemical facilities. This application, titled Voluntary Chemical Assessment Tool (VCAT), allows owners/operators to identify their current vulnerability and risk levels through an all-hazards approach. The application enables owners/operators to evaluate the theoretical vulnerability and risk associated with the effects of the selected threats, thus allowing the Chemical Sector to more thoroughly understand, prioritize and analyze its assets or systems. VCAT facilitates cost benefit analysis, allowing owners/operators to select the best combination of physical security countermeasures and mitigation strategies to reduce overall risk. Collection of this information is directed and supported by Homeland Security Presidential Directive (HSPD) 7, "Critical Infrastructure Identification, Prioritization, and Protection," December 17, 2003.

After Chemical SSA and private sector partners access the VCAT system (see supporting statement for VCAT User Accounts), the user will be prompted with the VCAT Assessment questionnaire and will answer various questions to input the data. This information will be used to supplement existing critical infrastructure and key resources (CIKR) protection activities conducted by DHS NPPD. More specifically, the information will be used to address facility assessments, response planning, and risk mitigation execution and related CIKR protection and incident management activities.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate.

Title: Assessment Questionnaire—Voluntary Chemical Assessment Tool (VCAT).

OMB Number: 1670–NEW.

Affected Public: Business or other for profit, Federal Government.

Number of Respondents: 50.

Estimated Time Per Respondent: 8 hours.

Total Burden Hours: 400 annual burden hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Signed: January 21, 2010.

Thomas Chase Garwood, III,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2010–1780 Filed 1–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2007–0008]

National Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Request for applicants for appointment to the National Advisory Council.

SUMMARY: The Federal Emergency Management Agency (FEMA) is requesting individuals who are interested in serving on the National Advisory Council (NAC) to apply for appointment. As provided for in the Department of Homeland Security Appropriations Act of 2007, the Secretary of Homeland Security established the NAC to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters.

DATES: Applications for membership should reach FEMA at the address below beginning February 5, 2010 and before 5 p.m. EST, on Friday, March 5, 2010.

ADDRESSES: If you wish to apply for membership, your application should be submitted by:

- *E-mail: FEMA–NAC@dhs.gov.*
- *Fax:* (202) 646–3930.
- *Mail:* Federal Emergency Management Agency, Office of the National Advisory Council, 500 C Street, SW., Room 832, Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: The Alternate Designated Federal Officer, Breese Eddy, Office of the National Advisory Council, telephone 202–646–3746; e-mail *FEMA–NAC@dhs.gov.* FEMA Ethics Office, Ebbonie Taylor, telephone 202–646–3664; e-mail *ebbonie.taylor@dhs.gov* and Paul Conrad, telephone 202–646–4025; e-mail *paul.conrad1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Advisory Council (NAC) is an advisory committee established in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). Section 508 of the Homeland Security Act of 2002 (Pub. L. 107–296), as amended by section 611 of the Post-Katrina Emergency Management Reform Act of 2006, as set forth in the Department of Homeland Security Appropriations Act of 2007 (Pub. L.

109–295), directed the Secretary of Homeland Security to establish the NAC to ensure effective and ongoing coordination of Federal preparedness, protection, response, recovery, and mitigation for natural disasters, acts of terrorism, and other man-made disasters.

The NAC consists of 35 members, all of whom are experts and leaders in their respective fields. Approximately one-third of the membership was appointed for a 3-year term expiring on June 15, 2010. Accordingly, the following discipline areas will be open for applications and nominations: Emergency Management (one representative appointment), Public Health (one Special Government Employee (SGE) appointment), Emergency Medical Provider (one SGE appointment), Standard Settings (one representative appointment), Special Needs (one representative appointment), State Non-Elected Official (one representative appointment), Tribal Non-Elected Official (one representative appointment), Officer of the Federal Government—U.S. Department of Health and Human Services (one *Ex Officio* appointment), Officer of the Federal Government—U.S. Department of Defense (one *Ex Officio* appointment), and three appointments (either representative or SGE appointments), which will be selected at the discretion of the FEMA Administrator.

There are specific membership types associated with the indicated disciplines open for new appointments. Some members are appointed as Special Government Employees (SGE) as defined in section 202(a) of title 18, United States Code. Specifically, the following two discipline areas will be filled by SGE appointments: Public Health and Emergency Medical Provider. If a candidate is selected for appointment as a SGE, the appointee is required to complete a Confidential Financial Disclosure Report (Office of Government Ethics (OGE) Form 450). OGE Form 450 or the information contained therein may not be released to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*http://www.oge.gov*), or by contacting the National Advisory Council Program Office, or by contacting the FEMA Ethics Office. This information is provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Additionally, the U.S. Department of Health and Human Services and U.S. Department of Defense Officers of the Federal Government positions will be filled by a current employee of those respective Departments. All other discipline areas including: Emergency Management, Public Health, Emergency Medical Provider, Standard Settings, Special Needs, State Non-Elected Official, Tribal Non-Elected Official, and the three positions selected by the FEMA Administrator will be filled by representatives of their respective fields.

Qualified individuals interested in serving on the NAC are invited to apply for appointment. Current FEMA employees, Disaster Assistance Employees, FEMA Contractors, and potential FEMA Contractors will not be considered for NAC Membership.

The NAC assists FEMA in carrying out its missions by providing advice and recommendations in the development and revision of the national preparedness goal, the national preparedness guidelines, the National Incident Management System, the National Response Framework, and other related plans and strategies. The members of the NAC are appointed by the Administrator of FEMA and are composed of Federal, State, local, Tribal, and private-sector leaders and subject matter experts in law enforcement, fire, emergency medical services, hospital, public works, emergency management, State and local governments, public health, emergency response, standard setting and accrediting organizations, representatives of individuals with disabilities and other special needs, infrastructure protection, cyber security, communications, and homeland security communities.

Qualified individuals interested in serving on the NAC are invited to apply for appointment by submitting a resume or Curriculum Vitae (CV) to the NAC's alternate Designated Federal Officer. Letters of recommendation may also be provided, but are not required. Please ensure the submission includes the following information: The applicant's name, phone number, e-mail address, home and business mailing addresses, current position title and organization, and the discipline area of interest (*i.e.,* Emergency Management). Current NAC members whose terms are ending should notify the Alternate Designated Federal Officer of their interest in reappointment in lieu of submitting a new application, and should provide an updated resume and/or CV and letters of recommendation for consideration. The NAC meets in a plenary session approximately once per quarter. The NAC also holds at least one teleconference meeting with public call-in lines. Members serve without compensation from the Federal Government; however, consistent with the charter, they do receive travel reimbursement and per diem under applicable Federal travel regulations. In support of the policy of the Department of Homeland Security on gender and ethnic diversity, qualified women and minorities are encouraged to apply for membership.

Dated: January 14, 2010.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–1800 Filed 1–28–10; 8:45 am]

BILLING CODE 9111–48–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5380–N–01]

Notice of Proposed Information Collection: Comment Request; FHA-Insured Mortgage Loan Servicing Property Physical Inspection/Preservation

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 30, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Eric Ramsey, Director, Business Relationships and Special Initiatives Division, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3944 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: MF Uniform Physical Inspection Reporting Requirements.

OMB Control Number, if applicable: 2502–0369.

Description of the need for the information and proposed use:

All multifamily properties with Section 8 project based assistance or housing with HUD insured or HUD Held mortgages or Housing that is receiving insurance from HUD must be inspected regularly. Entities responsible for conducting physical inspections of the properties are HUD, the lender or the owner. Owners/Agents which have been cited with Exigent Health and Safety (EH&S) deficiencies must certify that (EH&S) deficiencies noted during the inspections have been repaired. This information is intended to ensure that HUD Program Participants maintain HUD properties in a condition that is decent, safe, sanitary and in good repair.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours annually is *32,953.* The number of respondents annually is *10,576,* the number of responses annually is *10,554,* the frequency of response is on occasion, and the burden hour per response is about *6.3.*

Status of the proposed information collection: This is a request for extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 26, 2010.

Ronald Y. Spraker,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2010–1837 Filed 1–28–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–04]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: January 29, 2010.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 21, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–1483 Filed 1–28–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Tribal Energy Resource Agreements

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: The Office of Indian Energy and Economic Development (IEED), in the Office of the Assistant Secretary—Indian Affairs, is proposing to submit the information collection titled "Tribal Energy Resource Agreements (TERAs)" to the Office of Management and Budget (OMB) for renewal pursuant to the Paperwork Reduction Act. The information collection is currently authorized by OMB Control Number 1076–0167, which expires March 31, 2010. The information collection requires Indian tribes interested in entering into a TERA or who already have a TERA to provide certain information, including information as part of the application for, and implementation, reassumption, and rescission of the TERA.

DATES: Interested persons are invited to submit comments on or before *March 30, 2010.*

ADDRESSES: You may submit comments on the information collection to Darryl Francois, Department of the Interior, Office of Indian Energy and Economic Development, Room 20—South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20245, fax (202) 208–4564; *e-mail: Darryl.Francois@bia.gov.*

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Darryl Francois, Department of the Interior, Office of Indian Energy and Economic Development. Telephone (202) 219–0740.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Energy Policy Act of 2005 (Pub. L. 109–58) authorizes the Secretary to approve individual TERAs. The intent of these agreements is to promote tribal oversight and management of energy and mineral resource development on tribal lands and further the goal of Indian self-determination. A TERA offers a tribe an entirely new alternative for developing energy-related business agreements and awarding leases and granting rights-of-way for energy facilities without having to obtain further approval from the Secretary.

This information collection conducted under TERA regulations at 25 CFR 224 will allow IEED to determine the capacity of tribes to manage the development of energy resources on tribal lands. Information collected:

- Enables IEED to engage in a consultation process with tribes that is designed to foster optimal pre-planning of development proposals and speed up the review and approval process for TERA agreements;
- Provides wide public notice and opportunity for review of TERA agreements by the public, industry, and government agencies;
- Ensures that the public has an avenue for review of the performance of tribes in implementing a TERA;
- Creates a process for preventing damage to sensitive resources as well as ensuring that the public has fully communicated with the tribe in the petition process;
- Ensures that a tribe is fully aware of any attempt by DOI to resume management authority over energy resources on tribal lands; and
- Ensures that the tribal government fully endorses any relinquishment of a TERA.

II. Request for Comments

IEED requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. Approval for this collection expires March 31, 2010. Response to the information collection is required to obtain a benefit.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0167.

Title: Tribal Energy Resource Agreements.

Brief Description of Collection: Submission of this information is required for Indian tribes to apply for, implement, reassume, or rescind a TERA that has been entered into in accordance with the Energy Policy Act of 2005 and 25 CFR 224. This collection also requires the tribe to notify the public of certain actions. Response is required to obtain a benefit.

Type of Review: Extension without change of a currently approved collection.

Respondents: Indian tribes.

Number of Respondents: 14 (4 applicant tribes and 10 tribes with a TERA)

Total Number of Responses: Ranges from once annually (for applications and other requirements) to a few times a year (for notifications to public and the Secretary that any leases, businesses agreements, or rights-of-way have been entered into pursuant to the TERA)

Estimated Time per Response: Ranges from 32 hours to 1,080 hours.

Estimated Total Annual Burden: 10,752 hours.

Dated: January 25, 2010.

Alvin Foster,

Chief Information Officer—Indian Affairs.

[FR Doc. 2010–1786 Filed 1–28–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection: Comment Request

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a new collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB a new information collection request (ICR) for review and approval. This notice provides the public an opportunity to comment on the paperwork burden of this collection.

DATES: You must submit comments on or before March 30, 2010.

ADDRESSES: Send your comments regarding this ICR to Phadrea Ponds, Information Collections Clearance Officer, U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–NEW—YRBDAS.

FOR FURTHER INFORMATION CONTACT: Jessica M. Montag by mail at U.S. Geological Survey, 2150–C Center Avenue, Fort Collins, CO 80526, or by telephone at (970) 226–9137.

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS is currently conducting a "proof-of-concept" project to develop a series of linked physical, biological and socioeconomic models to address global climate change in the Yakima River Basin (YRB). In support of this effort, the USGS acknowledges that there is a need to better understand the Yakama Nation's cultural connection and interactions with the resources of the YRB. We are working with tribal liaisons to develop a roster of potential Yakama Nation members to participate in a series of in-depth interviews. The anticipated outcome of the interviews will be critical information that is missing for YRB water resource management decisions.

II. Data

OMB Control Number: 1028–NEW.

Title: Yakima River Basin Global Climate Change Decision Support System.

Respondent's Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Annual Number of Respondents: An estimated 32 Yakama Nation tribal members (proposing 2 individuals from the 14 tribes/bands and 4 Tribal Council members) will be asked to participate in this collection.

Affected Public: Yakama Nation tribal members.

Estimated Completion Time: 2 hours per interview.

Annual Burden Hours: 64 hours.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the interviews to last no more than 2 hours per respondent.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost": We have not identified any "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

To comply with the public consultation process, we publish this

Federal Register notice announcing that we will submit this ICR to OMB for approval. The notice provided the required 60-day public comment period. We invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden on the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are 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 publically available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 20, 2010.

Susan D. Haseltine,

Associate Director for Biology, U.S. Geological Survey.

[FR Doc. 2010–1821 Filed 1–28–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB #1024–0029). 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 Office of Management and Budget (OMB) control number.

DATES: Submit comments on or before March 30, 2010.

ADDRESSES: Submit comments directly to Ms. Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005 or via fax at 202/371–2090. All responses to the Notice will be summarized and included in the request for the OMB approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ms. Jo A. Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, via e-mail at *Jo_Pendry@nps.gov* or via phone at 202–513–7156. You are entitled to a copy of the entire ICR package free-of-charge.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1024–0029.

Title: Concessioner Annual Financial Reports.

Form(s): 10–356, 10–356A.

Type of Request: Extension of a currently approved collection of information.

Abstract: The regulations at 36 CFR Part 51 primarily implement Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391 or the Act), which requires that the Secretary of the Interior exercise authority in a manner consistent with a reasonable opportunity for a concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed. It also requires that franchise fees be determined with consideration to the opportunity for net profit in relation to both gross receipts and capital invested. The financial information being collected is necessary to provide insight into, and knowledge of the concessioner's operation so that this authority can be exercised and franchise fees determined in a timely manner and without an undue burden on the concessioner. This program will measure performance in meeting goals as required by the 1995 Government Performance and Results Act.

Affected public: Businesses and nonprofit organizations.

Obligation to respond: Required to obtain or retain a benefit.

Frequency of response: Annually.

Estimated total annual responses:

150 responses for Form 10–356.

350 responses for form 10–356A.

Estimated average completion time per response:

Form 10–356—16 hours per response.

Form 10–356A—4 hours per response.

Estimated annual reporting burden: 3,800 hours.

Estimated annual nonhour cost burden: None.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 26, 2010.

Cartina Miller,

NPS Information Collection Clearance Officer.

[FR Doc. 2010–1903 Filed 1–28–10; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Loan Guaranty, Insurance, and Interest Subsidy Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: The Department of the Interior (DOI), Office of Indian Energy and Economic Development (IEED) is seeking comments on renewal of Office of Management and Budget (OMB) approval, pursuant to the Paperwork Reduction Act, for the collection of information for the Loan Guaranty, Insurance, and Interest Subsidy Program. The information collection is currently authorized by OMB Control Number 1076–0020, which expires April 30, 2010. The information collection allows IEED to ensure compliance with Program requirements and includes the use of several forms.

DATES: Interested persons are invited to submit comments on or before *March 30, 2010.*

ADDRESSES: You may submit comments on the information collection to and

obtain copies of the revised forms from Molly Kubiak, Office of Indian Energy and Economic Development, U.S. Department of the Interior, 1951 Constitution Ave., NW., Mail Stop 20–SIB, Washington, DC 20245; facsimile: (202) 208–4564; or e-mail: *molly.kubiak@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Molly Kubiak, (202) 208–0121.

SUPPLEMENTARY INFORMATION:

I. Abstract

IEED is seeking renewal of the approval for the information collection conducted under 25 CFR 103, implementing the Loan Guaranty, Insurance, and Interest Subsidy Program, established by 25 U.S.C 1481 *et seq.* Approval for this collection expires April 30, 2010. The information collection allows IEED determine the eligibility and credit-worthiness of respondents and loans and otherwise ensure compliance with Program requirements. This information collection includes the use of several forms to be revised, including: 5–4753 Loan Guaranty Agreement, 5–4754 Loan Insurance Agreement, 5–4754a Notice of Insured Loan, 5–4755 Request to BIA for Loan Guaranty, Loan Insurance, and/or Interest Subsidy, 5–4749 Interest Subsidy Report, 5–4759 Assignment of Loan Documents and Related Rights, 5–4760a Notice of Default, and 5–4760b Claim for Loss. The revision will change these forms to: 5–4753 Loan Guaranty Agreement, 5–4754 Loan Insurance Agreement, 5–4754a Notice of Insured Loan, 5–4755 Request for Indian Affairs Loan Guaranty, Loan Insurance, and/or Interest Subsidy, 5–4749 Interest Subsidy Report, 5–4759 Assignment of Loan Documents and Related Rights, 5–4760a Notice of Default, and 5–4760b Claim for Loss. No third party notification or public disclosure burden is associated with this collection. There is no change to the approved burden hours for this information collection, but IEED is revising several of the forms.

II. Request for Comments

The Department requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires April 30, 2010.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0020.

Title: Loan Guaranty, Insurance, and Interest Subsidy, 25 CFR 103.

Brief Description of Collection: Submission of this information allows IEED to implement the Loan Guaranty, Insurance, and Interest Subsidy Program, 25 U.S.C. 1481 *et seq.,* the purpose of which is to encourage private lending to individual Indians and Indian organizations by providing lenders with loan guarantees or loan insurance to reduce their potential risk. The information collection allows IEED determine the eligibility and credit-worthiness of respondents and loans and otherwise ensure compliance with Program requirements. This information collection includes the use of several forms. Response is required to obtain a benefit.

Type of Review: Revision of a currently approved collection.

Respondents: Commercial banks and Individual Indians and Indian organizations.

Number of Respondents: 350.

Total Number of Responses: 1,527.

Frequency of Response: As needed.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden: 3,054 hours.

Total Annual Cost to Respondents: $60,280.

Dated: January 25, 2010.

Alvin Foster,

Chief Information Officer—Indian Affairs.

[FR Doc. 2010–1789 Filed 1–28–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2010–N014; 40120–1112–0000–F2]

Endangered and Threatened Wildlife and Plants; Permit, St. Lucie County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for incidental take permit; availability of proposed low-effect habitat conservation plan and associated documents; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of incidental take permit (ITP) and Habitat Conservation Plan (HCP). V.P. Properties (under the name of International Airport Business Park) (applicant) requests an ITP under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking about 1.0 acre of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) breeding, feeding, and sheltering habitat incidental to lot preparation for the construction of a gas station, convenience store, several light industrial warehouse condominiums, and supporting infrastructure in St. Lucie County, Florida (Project). The destruction of 1.0 acre of foraging and sheltering habitat is expected to result in the take of one family of scrub-jays. The applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the scrub-jay.

DATES: Written comments on the ITP application and HCP should be sent to the South Florida Ecological Services Office (see **ADDRESSES**) and should be received on or before March 1, 2010.

ADDRESSES: You may request documents by U.S. mail, e-mail, or phone (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

E-mail: Trish_Adams@fws.gov. Use "Attn: Permit number TE214678–0" as your message subject line.

Fax: Trish Adams, (772) 562–4288, Attn: Permit number TE214678–0.

U.S. mail: Trish Adams, HCP Coordinator, South Florida Ecological Services Field Office, Attn: Permit number TE214678–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Ms. Trish Adams, HCP Coordinator, South Florida Ecological Services Office, Vero Beach, Florida (see **ADDRESSES**), telephone: 772–562–3909, extension 232.

SUPPLEMENTARY INFORMATION: If you wish to submit comments or information, you may do so by any one of several methods. Please reference permit number TE214678–0, in such comments. You may mail comments to the Service's South Florida Ecological Services Office (see **ADDRESSES**). You may also comment via the Internet to *trish_adams@fws.gov.* Please also include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your Internet message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to the Service office listed under **ADDRESSES**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, 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.

Applicant's Proposed Project: We received an application from the applicant for an incidental take permit, along with a proposed habitat conservation plan. The applicant requests a 5-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking approximately 1 acre (0.4 hectares (ha)) of Florida scrub-jay breeding, feeding and sheltering habitat incidental to land preparation for construction of a gas station, convenience store, several light industrial warehouse condominiums, and supporting infrastructure in St. Lucie County, Florida. In 1987, we listed this species as threatened (June 3, 1987; 52 FR 20715). The listing became effective July 6, 1987.

Project construction would take place at latitude 27.4833, longitude −80.3577, St. Lucie County, Florida, at St. Lucie Boulevard, Lots 1 through 18 and north half of Hawthorn Road adjacent on south side of Lot 18, Block 37, and Lot 1 and south half of Hawthorn Road adjacent on north side of Lot 1, Block 15A, San Lucie Plaza Unit One, Florida. Parts of these lots are within scrub-jay-occupied habitat.

The parcels encompass about 2.92 acres (1.18 ha), and the footprint of the commercial buildings, paved areas, infrastructure, and landscaping precludes retention of viable scrub-jay habitat on this lot. In order to minimize take on site, the applicant proposes to mitigate for the loss of 1.0 acres (0.4 ha) of occupied scrub-jay habitat by contributing $82,904.00 to a Service-approved scrub-jay conservation fund, or purchase the equivalent amount of credit in an appropriate Service-approved scrub-jay conservation bank within 180 days of permit issuance or before the commencement of clearing and construction activities, whichever is sooner.

Our Preliminary Determination: The Service has made a preliminary determination that the applicant's Project, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a "low-effect" project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA) (40 CFR 1506.6), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1), and as defined in our Habitat Conservation Planning Handbook (November 1996). We base our determination that the plan qualifies as a low-effect plan on the following three criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. As more fully explained in our environmental action statement and associated Low Effect Screening Form, the applicant's proposed plan qualifies as a "low-effect" plan. This preliminary determination may be revised based on our review of public comments that we receive in response to this notice.

Next Steps: The Service will evaluate the HCP and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et. seq.*). If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Authority: This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: January 15, 2010.

Paul Souza,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2010–1808 Filed 1–28–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2009–N263; 30120–1113–0000–F6]

Endangered and Threatened Wildlife and Plants; Indiana Bat; 30-Day Scoping Period for a National Environmental Policy Act Decision on a Proposed Habitat Conservation Plan and Incidental Take Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct a 30-day scoping period for a National Environmental Policy Act decision on a proposed habitat conservation plan and incidental take permit; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a National Environmental Policy Act (NEPA) document for a decision on a proposed habitat conservation plan (HCP) and incidental take permit (ITP) for the Indiana bat (*Myotis sodalis*) at a wind power project in Champaign County, Ohio. We provide this notice to advise other agencies, tribes, and the public of our intentions, and to obtain suggestions and information on the scope of the NEPA review and issues to consider in the planning process. We are also using this opportunity to seek comments on

the appropriate level of NEPA review, and whether an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) would be the appropriate level.

DATES: To ensure consideration, please send your written comments by March 1, 2010.

ADDRESSES: You may submit comments by one of the following methods:

U.S. mail or hand-delivery: Ms. Megan Seymour, U.S. Fish and Wildlife Service, Ohio Field Office, 4625 Morse Rd., Suite 104, Columbus, OH 43230;

E-mail: EverPowerHCP@fws.gov; or

Fax: (614) 416–8994 (Attention: Megan Seymour).

FOR FURTHER INFORMATION CONTACT: Ms. Megan Seymour at (614) 416–8993, extension 16. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider all comments we receive in complying with the requirements of NEPA and in the development of an HCP and ITP. We particularly seek comments concerning:

(1) Biological information concerning the Indiana bat;

(2) Relevant data concerning wind power and bat interactions;

(3) Additional information concerning the range, distribution, population size, and population trends of the Indiana bat;

(4) Current or planned activities in the subject area and their possible impacts on the Indiana bat;

(5) The presence of facilities within the project area which are eligible to be listed on the National Register of Historic Places or whether other historical, archeological, or traditional cultural properties may be present;

(6) The appropriate level of NEPA review, specifically whether development of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) would be appropriate; and

(7) Identification of any other environmental issues that we should consider with regard to the proposed development and permit action.

You may submit your comments and materials considering this notice by one of the methods listed in the **ADDRESSES** section.

Comments and materials we receive, as well as supporting documentation we use in preparing the NEPA document, will be available for public inspection by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ohio Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of this notice by mail from the Ohio Field Office, or on the Internet at: *http://www.fws.gov/midwest/Endangered/permits/hcp/r3hcps.html.*

Background

The Indiana bat was added to the list of Endangered and Threatened Wildlife and Plants on March 11, 1967 (32 FR 4001). It is currently listed as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA). The population decline of this species is attributed to habitat loss and degradation of both winter hibernation habitat and summer roosting habitat, human disturbance during hibernation, and possibly pesticides. An additional and emerging threat to Indiana bats is White-Nose Syndrome (*Geomyces destructans*), a recently discovered fungus that invades the skin of bats, causing ulcers that may alter hibernation arousal patterns, and which can cause emaciation. The range of the Indiana bat includes much of the eastern United States, and Ohio is located within the core maternity range of the bat. Winter habitat for the Indiana bat includes caves and mines that support high humidity and cool but stable temperatures. In the summer, Indiana bats roost under the loose bark of dead or dying trees. During summer, males roost alone or in small groups, while females and their offspring roost in larger groups of 100 or more. Indiana bats forage for insects in and along the edges of forested areas and wooded stream corridors. Maternity colonies of Indiana bats have recently been detected in Champaign County, Ohio, though no Indiana bat hibernacula have been documented in this county.

EverPower Wind Holdings, Inc. is planning the development of a wind power project in Champaign County, Ohio. The project would be spread across 80,370 acres within portions of Union, Wayne, Urbana, Salem, Rush, and Goshen Townships. Development of the wind power project would include installation of up to 100 wind turbines and associated collection lines, access roads, utility lines, substations, operation and maintenance facility buildings, and temporary staging areas and concrete batch plants. The wind turbine hub height would be approximately 100 meters (m), and the rotor diameter would be approximately 100 m, for an approximate total height of 150 m at the rotor apex. Installation of each individual turbine will temporarily impact an area of approximately 2.9 acres, while the final footprint of each turbine will be approximately 0.2 acres. Access roads to the turbines will have a temporary width of up to 55 feet during construction, and a permanent width of 16–20 feet. Despite the relatively small acreage of land to be affected by the project, impacts to wildlife—particularly birds and bats—are anticipated.

The project is located in a rural setting, with the landscape primarily composed of agricultural properties. Woodlots are scattered throughout the project area. Several small towns (Mutual and Cable) occur within the project area, and individual homes and low-density residential areas are also scattered throughout.

EverPower Wind Holdings, Inc., in conjunction with the Service, has determined that take of Indiana bats is likely to occur from development of the proposed wind power project. To authorize take, EverPower Wind Holdings, Inc. plans to develop an HCP and request issuance of an ITP from the Service. Relevant information provided in response to this notice will aid in developing the HCP and NEPA document, and potentially the ITP, should take be authorized.

At this point, the Service has not developed any alternatives for the NEPA document. Any preferred alternative developed by the Service will contain various measures to avoid and minimize impacts to Indiana bats, including the impact of lethal take. Various methods that may be considered include, but are not limited to: Protection of roost trees and surrounding habitat, set-back distances from known roost trees, mapping and avoidance of foraging areas, protection and enhancement of Indiana bat habitat outside the project area, removal of small woodlots near turbines to preclude expansion of Indiana bat usage near turbines, various curtailment regimes for turbines during prime activity or migration periods, and post-construction monitoring for fatalities.

Authority

We furnish this notice under NEPA regulations (40 CFR 1501.7 and 1508.22). The intent of the notice is to enable us to obtain suggestions and additional information from other agencies and the public on the scope of issues to be considered.

Dated: December 21, 2009.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, MN.

[FR Doc. 2010–1810 Filed 1–28–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZC02000L16100000.DR0000.241A]

Notice of Availability of Record of Decision for the Yuma Field Office Resource Management Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Resource Management Plan (RMP) for the Yuma Field Office (YFO) located in Arizona and California. The Arizona State Director signed the ROD on July 28, 2009, which constitutes the final decision of the BLM and makes the approved RMP effective immediately.

ADDRESSES: Copies of the ROD/ Approved RMP are available upon request from the Bureau of Land Management, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365, or via the Internet at *http://www.blm.gov/az/st/en/prog/planning/yuma_plan.html*.

FOR FURTHER INFORMATION CONTACT: James T. Shoaff, Field Manager, Bureau of Land Management, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365.

SUPPLEMENTARY INFORMATION: One of BLM's objectives during the planning process was to understand the views of various public interest groups by providing opportunities for meaningful participation. Through communication media such as meetings, newsletters, and news releases, the public was provided opportunities to identify issues that needed to be addressed. The public also provided comments during the 90-day public comment period on the Draft Environmental Impact Statement (EIS), which were addressed in the Final EIS. The Approved RMP/ Final EIS was developed with the following cooperating agencies: the Bureau of Reclamation; the Arizona Game and Fish Department; the Arizona Department of Transportation; the Federal Highway Administration; the Imperial, Cibola, and Kofa National Wildlife Refuges; the Fort Yuma Quechan Tribe; the Marine Corps Air Station, Yuma; Natural Resource Conservation Service; the Yuma County Department of Public Works; the city of Yuma; the U.S. Army Yuma Proving Ground; the U.S. Department of Agriculture, the Natural Resources Conservation Service; the U.S. Department of Homeland Security, Customs and Border Patrol; the Cocopah Indian Tribe; the town of Quartzsite; the Wellton-Mohawk Irrigation District; and the Yavapai-Apache Nation. The BLM also initiated consultation with tribes that have oral traditions or cultural concerns relating to the planning area or that are documented as having occupied or used portions of the planning area during prehistoric or historic times.

The Approved RMP includes strategies for protecting and preserving the biological, cultural, recreational, geological, educational, scientific, and scenic values that balance multiple uses of the BLM-administered lands throughout the YFO planning area. The planning area encompasses more than 1.2 million acres of BLM-administered lands.

The ROD and Approved RMP include one new Area of Critical Environmental Concern (ACEC): Dripping Springs Natural and Cultural ACEC (11,733 acres). One existing ACEC is expanded under the new plan: Gila River Cultural ACEC (from 3,668 to 28,504 acres). The Gila River Cultural ACEC is renamed the Sears Point Cultural ACEC. The following types of resource use limitations generally apply to these ACECs:

(1) Allowable uses are limited to those which are compatible with the natural or cultural resources for which the area is designated; (2) Recreation facilities are limited to projects that protect ACEC values; and (3) Travel is permitted only on designated open and signed routes. Detailed information is provided in the Special Designations Management section of the Approved RMP.

The Preferred Alternative in the *Draft Resource Management Plan/Draft EIS* (published December 15, 2006) was revised to include comments received during the 90-day public comment period. The resulting alternative became the Proposed Plan in the *Proposed Resource Management Plan/Final EIS* (PRMP/FEIS), published on April 11, 2008. Seven protests were received during the Final EIS 30-day protest period. The Proposed Plan was clarified based on these protests. The Proposed Plan is now called the "Approved RMP" and is attached to the ROD. As a result of protests, only minor editorial modifications were made in preparing the Approved RMP. These modifications provided further clarification of some of the decisions. Minor clarifications and changes between the Proposed Plan/Final EIS and the ROD/Approved Plan include the recalculation of Geographic Information System acreage to ensure consistency between lands available for grazing and those unavailable for grazing in the YFO, and minor text changes to clarify certain decisions. The BLM has determined that the Approved RMP provides an optimal balance between authorized resource use and the protection and long-term sustainability of sensitive resources within the planning area.

Neither the Arizona Governor's Office nor the California Governor's Office identified any inconsistencies between the Proposed RMP/Final EIS and state or local plans, policies, and programs following the 60-day Governors' Consistency Reviews (initiated March 6, 2008), in accordance with planning regulations at 43 CFR part 1610.3–2(e).

The Approved RMP does not contain implementation decisions. Future activity-level plans will address the implementation of the approved RMP. These implementation plans will provide the required additional site-specific planning and National Environmental Policy Act (NEPA) analyses. At that time, such decisions will become appealable. The appeal process will be outlined in the future individual implementation (activity or project-level) plans.

Authority: H–1790–1 National Environmental Policy Act Handbook, January 30, 2008.

James G. Kenna,

Arizona State Director.

[FR Doc. 2010–1726 Filed 1–28–10; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Winter Use Plan, Environmental Impact Statement, Yellowstone National Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for a Winter Use Plan, Yellowstone National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for a Winter Use Plan for Yellowstone

National Park, located in Idaho, Montana and Wyoming.

The purpose of the EIS is to establish a management framework that allows the public to experience Yellowstone's unique winter resources and values. This plan will determine whether motorized winter use of the park (including wheeled motor vehicles, snowmobiles, and snowcoaches) is appropriate, and if so, the types, extent, and location of this use.

A Winter Use Plan is needed at this time because: (1) Yellowstone offers unique winter experiences that are distinct from other times of the year; (2) the National Park Service provides opportunities for people to experience the park in the winter, but access to most of the park in the winter is limited by distance and the harsh winter environment, which present challenges to safety and park operations; and (3) the legal authority for oversnow vehicle use (snowmobiles and snowcoaches) at Yellowstone expires after the winter of 2010–2011. A decision is needed about whether this use should continue, and if so, how to structure use to protect resources and values and to provide for visitor use and enjoyment.

Alternatives considered in the EIS process will focus on responding to the purpose and need, and will also address the objectives of the EIS. The EIS will consider a variety of alternatives for managing winter use in the park, including the use of snowmobiles, snowcoaches, and wheeled vehicles, as well as requirement for professional guides to lead oversnow vehicles into and out of the park. The EIS will evaluate the environmental effects of winter use on air quality and visibility, wildlife, natural soundscapes, employee and visitor health and safety, visitor experience, and socioeconomics.

The NPS will be inviting several other government agencies to participate in the development of the EIS as cooperating agencies, including the states of Wyoming, Montana, and Idaho; the counties of Park and Teton, WY; Gallatin and Park, MT; and Fremont, ID; the Environmental Protection Agency; the U.S. Fish and Wildlife Service; and the U.S. Forest Service.

A scoping brochure has been prepared that details the issues identified to date, and includes the purpose, need and objectives of the EIS. Copies of the brochure may be obtained online at *http://parkplanning.nps.gov/YELL* (click on the link to the Winter Use Plan) or from Yellowstone National Park, P.O. Box 168, Yellowstone National Park, WY 82190, 307–344–2019.

The NPS is interested in obtaining comments from the public on the scope of the EIS; the purpose, need, and objectives; the issues that the EIS should address; and the alternatives that should be considered in the EIS. Comments submitted during this scoping period will allow the NPS to address public concerns as the EIS is prepared.

Background: The NPS is preparing this EIS to develop a long-term plan to allow the public to experience Yellowstone's unique winter resources and values. Currently, the vast majority of access to the park in winter is automobile access in the northern portion of the park and snowmobile and snowcoach access through the park's North, South, and East entrances. Snowmobile and snowcoach access in the park are currently authorized by an interim regulation, which allows their use for the winters of 2009–2010 and 2010–2011. The regulation mandates that the authorization of snowmobile and snowcoach use ends following the winter of 2010–2011, so their use will cease unless a new regulation is promulgated. Among other issues, the EIS will consider whether continued use of snowmobiles and snowcoaches is appropriate. If a determination is made that continued use of snowmobiles and/or snowcoaches is appropriate, this EIS is intended to satisfy the National Environmental Policy Act requirements for any new regulation.

Because the interim regulation's authorization of oversnow vehicle use is only in effect through the winter of 2010–2011, the NPS intends to complete this EIS and issue a new regulation, if necessary, based upon the outcome of the EIS process, prior to the start of the 2011–2012 winter season.

More information regarding Yellowstone in the winter, including educational materials and a detailed history of winter use in Yellowstone, is available at *http://www.nps.gov/yell/planvisit/winteruse/index.htm*.

DATES: The National Park Service will accept comments from the public for 60 days from the date that this Notice is published in the **Federal Register**. The National Park Service intends to hold public scoping meetings in Idaho Falls, ID, and Billings, MT, the week of February 15, 2010; and in Cheyenne, WY, and Washington, DC, the week of March 15, 2010. Details regarding the exact times and locations of these meetings will be announced on the park's Web site, at *http://parkplanning.nps.gov/YELL* (click on the link to the Winter Use Plan), and through local media.

ADDRESSES: Information specific to the EIS process will be available for public review and comment online at *http://parkplanning.nps.gov/YELL* (click on the link to the Winter Use Plan), and at Yellowstone National Park headquarters, Mammoth Hot Springs, WY.

FOR FURTHER INFORMATION CONTACT: John Sacklin, P.O. Box 168, Yellowstone National Park, WY 82190, (307) 344–2019, *yell_winter_use@nps.gov*.

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. We encourage you to comment via the Internet at *http://parkplanning.nps.gov/YELL* (click on the link to the Winter Use Plan). You may also comment by mail to: Yellowstone National Park, Winter Use Scoping, P.O. Box 168, Yellowstone NP, WY 82190. Finally, you may hand deliver your comments to: Management Assistant's Office, Headquarters Building, Mammoth Hot Springs, Yellowstone National Park, WY. Comments will not be accepted by fax, e-mail, or in any other way than those specified above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 8, 2010.

Michael D. Snyder,

Director, Intermountain Region, National Park Service.

[FR Doc. 2010–1914 Filed 1–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK920000–L14100000–BJ0000]

Notice of Filing of Plats of Survey; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: Notice of Filing of Plats of Survey; Alaska.

DATES: The plat(s) of survey described below is scheduled to be officially filed in the Alaska State Office, Bureau of Land Management, Anchorage, Alaska,

thirty (30) days from the date of publication in the **Federal Register.**

ADDRESSES: Bureau of Land Management, Alaska State Office, 222 W. 7th Ave., Stop 13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Michael H. Schoder, Chief Cadastral Surveyor for Alaska, Division of Cadastral Survey, *telephone:* 907–271–5481; *fax:* 907–271–4549; *e-mail: mschoder@blm.gov.*

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs, Alaska Region.

The lands surveyed are:

Seward Meridian, Alaska

T. 12 N., R. 2 W.

The plat(s) and field notes represent the dependent resurvey of a portion of the West boundary, a portion of the subdivisional lines and the survey of the subdivision of Section 30, Township 12 North, Range 2 West, Seward Meridian, in the state of Alaska.

We will place copies of the survey plat and field notes we describe in open files. They will be available to the public as a matter of information. Copies may be obtained from this office for a minimum recovery fee.

If BLM receives a protest against the survey, as shown on the plat, prior to the date of official filing, the filing will be stayed pending consideration of the protest. We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Authority: 43 U.S.C. chap. 3 sec. 53.

Dated: January 25, 2010.

Michael H. Schoder,

Chief Cadastral Surveyor.

[FR Doc. 2010–1807 Filed 1–28–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission will be held at 9 a.m., on Friday, February 12, 2010, at the House of Sweden, 2900 K Street, NW., Washington, DC 20007.

DATES: Friday, February 12, 2010.

ADDRESSES: House of Sweden, 2900, 2900 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740, telephone: (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

Normally, notice of advisory committee meetings are published at least 15 calendar days prior to the meeting date. Due to an unanticipated administrative delay in preparing this notice, it could not be published at least 15 days prior to the meeting date. The National Park Service regrets this error, but is compelled to hold the meeting as scheduled because of the significant sacrifice re-scheduling would require of the Commission members who have adjusted their schedules to accommodate the proposed meeting dates and the high level of anticipation by all parties who will be affected by the outcome of the Commission's actions. Since there has been advance notice to the Commission members and local public interest groups about this meeting, the National Park Service believes that the public interest will not be adversely affected by the less-than-15-days advance notice in the **Federal Register**.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairperson.
Mr. Charles J. Weir.
Mr. Barry A. Passett.
Mr. James G. McCleaf, II.
Mr. John A. Ziegler.
Mrs. Mary E. Woodward.
Mrs. Donna Printz.
Mrs. Ferial S. Bishop.
Ms. Nancy C. Long.
Mrs. Jo Reynolds.
Dr. James H. Gilford.
Brother James Kirkpatrick.
Dr. George E. Lewis, Jr.
Mr. Charles D. McElrath.
Ms. Patricia Schooley.
Mr. Jack Reeder.
Ms. Merrily Pierce.

Topics that will be presented during the meeting include:

1. Update on park operations.
2. Update on major construction development projects.
3. Update on partnership projects.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Kevin Brandt, Superintendent, Chesapeake and Ohio Canal National Historical Park. 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. Minutes of the meeting will be available for public inspection six weeks after the meeting at Chesapeake and Ohio Canal National Historical Park Headquarters, 1850 Dual Highway, Suite 100, Hagerstown, Maryland 21740.

Dated: January 15, 2010.

Brian T. Carlstrom,

Deputy Superintendent, Chesapeake and Ohio, Canal National Historical Park.

[FR Doc. 2010–1911 Filed 1–28–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting for Acadia National Park Advisory Commission

AGENCY: National Park Service, Department of Interior.

ACTION: Notice of February 19, 2010, Meeting for Acadia National Park Advisory Commission.

SUMMARY: This notice sets the date of February 19, 2010, meeting of the Acadia National Park Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Friday, February 19, 2010, at 1 p.m. (EASTERN).

ADDRESSES: *Location:* The meeting will be held at Park Headquarters, Bar Harbor, Maine 04609.

Agenda

The February 19, 2010, Commission meeting will consist of the following:

1. Committee reports:
—Land Conservation
—Park Use
—Science and Education
—Historic

2. Old Business
3. Superintendent's Report
4. Chairman's Report
5. Public Comments

FOR FURTHER INFORMATION CONTACT: Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone (207) 288–3338.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 7, 2010.

Sheridan Steele,

Superintendent, Acadia National Park.

[FR Doc. 2010–1922 Filed 1–28–10; 8:45 am]

BILLING CODE 4310–2N–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–513]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2010 Special Review, Certain Sleeping Bags

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on January 19, 2010 from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the U.S. International Trade Commission (Commission) instituted investigation No. 332–513, *Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2010 Special Review, Certain Sleeping Bags.*

DATES: March 1, 2010: Deadline for filing written submissions.

April 12, 2010: Transmittal of report to the United States Trade Representative.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Philip Stone, Project Leader, Office of Industries (202–205–3424 or *philip.stone@usitc.gov*). For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: As requested by the USTR pursuant to section 332(g) of the Tariff Act of 1930, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles, on U.S. imports, and on U.S. consumers of the removal of sleeping bags provided for in HTS subheading 9404.30.80 (sleeping bags, not containing 20 percent or more by weight of feathers and/or down) from eligibility for duty-free treatment under the Generalized System of Preferences (GSP) program with respect to all beneficiary countries. As requested by the USTR, the Commission will provide its advice by April 12, 2010. The USTR indicated that those sections of the Commission's report and related working papers that contain the Commission's advice will be classified as "confidential."

Written Submissions: Interested parties are invited to file written submissions concerning this investigation. All such submissions should be addressed to the Secretary and should be received not later than 5:15 p.m. on March 1, 2010. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include some or all of the confidential business information submitted in the course of the investigation in the report it sends to the USTR. As requested by the USTR, the Commission will publish a public version of the report, which will exclude portions of the report that the USTR has classified as well as any business confidential information.

By order of the Commission.

Issued: January 25, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–1812 Filed 1–28–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women

[OMB Number 1122–0020]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Office on Violence Against Women Solicitation Template.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 228, page 62595, on November 30, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 1, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed collection.

(2) *Title of the Form/Collection:* OVW Solicitation Template.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–XXXX. U.S. Department of Justice, OVW.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes applicants to OVW grant programs authorized under the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000 and the Violence Against Women Act of 2005. These include States, territory, Tribe or unit of local government; State, territorial, tribal or unit of local governmental entity; institutions of higher education including colleges and universities; tribal organizations; Federal, State, tribal, territorial or local courts or court-based programs; State sexual assault coalition, State domestic violence coalition; territorial domestic violence or sexual assault coalition; tribal coalition; tribal organization; community-based organizations and non-profit, nongovernmental organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes the requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.* project activities and timeline, proposed budget); and provides registration dates, due dates, and instructions on how to apply within the designated application system.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collect annually from the approximately 1800 respondents (applicants to the OVW grant programs). The public reporting burden for this collection of information is estimated at up to 30 hours per application. The 30-hour estimate is based on the amount of time to prepare a narrative, budget and other materials for the application as well to coordinate with and develop a memorandum of understanding with requisite project partners.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 54,000 hours.

If Additional Information Is Required Contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–1871 Filed 1–28–10; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

[OMB Number 1103–0106]

Agency Information Collection Activities: Extension of a Previously Approved Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: COPS Hiring Recovery Program (CHRP) Progress Report.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register,** Volume 74, Number 227, pages 62348, on November 27, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment February 1, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Whiteaker, Department of Justice Office of

Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the extension of a previously approved collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the extension of a previously approved collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a previously approved collection; comments requested.

(2) *Title of the Form/Collection:* CHRP Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement and partner public safety agencies that are recipients of COPS Hiring Recovery Program grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 1046 report respondents can complete the report in an average of 10 minutes per calendar quarter.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 697.333 total burden hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–1872 Filed 1–28–10; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on January 25, 2010, a proposed Consent Decree in *United States of America, et al.* v. *Westar Energy, Inc.,* Civil Action No. 2:09–CV–2059–JAR–DJW, was lodged with the United States District Court for the District of Kansas.

The Consent Decree would resolve claims asserted by the United States against Westar Energy ("Westar") pursuant to Sections 113(b) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b) and 7477, seeking injunctive relief and the assessment of civil penalties for Westar's violations of:

(a) The Prevention of Significant Deterioration ("PSD") provisions in Part C of Subchapter I of the Act, 42 U.S.C. 7470–92;

(b) The New Source Performance Standards ("NSPS") provisions of the Act, 42 U.S.C. 7411;

(c) Title V of the Act, 42 U.S.C. 7661 *et seq.;* and

(d) The federally-enforceable State Implementation Plan ("SIP") developed by the State of Kansas.

Westar operates three coal-fired power plants in Kansas. One of those plants, the Jeffrey Energy Center ("Jeffrey Plant"), has three electric generating units and is located near St. Marys in Pottawatomie County, Kansas. Only the Jeffrey Plant is the subject of this settlement. The complaint filed by the United States alleges that Westar modified and thereafter operated all three units at the Jeffrey Plant without complying with the PSD requirements of the Act (including the requirements to first obtain a PSD permit authorizing the modifications and to install and operate the best available control technology to control emissions of sulfur dioxide ("SO_2"), nitrogen oxides ("NO_X"), and/or particulate matter ("PM")). The complaint also alleges that Westar violated Title V of the Act by failing to include the PSD requirements triggered by its modifications in its Title V operating permit for the Jeffrey Plant.

The proposed Consent Decree would require Westar to reduce SO_2, NO_X and PM emissions at all three Jeffrey Units through the installation, upgrade, and/or operation of pollution control technologies. In addition, the proposed complaint would require Westar to spend $6 million on environmental mitigation projects, namely retrofitting diesel engines to reduce emissions from vehicles owned by or operated for public entities in Kansas with emission control equipment, installing new wind turbines that provide electricity for the benefit of schools or non-profits, installing advanced truck stop electrification, installing plug-in hybrid infrastructure, and converting vehicles in Westar's fleet by retrofitting diesel vehicles and purchasing hybrid vehicles. Finally, the proposed Consent Decree would require Westar to pay a $3 million civil penalty. The State of Kansas has joined the settlement as co-plaintiff.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America, et al.* v. *Westar Energy, Inc.,* D.J. Ref. 90–5–2–1–08242.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Kansas, 500 State Avenue, Suite 360, Kansas City, KS 66101, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, KS 66101. 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/ConsentDecrees.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 $16.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–1773 Filed 1–28–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0006]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 30-day Notice of Information Collection Under Review: Revision of a currently approved collection: Law Enforcement Officers Killed or Assaulted.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 227, pages 62349, on November 27, 2009, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 1, 2010. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Law Enforcement Officers Killed or Assaulted

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: 1–705;

Sponsor: Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies.

Brief Abstract: This collection is needed to collect information on law enforcement officers killed or assaulted in the line of duty throughout the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,799 law enforcement agency respondents that submit monthly for a total of 213,588 responses with an estimated response time of 7 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 24,919 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: January 26, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2010–1870 Filed 1–28–10; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations

Applications for a permit to fire more than 20 boreholes and for the use of non-permissible blasting units or for the posting of notices of misfired holes (pertaining to underground coal mines) and the use of nonpermissible explosives and shot-firing units in shaft and slope construction (pertains to coal mining industry).

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the applications for a permit to fire more than 20 boreholes and for the use of non-permissible blasting units or for the posting of notices of misfired holes and the use of nonpermissible explosives and shot-firing units in shaft and slope construction pertaining to the coal mining industry.

DATES: Submit comments on or before March 30, 2010.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments via e-mail to *Rowlett.John@dol.gov.* Mr. Rowlett can be reached at (202) 693–

9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, a mine operator is required to use permissible explosives in underground coal mines. The Mine Act also provides that under safeguards prescribed by the Secretary of Labor, a mine operator may permit the firing of more than 20 shots and the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Title 30, CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of nonpermissible shot-firing units in underground coal mines. In those instances in which there is a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Title 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use nonpermissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines.

II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov/*) and selecting "Rules & Regs", and then selecting "FedReg. Docs". On the next screen, select "Paperwork Reduction Act Supporting Statement" to view documents supporting the **Federal Register** Notice.

III. Current Actions

Title 30, CFR 75.1321, 75.1327 and 77.1909–1 provide MSHA District Managers with the authority to address unusual but recurring blasting practices needed for breaking rock types more resilient than coal and for misfires in blasting coal. MSHA uses the information requested to issue permits to mine operators or shaft and slope contractors for the use of nonpermissible explosives and/or shot-firing units under 30 CFR part 77, subpart T—Slope and Shaft Sinking. Similar permits are issued by MSHA to underground coal mine operators for shooting more than 20 bore holes and/or for the use of nonpermissible shot-firing units when requested under 30 CFR part 75, subpart N—Explosives and Blasting. The approved permits allow the use of specific equipment and explosives in limited applications and under exceptional circumstances where standard coal blasting techniques or equipment is inadequate to the task. These permits inform mine management and the miners of the steps to be employed to protect the safety of any person exposed to such blasting while using nonpermissible items. Also, the posting of danger/warning signs at entrances to locations where a misfired blast hole or round remains indisposed is a safety precaution predating the Coal Mine Safety and Health Act.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Application for a Permit to Fire More than 20 Boreholes for the use of Nonpermissible Blasting Units, Explosives, and Shot-firing Units.

OMB Number: 1219–0025.

Affected Public: Business or other for-profit.

Respondents: 68.

Responses: 101.

Total Burden Hours: 79.

Total Burden Cost: $427.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 22nd day of January, 2010.

John Rowlett,

Director, Management Services Division.

[FR Doc. 2010–1806 Filed 1–28–10; 8:45 am]

BILLING CODE 4510–43–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 10–04]

Notice of Entering Into a Compact With the Republic of Moldova

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Moldova. Representatives of the United States Government and the Republic of Moldova executed the Compact documents on January 22, 2010.

Dated: January 26, 2010.

Henry Pitney,

Acting General Counsel, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Republic of Moldova

The five-year Millennium Challenge Compact with the Republic of Moldova ("Compact") will provide up to $262 million to reduce poverty and accelerate economic growth. The Compact is intended to improve agricultural productivity and to expand access to markets and services through investments in critical infrastructure in the irrigation and road sectors, and through capacity-building in the high value agriculture sector ("Program").

Transition to High Value Agriculture Project ($101.77 Million)

The Transition to High Value Agriculture Project ("THVA Project") seeks to (i) increase rural incomes by stimulating growth in high value agriculture ("HVA") and (ii) act as a catalyst for future investment in HVA production by establishing a successful model that contributes to a conducive institutional and policy environment for irrigated agriculture. Agriculture has been the backbone of the Moldovan economy, though, following the collapse

of the Soviet Union, Moldova lost its position as a key exporter of fresh produce, and its extensive irrigation systems and post-harvest cold chain fell into disrepair. Today, the country's agricultural sector suffers from poor water service, production of low-value crops, low water-tariff revenue, and underinvestment in maintenance of the irrigation system, all of which contribute to high rates of rural poverty. However, with its fertile soils, relatively long growing season, and proximity to both European Union and former Soviet markets, Moldova has many of the necessary conditions to regain competitiveness in HVA. The THVA Project supports the government of Moldova's national strategy to increase land under irrigation and to upgrade the cold chain to facilitate the transition to HVA. The set of four reinforcing and integrated activities include:

- *Centralized Irrigation System Rehabilitation:* Rehabilitation of up to 11 large irrigation systems servicing an area of approximately 15,500 hectares located along the Prut and Nistru rivers that will provide reliable water needed for HVA crops, as well as improve food security through enhanced grain production.
- *Irrigation Sector Reform:* Provision of technical assistance and capacity-building to: (i) Support the establishment of water user associations able to manage and operate the rehabilitated irrigation systems and the legal transfer of responsibilities for operations and maintenance of repaired irrigation systems to water user associations; (ii) improve water resource management by the government, including the establishment of a modem water-rights system; and (iii) ensure the legal and institutional framework needed for irrigation sector sustainability and further private and donor investment.
- *Access to Agricultural Finance:* Establishment of financing facilities that will support HVA-related investment by farmers and rural entrepreneurs.
- *Growing HVA Sales:* Provision of technical assistance to farmers and rural entrepreneurs to better access HVA markets and support the shift to HVA at the production and post-harvest level, in an activity undertaken jointly with, and administered by, the United States Agency for International Development.

Road Rehabilitation Project ($132.84 Million)

The Road Rehabilitation Project seeks to (i) increase the income of the local population through reduced cost of transport and reduced costs of goods and services; (ii) reduce losses to the national economy resulting from the deteriorated road conditions; and (iii) reduce the number of road accidents through improved traffic conditions. Specifically, the project will support the rehabilitation of the M2 road, which is part of an arterial highway connecting Chisinau, the Moldovan capital, to the Ukrainian border and beyond to Kyiv, the Ukrainian capital. This route serves as a significant link between Moldova and Ukraine for private, passenger, and commercial traffic, and has been prioritized by the government of Moldova in its National Development Strategy and Land Transport Infrastructure Strategy with the long-term goal to provide an efficient transport system that facilitates opportunities for trade in domestic and international markets and the mobility of its citizens. The existing M2 segment is a paved two-lane road that is extremely deteriorated. Compact funding will support the rehabilitation of 93 kilometers, beginning at the city of Sarateni at the southern end, passing near the city of Soroca, and ending at the junction with the R7 road west to Drochia at the northern end; construction (or reconstruction) or associated structures such as bridges and culverts; and improvement in road safety along the rehabilitated corridor. In addition, the Compact will fund a feasibility study, environmental and social impact assessment, detailed design work, and a resettlement action plan for the road segment continuing on to the Ukrainian border at the town of Otaci. These studies can be used by the government of Moldova to seek funding from other donors, or to plan investments with its own resources.

Administration

The Compact also includes program management and oversight costs estimated at $23.85 million over a five-year time frame, including the costs of administration, management, auditing, fiscal and procurement agent services and environmental and social oversight. In addition, the cost of monitoring and evaluation of the Compact is budgeted at approximately $3.54 million.

Intended Beneficiaries and Expected Results

The THVA Project is expected to benefit approximately 32,000 households (or approximately 124,000 individuals), with an average total benefit over 20 years equal to 170 percent of the beneficiaries' current annual income. Beneficiaries include owners or shareholders of farming enterprises; farmers or owners of land; and laborers employed in the operation of enterprise farms within the command areas where MCC will rehabilitate the irrigation systems, as well as producers and intermediaries investing in and working in the HVA sector. The economic analyses indicate an economic rate of return of approximately 12.7 percent.

The Road Rehabilitation Project is expected to benefit approximately 78,000 households (or approximately 302,000 beneficiaries) over the next 20 years, with an economic rate of return of approximately 19 percent. Beneficiaries include users and owners of motorized vehicles utilizing the road including local agricultural and other producers and buyers, providers and users of passenger transport services, and noncommercial owners of private motorized transport.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Republic of Moldova

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Millennium Challenge Compact

Preamble

This Millennium Challenge Compact (this "*Compact*") is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation ("*MCC*"), and the Republic of Moldova ("*Moldova*"), acting through its government (the "*Government*").

MCC and the Government are individually referred to in this Compact as a "*Party*" and together, as the "*Parties*." Capitalized terms used in this Compact will have the meanings specified in Annex V hereto.

Recalling that the Government consulted with the private sector and civil society of Moldova to determine the priorities for the use of Millennium Challenge Account assistance and developed and submitted to MCC a proposal for such assistance to achieve lasting economic growth and poverty reduction; and

Recognizing that MCC wishes to help Moldova implement a program to achieve the goal and objectives described herein (the "*Program*").

The Parties agree as follows:

Article 1. Goal and Objectives

Section 1.1 Compact Goal

The goal of this Compact is to reduce poverty through economic growth in Moldova (the "Compact Goal").

Section 1.2 Program Objective

The objective of the Program is to increase incomes through increased agricultural productivity and expanded access to markets and services through improved roads (as further described in Annex I, the "*Program Objective*").

Section 1.3 Project Objectives

The objectives of the Projects (as further described in Annex I) (each a "*Project Objective*" and collectively, the "*Project Objectives*") are as follows:

(a) The objectives of the Transition to High Value Agriculture Project (as defined in Annex I) are to: (i) Increase rural incomes by stimulating growth in irrigated high value agriculture; and (ii) catalyze future investments in high value agriculture by establishing a successful and sustainable model of irrigation system and water resource management and a conducive institutional and policy environment for irrigated agriculture.

(b) The objectives of the Road Rehabilitation Project (as defined in Annex I) are to: (i) Increase incomes of the local population by reducing the cost of transport, goods and services; (ii) reduce losses to the national economy resulting from deteriorated road conditions; and (iii) reduce the number of road accidents through improved traffic conditions.

Article 2. Funding and Resources

Section 2.1 Program Funding

Upon entry into force of this Compact, MCC will grant to the Government, under the terms of this Compact, an amount not to exceed Two Hundred and Fifty-Four Million United States Dollars (US$254,000,000) to support the Program ("*Program Funding*"). The allocation of Program Funding is generally described in Annex II to this Compact.

Section 2.2 Compact Implementation Funding

(a) Upon signature of this Compact, MCC hereby grants to the Government, under the terms of this Compact, in addition to the Program Funding described in Section 2.1, an amount not to exceed Eight Million United States Dollars (US$8,000,000) ("*Compact Implementation Funding*") under Section 609(g) of the Millennium Challenge Act of 2003, as amended (the "*MCA Act*"), for use by the Government as agreed by the Parties, which may include use for the following purposes:

(i) Financial management and procurement activities; and

(ii) Start-up activities, including staff salaries and administrative support expenses, such as office equipment, computers and other information technology or capital equipment; and other Compact implementation activities approved by MCC.

The allocation of Compact Implementation Funding is generally described in Annex II to this Compact.

(b) In accordance with Section 7.5 of this Compact, this Section 2.2 and other provisions of this Compact necessary to make use of Compact Implementation Funding for the purposes set forth herein, will be effective, for purposes of Compact Implementation Funding only, as of the date this Compact is signed by MCC and the Government.

(c) Each Disbursement of Compact Implementation Funding is subject to satisfaction of the conditions to such disbursement as set forth in Annex IV.

(d) If, after the first anniversary of this Compact entering into force, MCC determines that the full amount of Compact Implementation Funding under Section 2.2(a) of this Compact exceeds the amount which reasonably can be utilized for the purposes and uses set forth in Section 2.2(a) of this Compact, MCC, by written notice to the Government, may withdraw the excess amount, thereby reducing the amount of the Compact Implementation Funding as set forth in Section 2.2(a) (such excess, the "*Excess CIF Amount*"). In such event, the amount of Compact Implementation Funding granted to the Government under Section 2.2(a) will be reduced by the Excess CIF Amount, and MCC will have no further obligations with respect to such Excess CIF Amount.

(e) MCC, at its option by written notice to the Government, may elect to grant to the Government an amount equal to all or a portion of such Excess CIF Amount as an increase in the Program Funding, and such additional Program Funding will be subject to the terms and conditions of this Compact and any relevant supplemental agreement applicable to Program Funding.

Section 2.3 MCC Funding

Program Funding and Compact Implementation Funding are collectively referred to in this Compact as "*MCC Funding*."

Section 2.4 Disbursement

In accordance with this Compact and the Program Implementation Agreement, MCC will disburse MCC Funding for expenditures incurred in furtherance of the Program (each instance, a "*Disbursement*"). Subject to the satisfaction of all applicable conditions, the proceeds of such

Disbursements will be made available to the Government, at MCC's sole election, by (a) deposit to one or more bank accounts established by the Government through MCA-Moldova and acceptable to MCC (each, a "*Permitted Account*") or (b) direct payment to the relevant provider of goods, works or services for the implementation of the Program. MCC Funding may be expended only to fund Program expenditures as provided in this Compact and the Program Implementation Agreement.

Section 2.5 Interest

Except as otherwise agreed by MCC, the Government will transfer to MCC any interest or other earnings that accrue on MCC Funding (whether by directing such payments to a bank account outside Moldova that MCC may from time to time indicate or as otherwise directed by MCC).

Section 2.6 Government Resources; Budget

(a) The Government will provide all funds and other resources, and will take all actions, that are necessary to carry out the Government's responsibilities and obligations under this Compact.

(b) The Government will provide suitable and adequate office space for MCA-Moldova and the MCC resident country mission.

(c) The Government will use its best efforts to ensure that all MCC Funding it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget on a multi-year basis.

(d) The Government will not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact and the Program.

(e) Unless the Government discloses otherwise to MCC in writing, MCC Funding will be in addition to the resources that the Government would otherwise receive or budget for the activities contemplated under this Compact and the Program.

Section 2.7 Limitations on the Use of MCC Funding

The Government will ensure that MCC Funding (or any refunds or reimbursements of MCC Funding paid by the Government in accordance with this Compact that MCC permits to be used in connection with the Program) will not be used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified to the Government in writing or by posting from time to time on the MCC Web site at *http://www.mcc.gov* (the "*MCC Web site*"), including, but not limited to, the following purposes:

(a) For assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) For any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) To undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard, as further described in MCC's environmental and social guidelines posted from time to time on the MCC Web site or otherwise made available to the Government by MCC (the "*MCC Environmental Guidelines*"); or

(d) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.8 Taxes

(a) Unless the Parties otherwise specifically agree in writing, and subject to the provisions of Sections 2.8(b) and 2.8(c), the Government will ensure that each of the following is free from the payment or imposition of any existing or future taxes, duties, levies, contributions, or other similar charges ("*Taxes*") of or in Moldova (including any such Taxes imposed by a national, regional, local, or other governmental or taxing authority of or in Moldova) (i) The Program; (ii) MCC Funding; (iii) interest or earnings on MCC Funding; (iv) any Project or activity implemented under or in connection with the Program; (v) MCA-Moldova; (vi) goods and other property, works, services, technology, and other assets and activities, whether acquired, used or performed at any level or stage, under or in connection with the Program or any Project; (vii) persons and entities that provide such goods and other property, works, services, technology, and assets, or perform such activities; and (viii) income, profits, and payments with respect thereto. The Parties acknowledge and agree that "Taxes" include, among other things, value added and other transfer taxes (including exemption therefrom with credit), profit and income taxes, property and *ad valorem* taxes, import and export duties and taxes (including for goods imported and re-exported for personal use), withholding taxes, payroll taxes, social security and mandatory medical insurance contributions, road taxes and various applicable local taxes (such as, but not limited to, taxes on real estate property, taxes on territorial improvement, and taxes on placement of advertisements in public places).

(b) Without limiting the generality of the definition of Taxes as set forth in Section 2.8(a), the Parties hereby agree that the following taxes, duties, levies, contributions, and similar charges are specifically included in the definition of "Taxes" requiring exemptions in accordance with this Compact: (i) Customs duties and associated fees; (ii) value added taxes ("*VAT*"); (iii) registration and stamp taxes; (iv) taxes on the corporate incomes of professional, accounting or consulting firms derived from Compact-related work; (v) taxes on the corporate income of companies or other legal persons derived from Compact-related work; (vi) taxes on the personal income of individuals working under the Compact; (vii) taxes on temporary admissions of Compact-related goods and personal household goods; (viii) excise duties; (ix) customs procedure taxes; (x) road taxes; and (xi) real estate taxes and other local taxes. With respect to VAT and excise taxes on petroleum products, these will be addressed by way of a reimbursement, as set forth in Schedule E of Annex VI.

(c) Unless otherwise agreed by MCC in writing, set forth in Annex VI are procedures that the Government will implement to effectuate the exemption from Taxes required by Section 2.8(a) and Section 2.8(b) above with respect to each of the Taxes addressed therein. To the extent that there are Taxes not addressed in Annex VI, whether currently in force or established in the future, that MCC determines, in its sole discretion, are not being exempted by the Government in accordance with this Section 2.8, the Government hereby agrees that it will implement appropriate procedures (approved in writing by MCC) to ensure that such additional Taxes are exempted in accordance with this Section 2.8. For the avoidance of doubt, the identification (or lack of identification) of Taxes in Annex VI, or the description (or lack of description) of procedures to implement the required exemption from such Taxes in Annex VI, will in no way limit the scope of the tax exemption required by Section 2.8.

(d) Unless otherwise agreed in writing by the Parties, the exemption from Taxes set forth in Section 2.8(a) and 2.8(b) will not apply to income Taxes on, and contributions to, social insurance contributions and mandatory insurance charges for medical assistance, with respect to legal persons or natural persons who are nationals of Moldova, *provided that* such Taxes and contributions are not discriminatory and are generally applicable to all nationals in Moldova.

(e) In complying with the tax exemption obligations set forth herein, the Government will exempt MCA-Moldova, the Fiscal Agent, the Procurement Agent, and/or any other provider of goods, services, or works in connection with the Program from any obligation imposed by the laws of Moldova to withhold any Taxes from any payments made to any natural persons or legal persons working under the Program to the extent that such legal persons or natural persons are not nationals of Moldova.

(f) For the purposes of Section 2.8(d), Section 2.8(e) and Annex VI, the term "national" means natural persons who are citizens of Moldova or natural persons who hold a Moldovan permanent residence certificate and legal persons formed under the laws of Moldova (excluding (i) MCA-Moldova, and (ii) any foreign legal person, including any Moldovan-registered subsidiary, branch, representative office or other permanent establishment of a foreign legal person, with respect to income earned for providing services, goods or works in connection with this Compact); *provided that* in determining if a legal person has been formed under the laws of Moldova, the taxable status of such legal person will be based on its status at the time it is awarded or signs a Compact-related agreement or contract, and such initial determination will not change regardless of: (1) The type of agreement or contract used to employ or engage such company or other legal person; (2) any laws of Moldova that purport to change such status based on period of contract performance or period of time residing and/or working in Moldova; and/or (3) any requirement under the laws of Moldova that a company or other legal person must establish a branch office in Moldova, or otherwise register or organize itself under the laws of Moldova, in order to provide goods, services, or works in Moldova.

(g) The Government will from time to time sign and deliver, or cause to be signed and delivered, such other instructions, instruments or documents, and to take or cause to be taken such other actions as may be necessary or appropriate in the determination of MCC in order to implement this Section 2.8.

(h) If a Tax has been levied and paid contrary to the requirements of this Section 2.8, or any supplemental agreement entered into pursuant to this Section 2.8, the Government will refund promptly to MCC (or to another party as designated by MCC) the amount of such Tax in United States Dollars or the currency of Moldova within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing (whether by MCC or MCA-Moldova) that such Tax has been paid.

(i) No MCC Funding, proceeds thereof, or Program Assets may be applied by the Government in satisfaction of its obligations under this Section 2.8.

(j) The mechanism for application of the tax exemption described in this Section 2.8 and Annex VI will be provided in a Government decision to be enacted after ratification of this Compact.

(k) Notwithstanding the provisions of this Section 2.8 and Annex VI, with respect to all funding associated with the Activities which USAID intends to administer, the treatment of Taxes, other fees and any other fiscal obligations to the Government will be in compliance with the terms and conditions as stipulated and agreed to in the "Agreement between the Government of the United States of America and the Government of Moldova Regarding Cooperation to Facilitate the Provision of Assistance," which entered into force on March 21, 1994, as may be amended from time to time.

Article 3. Implementation

Section 3.1 Program Implementation Agreement

Prior to entry into force of this Compact, the Government and MCC will enter into an agreement relating to, among other matters, implementation arrangements, fiscal accountability and disbursement, and use of MCC Funding (the "*Program Implementation Agreement*" or "*PIA*"). The Government will implement the Program in accordance with the Compact and the PIA.

Section 3.2 Government Responsibilities

(a) The Government has principal responsibility for overseeing and managing the implementation of the Program.

(b) The Government hereby designates MCA-Moldova, an entity to be established through passage of a decree (the "*Establishment Decree*"), as the accountable entity to implement the Program and to exercise and perform the Government's rights and responsibilities with respect to the oversight, management, and implementation of the Program, including, without limitation, managing the implementation of Projects and their Activities, allocating resources, and managing procurements. Such entity will be referred to herein as "*MCA-Moldova,*" and will have the authority to bind the Government with regard to all Program Activities. The Establishment Decree will be in form and substance satisfactory to MCC. For the avoidance of doubt, the designation of MCA-Moldova as set forth in this Section 3.2(b) will not relieve the Government of any of its obligations or responsibilities as set forth hereunder, under any related agreement (including, upon execution thereof, the PIA), or under the Program Guidelines, for which the Government remains fully responsible. MCC hereby acknowledges and consents to the designation in this Section 3.2(b).

(c) The Government will ensure that no law or regulation in Moldova now or hereinafter in effect makes or will make unlawful or otherwise prevent or hinder the performance of any of the Government's obligations under this Compact, the PIA, or any other related agreement or any transaction contemplated hereby or thereby.

(d) The Government will ensure that any assets or services funded in whole or in part (directly or indirectly) by MCC Funding are used solely in furtherance of this Compact and the Program unless otherwise agreed by MCC in writing.

(e) The Government will take all necessary or appropriate steps to achieve the Program Objective and the Project Objectives during the Compact Term.

(f) The Government will fully comply with the Program Guidelines, as applicable, in its implementation of the Program.

Section 3.3 Policy Performance

In addition to undertaking the specific policy, legal, and regulatory reform commitments identified in Annex I (if any), the Government will seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the MCA Act, and the selection criteria and methodology used by MCC.

Section 3.4 Government Assurances

The Government assures MCC that, as of the date this Compact is signed by the

Government, the information provided to MCC by or on behalf of the Government in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects.

Section 3.5 Implementation Letters

From time to time, MCC may provide guidance to the Government in writing on any matters relating to this Compact, MCC Funding, or implementation of the Program (each, an "*Implementation Letter*"). The Government will apply such guidance in implementing the Program. Without limiting the foregoing, either Party may, through its Principal Representative or any Additional Representative, as the case may be, initiate discussions that may result in a jointly agreed-upon Implementation Letter to confirm and record their mutual understanding on aspects related to the implementation of this Compact, the PIA, or other related agreements.

Section 3.6 Procurement

The Government will ensure that the procurement of all goods, works, and services by the Government, or any applicable provider providing goods, works, and services, to implement the Program will be consistent with the program procurement guidelines posted from time to time on the MCC Web site (the "*MCC Program Procurement Guidelines*"). The MCC Program Procurement Guidelines include, among others, the following requirements:

(a) Open, fair, and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works, and services;

(b) Solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works, and services to be acquired;

(c) Contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their terms on a cost effective and timely basis; and

(d) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, will be paid to procure goods, works, and services.

Section 3.7 Records; Accounting; Covered Providers; Access

(a) *Government Books and Records.* The Government will maintain, and will use its best efforts to ensure that all Covered Providers maintain, accounting books, records, documents, and other evidence relating to the Program adequate to show, to MCC's satisfaction, the use of all MCC Funding ("*Compact Records*"). In addition, the Government will furnish or cause to be furnished to MCC, upon its request, all such Compact Records.

(b) *Accounting.* The Government will maintain, and will use its best efforts to ensure that all Covered Providers maintain, Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with MCC's prior written approval, other accounting principles, such as those (i) prescribed by the International Accounting Standards Board, or (ii) then prevailing in Moldova. Compact Records must be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any statutory requirements.

(c) *Providers and Covered Providers.* Unless the Parties agree otherwise in writing, a "*Provider*" is (i) any entity of the Government that receives or uses MCC Funding or any other Program Asset in carrying out activities in furtherance of this Compact, or (ii) any third party that receives at least Fifty Thousand United Stated Dollars (US$50,000) in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of the Government) during the Compact Term. A "*Covered Provider*" is (1) a non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) Three Hundred Thousand United States Dollars (US$300,000) or more of MCC Funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, Three Hundred Thousand United States Dollars (US$300,000) or more of MCC Funding from any Provider in such fiscal year, or (2) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) Five Hundred Thousand United States Dollars (US$500,000) or more of MCC Funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, Five Hundred Thousand United States Dollars (US$500,000) or more of MCC Funding from any Provider in such fiscal year.

(d) *Access.* Upon MCC's request, the Government, at all reasonable times, will permit, or cause to be permitted, authorized representatives of MCC, an authorized Inspector General, the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review, or evaluation of the Program, the opportunity to audit, review, evaluate, or inspect facilities and activities funded in whole or in part by MCC Funding.

Section 3.8 Audits; Reviews

(a) *Government Audits.* Except as the Parties may otherwise agree in writing, the Government will, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all disbursements of MCC Funding covering the period from signing of this Compact until the earlier of the following December 31 or June 30 and covering each six-month period thereafter ending December 31 and June 30, through the end of the Compact Term. In addition, upon MCC's request, the Government will ensure that such audits are conducted by an independent auditor approved by MCC and named on the list of local auditors approved by the Inspector General of MCC (the "*Inspector General*") or a United States–based certified public accounting firm selected in accordance with the "Guidelines for Financial Audits Contracted by MCA" (the "*Audit Guidelines*") issued and revised from time to time by the Inspector General, which are posted on the MCC Web site. Audits will be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. Each audit must be completed and the audit report delivered to MCC no later than ninety (90) days after the first period to be audited and no later than ninety (90) days after each June 30 and December 31 thereafter, or such other period as the Parties may otherwise agree in writing.

(b) *Audits of United States Entities.* The Government will ensure that agreements between the Government or any Provider, on the one hand, and a United States nonprofit organization, on the other hand, that are financed with MCC Funding state that the United States nonprofit organization is subject to the applicable audit requirements contained in OMB Circular A–133 issued by the United States Government Office of Management and Budget ("*OMB*"). The Government will ensure that agreements between the Government or any Provider, on the one hand, and a United States for-profit Covered Provider, on the other hand, that are financed with MCC Funding state that the United States for-profit

organization is subject to audit by the applicable United States Government agency, unless the Government and MCC agree otherwise in writing.

(c) *Corrective Actions.* The Government will (i) use its best efforts to ensure that Covered Providers take, where necessary, appropriate and timely corrective actions in response to audits, (ii) consider whether the results of a Covered Provider's audit necessitates adjustment of the Government's records, and (iii) require each such Covered Provider to permit independent auditors to have access to its records and financial statements as necessary.

(d) *Audit by MCC.* MCC will have the right to arrange for audits of the Government's use of MCC Funding.

(e) *Cost of Audits, Reviews or Evaluations.* MCC Funding may be used to fund the costs of any audits, reviews, or evaluations required under this Compact.

Article 4. Communications

Section 4.1 Communications

Any document or communication required or submitted by either Party to the other under this Compact must be in writing and, except as otherwise agreed with MCC, in English. For this purpose, the address of each Party is set forth below.

To MCC

Millennium Challenge Corporation, Attention: Vice President, Compact Implementation, (in each case, with a copy to the Vice President and General Counsel), 875 Fifteenth Street, NW., Washington, DC 20005, United States of America, Facsimile: (202) 521–3700, Telephone: (202) 521–3600, E-mail: *VPImplementation@mcc.gov* (Vice President, Compact Implementation), *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel)

To the Government

State Chancellery, Attention: Minister of State, 1, Piata Marii Adunari Nationale, Chisinau MD–2033, Republic of Moldova, Facsimile: (373) 22 242 696, Telephone: (373) 22 250 104, E-mail: *victor.bodiu@gov.md.*

With a Copy to MCA-Moldova

Upon establishment of MCA-Moldova, MCA-Moldova will notify the Parties of its contact details.

Section 4.2 Representatives

For all purposes of this Compact, the Government will be represented by the individual holding the position of, or acting as, the State Minister of Moldova, and MCC will be represented by the individual holding the position of, or acting as, Vice President, Compact Implementation (each of the foregoing, a "*Principal Representative*"). Each Party, by written notice to the other Party, may designate one or more additional representatives (each, an "*Additional Representative*") for all purposes other than signing amendments to this Compact. The Government hereby irrevocably designates the Executive Director of MCA-Moldova as an Additional Representative. A Party may change its Principal Representative to a new representative that holds a position of equal or higher rank upon written notice to the other Party.

Section 4.3 Signatures

With respect to all documents other than this Compact or an amendment to this Compact, a signature delivered by facsimile or electronic mail will be binding on the Party delivering such signature to the same extent as an original signature would be.

Article 5. Termination; Suspension; Refunds

Section 5.1 Termination; Suspension

(a) Either Party may terminate this Compact without cause in whole by giving the other Party thirty (30) days written notice. MCC may also terminate this Compact without cause in part by giving the Government thirty (30) days written notice.

(b) MCC may, immediately, upon written notice to the Government, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC as a basis for suspension or termination (whether in writing to the Government or by posting on the MCC Web site) has occurred, which circumstances include, but are not limited, to the following:

(i) The Government fails to comply with its obligations under this Compact, the PIA, or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program;

(ii) An event or series of events has occurred that MCC determines makes it probable that the Program Objective or any of the Project Objectives will not be achieved during the Compact Term or that the Government will not be able to perform its obligations under this Compact;

(iii) A use of MCC Funding or continued implementation of this Compact or the Program violates applicable law or United States Government policy, whether now or hereafter in effect;

(iv) The Government or any other person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is engaged in activities that are contrary to the national security interests of the United States;

(v) An act has been committed or an omission or an event has occurred that would render Moldova ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of the Foreign Assistance Act of 1961 or any other provision of law;

(vi) Moldova is classified as a Tier 3 country in the United States Department of State's annual Trafficking in Persons Report;

(vii) The Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Moldova for assistance under the MCA Act; or

(viii) The Government or another person or entity receiving MCC Funding or using assets acquired in whole or in part with MCC Funding is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

(c) All Disbursements will cease upon expiration, suspension, or termination of this Compact; *provided, however,* MCC may permit MCC Funding to be used, in compliance with this Compact and the PIA, to pay for (i) expenditures for goods, works, or services that are properly incurred under or in furtherance of the Program before expiration, suspension, or termination of this Compact, and (ii) reasonable expenditures (including administrative expenses) properly incurred in connection with the winding up of the Program within one hundred twenty (120) days after the expiration, suspension, or termination of this Compact, so long as, with respect to (i) and (ii) herein, the request for such expenditures is submitted within ninety (90) days after such expiration, suspension, or termination.

(d) Subject to Section 5.1(c), upon the expiration, suspension, or termination of this Compact, (i) any amounts of MCC Funding not disbursed by MCC in accordance with the Compact and the PIA will be automatically released from any obligation in connection with this Compact, and (ii) any amounts of MCC Funding disbursed to the Permitted Account by MCC but not expended before the expiration, suspension or termination of this Compact, plus accrued interest thereon will be returned to MCC within thirty (30) days after the Government receives MCC's

request for such return; *provided, however,* that if this Compact is suspended or terminated in part, MCC may request a refund for only the amount of MCC Funding allocated to the suspended or terminated portion. For the avoidance of doubt, interest will accrue from the date of the violation and will be calculated at the 10-year U.S. Treasury Note rate prevailing as of the close of business in Washington, DC as of the date of MCC's request for payment.

(e) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

Section 5.2 Refunds; Violation

(a) If any MCC Funding, any interest or earnings thereon, or any asset acquired in whole or in part with MCC Funding is used for any purpose in violation of the terms of this Compact or the PIA, including, but not limited to, any violation of the Program Guidelines, then MCC may require the Government to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings, or assets, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. For the avoidance of doubt, interest will accrue from the date of the violation and will be calculated at the 10-year U.S. Treasury Note rate prevailing as of the close of business in Washington, DC as of the date of MCC's request for payment. The Government will not use MCC Funding, proceeds thereof or Program Assets to make such payment.

(b) Notwithstanding any other provision in this Compact or any other agreement to the contrary, MCC's right under this Section 5.2 for a refund will continue during the Compact Term and for a period of (i) five (5) years thereafter, or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

Section 5.3 Survival

The Government's responsibilities under Sections 2.4, 2.5, 2.6, 2.7, 2.8, 3.7, 3.8, 5.1(c), 5.1(d), 5.2, 5.3, 6.2, and 6.4 of this Compact will survive the expiration, suspension or termination of this Compact.

Article 6. Compact Annexes; Amendments; Governing Law

Section 6.1 Annexes

Each annex to this Compact constitutes an integral part hereof, and references to "Annex" mean an annex to this Compact unless otherwise expressly stated.

Section 6.2 Amendments

(a) The Parties may amend this Compact only by a written agreement signed by the Principal Representatives.

(b) Without formally amending this Compact, the Government hereby acknowledges and agrees that the Parties may, through the Principal Representative, in the case of Moldova, or Principal Representative, or any Additional Representative, in the case of MCC, as the case may be, in writing, agree to modify any Annex to this Compact to (i) suspend, terminate, or modify any project described in Annex I (each, a "*Project*" and collectively, the "*Projects*") or to create a new project, (ii) change the allocations of funds among the Projects, the Project Activities, or any Activity under Program administration or monitoring and evaluation, or between a Project identified as of the signature of this Compact and a new project, (iii) modify the terms of Section B.3 of Annex I, or (iv) add, delete, or waive any condition precedent described in Annex IV, *provided that* any such modification (1) is consistent in all material respects with the Program Objective, (2) does not cause the amount of Program Funding to exceed the aggregate amount specified in Section 2.1 of this Compact (as may be modified by operation of Section 2.2(e) of this Compact), (3) does not cause the amount of Compact Implementation Funding to exceed the aggregate amount specified in Section 2.2(a) of this Compact, (4) does not cause the Government's responsibilities or contribution of resources to be less than specified in this Compact, (5) does not extend the Compact Term, and (6) in the case of a modification to change allocations of funds among Projects or the creation of a new Project, does not materially adversely affect any Activity under Program administration or monitoring and evaluation.

(c) Any modification of any Annex to this Compact signed in accordance with Section 6.2(b), or any modification of any other provision of this Compact pursuant to Section 6.2(a), will be binding on the Government without the need for further action by the Government, any further Parliamentary action, or satisfaction of any additional domestic requirements of Moldova.

Section 6.3 Inconsistencies

In the event of any conflict or inconsistency between:

(a) Any Annex to this Compact and any of Articles 1 through 7, such Articles 1 through 7 will prevail; or

(b) This Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

Section 6.4 Governing Law

This Compact is an international agreement and as such will be governed by the principles of international law.

Section 6.5 Additional Instruments

Any reference to activities, obligations, or rights undertaken or existing under or in furtherance of this Compact or similar language will include activities, obligations, and rights undertaken by or existing under or in furtherance of any agreement, document, or instrument related to this Compact and the Program.

Section 6.6 References to MCC Web Site

Any reference in this Compact, the PIA, or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on the MCC Web site will be deemed a reference to such document or information as updated or substituted on the MCC Web site from time to time.

Section 6.7 References to Laws, Regulations, Policies, and Guidelines

Each reference in this Compact, the PIA, or any other agreement entered into in connection with this Compact, to a law, regulation, policy, guideline, or similar document (including, but not limited to, the Program Guidelines) will be construed as a reference to such law, regulation, policy, guideline, or similar document as it may, from time to time, be amended, revised, replaced, or extended and will include any law, regulation, policy, guideline, or similar document issued under or otherwise applicable or related to such law, regulation, policy, guideline, or similar document.

Section 6.8 MCC Status

MCC is a United States government corporation acting on behalf of the United States government in the implementation of this Compact. MCC and the United States government have no liability under this Compact, the Program Implementation Agreement, or any related agreement, are immune from any action or proceeding arising under or relating to any of the foregoing documents, and the Government hereby waives and releases all claims related to any such liability. In matters arising under or relating to this Compact, the

Program Implementation Agreement, or any related agreement, neither MCC nor the United States government will be subject to the jurisdiction of the courts of Moldova or of any other jurisdiction or of any other body.

Section 6.9 Counterparts; Electronic Delivery

(a) *Counterparts.* Signatures to this Compact, the Program Implementation Agreement, and any amendments to such agreements that are done as instruments to be signed by both Parties will be signed on the same page. Any other documents arising out of this Compact, may be signed in one or more counterparts. Such counterparts when delivered and taken together will constitute a single document.

(b) *Electronic Delivery.* A signature to this Compact, the Program Implementation Agreement, and any amendments to such agreements, will be an original signature. With respect to any other documents arising out of this Compact, a signature delivered by facsimile or electronic mail in accordance with Section 4.1 of this Compact will be deemed an original signature and will be binding on the Party delivering such signature, and the Parties hereby waive any objection to such signature or to the validity of the underlying document, certificate, notice, instrument, or agreement on the basis of the signature's legal effect, validity or enforceability solely because it is in facsimile or electronic form.

Article 7. Entry Into Force

Section 7.1 Domestic Requirements

Before this Compact enters into force, the Government will proceed in a timely manner to obtain ratification of this Compact by the Moldovan Parliament. The Parties understand that, upon its entry into force this Compact will prevail over the domestic laws of Moldova.

Section 7.2 Conditions Precedent to Entry Into Force

Before this Compact enters into force:

(a) The PIA must have been signed by the parties thereto;

(b) The Government must have delivered to MCC:

(i) A legal opinion from the Minister of Justice of Moldova (or such other legal representative of the Government acceptable to MCC), in form and substance satisfactory to MCC; and

(ii) Complete, certified copies of all decrees, legislation, regulations, or other governmental documents relating to the Government's domestic requirements for this Compact to enter into force and the satisfaction of Section 7.1, which MCC may post on the MCC Web site or otherwise make publicly available; and

(c) MCC must determine that, after signature of this Compact, the Government has not engaged in any action or omission that is inconsistent with the eligibility criteria for MCC Funding.

Section 7.3 Date of Entry into Force

This Compact will enter into force on the date of the last letter in an exchange of letters between the Principal Representatives confirming that each Party has completed its domestic requirements for entry into force of this Compact and that the conditions precedent to entry into force of Section 7.2 have been met.

Section 7.4 Compact Term

This Compact will remain in force for five (5) years after its entry into force, unless terminated earlier under Section 5.1 (the "*Compact Term*").

Section 7.5 Provisional Application

Upon signature of this Compact and until this Compact has entered into force in accordance with Section 7.3, the Parties will provisionally apply the terms of this Compact and the PIA; *provided that,* no Program Funding will be made available or disbursed before this Compact enters into force.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact.

Done at Washington, DC, this 22nd day of January, 2010, in the English language only.

For Millennium Challenge Corporation, on behalf of the United States of America, Name: Daniel W. Yohannes, Title: Chief Executive Officer.

For the Republic of Moldova, Name: Iurie Leancă, Title: Deputy Prime Minister, Minister of Foreign Affairs and European Integration.

Annex I—Program Description

This Annex I describes the Program that MCC Funding will support in Moldova during the Compact Term.

A. Program Overview

1. Background and Consultative Process

With a population of approximately 3.8 million inhabitants, Moldova was originally declared eligible for MCC Compact assistance in 2006. The Government mobilized a team of consultants to conduct an empirical analysis of the key constraints to growth. This constraints analysis served as the basis for two rounds of national consultations through regional town-hall meetings, as well as numerous meetings with smaller groups of stakeholders. Following these consultations, the Government submitted a Compact proposal in February 2008. In addition to the national consultations, project-specific consultations were conducted as part of the environmental and social impact assessment, both by the Government and by MCC-contracted entities. These public fora involved consultations with key stakeholders including: local government officials, regional and national staff from government agencies, civil society representatives, environmental and social non-governmental organizations, and interested local people to evaluate the proposed projects, to raise concerns, and to make recommendations on the design requirements to enhance benefits and reduce negative impacts from project implementation. These recommendations are to be incorporated into the detailed design to better address community needs. In addition, the Government and MCC worked with a consultative group of public and private sector representatives in the agricultural sector.

Agriculture has been the backbone of the Moldovan economy, with Moldova formerly serving as an important exporter of high value agriculture to the rest of the Soviet Union. Following the collapse of the Soviet Union, Moldova lost its position as a key exporter of fresh produce, and its extensive irrigation systems and post-harvest cold chain fell into disrepair.

Reforms necessary to attract private and donor investment in agriculture have been slow. As a result, Moldovan agriculture suffers from low productivity, contributing to high rates of rural poverty. However, with its fertile soils, relatively long growing season, and proximity to both European Union and former Soviet markets, Moldova has many of the necessary conditions to regain competitiveness in high value agriculture. The key constraints facing Moldovan producers are: lack of reliable water, lack of financing, lack of access to markets and technologies and lack of know-how. The Transition to High Value Agriculture Project will address these constraints.

The quality of the road network in Moldova is seriously deteriorated and has been cited repeatedly as a binding constraint to economic growth which impacts the entire country, as the country's economy is highly dependent on road transport. The Road Rehabilitation Project will address this constraint.

2. Program Objective

The Program Objective is to increase incomes through increased agricultural productivity and expanded access to markets and services through improved roads. The Program consists of the Transition to High Value Agriculture Project and the Road Rehabilitation Project as further described in this Annex I.

3. Environmental and Social Safeguards

The Transition to High Value Agriculture Project and the Road Rehabilitation Project will be implemented in compliance with the MCC Environmental Guidelines and MCC's environmental and social guidelines posted from time to time on the MCC Web site or otherwise made available to the Government by MCC ("*MCC Gender Policy*") and any resettlement will be carried out in accordance with best international resettlement standards based on the World Bank's Operational Policy on Involuntary Resettlement in effect as of July 2007 ("*OP 4.12*") and in accordance with procedures approved by MCC. The Government will also ensure that the Projects comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with this Compact. The Government will: (a) Cooperate with any ongoing environmental review, or if necessary undertake and complete any additional environmental reviews, required by MCC or under the laws of Moldova; (b) implement to MCC's satisfaction environmental and social mitigation measures identified in such environmental review; and (c) commit to fund environmental mitigation, (including costs of resettlement) in excess of MCC Funding not specifically provided for in the budget for any Project.

To maximize the positive social impacts of the Projects, address cross-cutting social and gender issues such as human trafficking, child and forced labor, and HIV/AIDS, and ensure compliance with the MCC Gender Policy, MCA–Moldova will: (i) Develop a comprehensive social and gender integration plan which, at a minimum, identifies approaches for regular, meaningful and inclusive consultations with women and other vulnerable/underrepresented groups, consolidates the findings and recommendations of Project-specific social and gender analyses and sets forth strategies for incorporating findings of the social and gender analyses into final Project designs as appropriate; and (ii) ensure, through monitoring and coordination during implementation, that final Project Activity designs, construction tender documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analysis and social and gender integration plan.

B. Description of the Projects

Set forth below is a description of each of the Projects that the Government will implement, or cause to be implemented, using MCC Funding to advance the applicable Project Objective. In addition, specific activities that will be undertaken within each Project (each, an "*Activity*"), including sub-activities, are described.

1. Transition to High Value Agriculture Project

(a) Summary of Project and Activities.

The objectives of the Transition to High Value Agriculture Project are to: (i) Increase rural incomes by stimulating growth in irrigated high value agriculture; and (ii) catalyze future investments in high value agriculture by establishing a successful and sustainable model of irrigation system and water resource management and a conducive institutional and policy environment for irrigated agriculture.

The Transition to High Value Agriculture Project consists of four reinforcing and integrated activities that, when implemented together, address the key constraints facing Moldovan producers: lack of reliable water, lack of financing, lack of access to markets and technologies, and lack of know-how (the "*Transition to High Value Agriculture Project*"). The Transition to High Value Agriculture Project will increase the ability and willingness of farmers to make the transition to higher value fruit and vegetable production. By addressing infrastructure and institutional/market constraints, the Transition to High Value Agriculture Project will break the vicious cycle of poor water service, low water tariff revenue, underinvestment in irrigation system maintenance, and low investment by farmers in high value agriculture (resulting in low agricultural incomes). The Transition to High Value Agriculture Project provides the first opportunity to pilot a set of institutional and management reforms, together with much needed infrastructure rehabilitation that will set the stage for future investment and enable Moldova to benefit from its natural comparative advantage in agriculture.

The Transition to High Value Agriculture Project will: (i) Rehabilitate up to 11 irrigation systems covering a command area of up to approximately 15,500 hectares (the "*Centralized Irrigation System Rehabilitation Activity*"); (ii) provide technical assistance and capacity building to (1) support legal transfer of management and operations of MCC-rehabilitated systems from the Government to Water User Associations ("*WUAs*"), (2) improve water resource management, including establishment of a modern water rights system, and (3) ensure the legal and institutional framework needed for private and/or donor investment in the irrigation sector (the "*Irrigation Sector Reform Activity*"); (iii) provide term financing and technical assistance to support high value agriculture-related investments by farmers and rural entrepreneurs (the "*Access to Agricultural Finance Activity*"); and (iv) provide market development support and technical assistance and training to help producers and agribusinesses better access high value agriculture markets and support the shift to high value agriculture at the production and post-harvest level, and promote sustainable agricultural practices (the "*Growing High Value Agriculture Sales Activity*"), the latter to be undertaken jointly with, and administered by, the United States Agency for International Development ("*USAID*").

The Transition to High Value Agriculture Project consists of the following Activities:

(i) Centralized Irrigation System Rehabilitation Activity.

Most of the Government-owned irrigation infrastructure in Moldova requires rehabilitation to bring the systems back into working condition. MCC Funding will be used to rehabilitate up to 11 systems to provide reliable water to farm operations in their command areas. The 11 systems eligible for rehabilitation have completed feasibility studies and are listed below, along with their respective system numbers as listed in the Government proposal to MCC, as follows:

1. Chircani-Zirnesti (6–6).
2. Blindesti (3–2).
3. Grozesti (3–6).
4. Leova Sud (5–4).
5. Cahul (6–9).
6. Jora de Jos (11–6).
7. Lopatna (11–7).
8. Cosnita (12–3).
9. Criuleni (14–2).
10. Puhaceni (14–11).
11. Roscani (14–13).

Specifically, in the above systems that are rehabilitated, MCC Funding will support:

(1) *Construction activities:* These costs may include, without limitation, simple

repair and/or replacement of pumps, valves, piping and ancillary systems, water intakes, related electrical and control systems, and pump station buildings; rehabilitation of reservoirs; and, installation of new system components where needed.

(2) *Non-construction activities:* These costs may include, without limitation, studies, construction supervision, WUA equipment reserve, environmental and social mitigation (including temporary or permanent resettlement compensation associated with construction) and other project management costs and technical assistance to be incurred in connection with the Centralized Irrigation System Rehabilitation Activity.

(ii) Irrigation Sector Reform Activity.

The Irrigation Sector Reform Activity is designed to: (1) Establish the enabling environment and institutional capacity required to ensure effective management (operations, maintenance and financing) of the rehabilitated irrigation systems (thereby better ensuring their sustainability); and (2) improve Moldova's capacity to manage its limited water resources in light of increasing demand for water and the expected effects of climate change.

MCC and the Government agree that institutional and policy reforms surrounding the centralized irrigation sector are necessary to maximize sustainability and project impact. The Irrigation Sector Reform Activity will transfer management responsibility for irrigation systems rehabilitated using MCC Funding from the Government to users by establishing and building capacity within WUAs. As a necessary condition for success in transfer of management and operations and maintenance responsibilities to WUAs, a new WUA law acceptable to MCC ("*WUA Law*") is required in Moldova to provide a solid legal foundation both for the transfer process and for the WUAs themselves to manage the systems. The Government will also ensure passage of a new water law acceptable to MCC ("*Water Law*") that will provide more secure long-term water rights and the framework to issue water management authorizations and improved and upgraded systems for water resource management at the basin level.

The Irrigation Sector Reform Activity consists of two sub-Activities: (1) The creation and implementation of improved institutional arrangements for the operations and maintenance of rehabilitated irrigation infrastructure (the "*Irrigation Management Transfer Sub-Activity*"); and (2) a comprehensive approach to water management to build the Government's capacity to ensure that water resources are effectively managed over the long term (the "*River Basin Management Sub-Activity*").

(1) Irrigation Management Transfer Sub-Activity.

The main objectives of the Irrigation Management Transfer Sub-Activity are: (A) Establishment of fully-functional WUAs with the capacity to effectively manage and maintain the rehabilitated systems; and (B) legal transfer of management responsibilities from the Government to those WUAs through management transfer agreements ("*MTAs*").

MCC Funding will support technical assistance and training to: (A) Assist WUA formation in a manner consistent with the WUA Law and with best practices of financially and operationally sustainable water service entities; (B) build capacity within WUAs to exercise responsibility for operations and maintenance of the rehabilitated systems; (C) support creation of a legal environment that enables WUAs to exercise this responsibility (WUA Law, Water Law with long-term water rights, and binding MTAs in full compliance with Moldovan law); and (D) assist and support the Government, as the legal owner of the irrigation infrastructure, to negotiate and sign system specific MTAs that legally transfer irrigation management responsibilities to WUAs for all rehabilitated systems.

(2) River Basin Management Sub-Activity.

Water resource management is vital to the sustainability of both irrigated agriculture and Moldova's long-term non-agricultural development. Growing demand for water, and concerns about climate change and the increasing frequency of drought and floods require improved water resource planning and secure water rights. The purpose of this sub-Activity is to help the Government improve management of water resources and assess future water availability in order to promote sustainable growth in the agricultural sector. In particular, the sub-Activity will: (A) Support the implementation of a Water Law and development of secondary regulations institutionalizing a modern system of secure, long-term water rights and river basin management; (B) provide institutional support and equipment (geographical information systems, databases, and decision support tools) to the Government to improve its ability to monitor water quality and quantity and issue water certificates under a Water Law and river basin management system; and (C) build institutional capacity in the Government to engage stakeholders in the participatory planning and management of water resources through a system of basin and sub-basin councils and management plans.

(iii) Access to Agricultural Finance Activity.

The objective of the Access to Agricultural Finance Activity is to provide term financing needed to support increased investment in the high value agriculture supply chain to facilitate transition to high value agriculture, with particular focus on serving farmers and enterprises operating in the irrigation systems targeted for rehabilitation. Improved sorting and packing of produce, and the ability to extend the production and marketing season, can assist Moldovan producers to become more competitive in domestic and export markets and to sell their production at a higher price. However, with virtually no domestic sources of long-term funding and little ability to access international debt markets, Moldovan financial institutions largely lack the ability to lend for investments in the high value agriculture supply chain for periods longer than three years.

The Access to Agricultural Finance Activity will be initiated on a pilot basis, which will be evaluated through an independent impact evaluation. The impact evaluation will likely involve some denial of credit under the Activity to otherwise eligible approved borrowers, possibly through randomization. The final decision whether to scale up or terminate the program will be in accordance to the PIA and will ensure that the activity, if scaled up, is likely to have an economic rate of return of 12 percent as determined by MCC's model for the Access to Agricultural Finance Activity in consultation with MCA-Moldova, or a rate acceptable to MCC, given the level of "additionality" of investment evidenced by the pilot, as well as other known parameters and costs of the activity at the time of this review.

The Access to Agricultural Finance Activity consists of two sub-Activities: (1) Term financing to support increased investments in the high value agriculture value chain (the "*High Value Agriculture Post-Harvest Credit Facility*"); and (2) demand-driven investment development services support (the "*Investment Development Services*").

(1) High Value Agriculture Post-Harvest Credit Facility Sub-Activity.

The objective of the High Value Agriculture Post-Harvest Credit Facility will provide term loans (three to seven years) through participating financial institutions ("*PFIs*") to fund post-harvest

supply chain investments. It will be managed by the Credit Line Directorate (the "*CLD*"), which is a program management unit within the Ministry of Finance established by the World Bank to oversee donor funded credit lines. Loans will be provided on a "back-to-back" basis (loans to PFIs will be made against, and will mirror terms of, PFI loans to end-borrowers). PFIs will take all repayment risk, with the obligation to repay loans regardless of the performance of the end-borrowers. PFIs will make their own underwriting decisions, subject to eligibility requirements stipulated by MCA-Moldova and MCC in the high value agriculture post- harvest policy and procedures manual. The primary benefit of the High Value Agriculture Post-Harvest Credit Facility is not to subsidize lending by financial institutions or investment by end borrowers, but instead to provide longer-term funding which is otherwise not available in the Moldovan financial markets. An approximate market-based rate will be established and adjusting on new and existing credits every six months, according to the process and methodology outlined in the high value agriculture post-harvest policy and procedures manual. The full list of eligible investments will be provided in the high value agriculture post-harvest policy and procedures manual. The specific determination of interest rates will be done in a manner consistent with a positive premium for the provision of term financing, and in a manner which prices loans not significantly below market rates. MCC reserves the right to review rates in context of changing market conditions, but will not raise the subsidy element as a means to increase disbursements without independent analysis showing that this would lead to greater additionality of viable investment. Borrowers are not restricted to investments in, adjacent to, or serving the MCC irrigation command areas.

(2) Investment Development Services.

Support for investment development services will be provided on a demand-driven cost sharing basis through Moldovan investment development service providers to those producers, producer groups and rural entrepreneurs interested in developing post harvest investment projects and obtaining loans for them via the High Value Agriculture Post-Harvest Credit Facility.

(iv) Growing High Value Agriculture Sales Activity.

The objective of the Growing High Value Agriculture Sales Activity is to increase farmer incomes by increasing sales of higher-value fruit and vegetables. Market assessments made during the project development process (and supported by the analysis of other donors) concluded that Moldova might have a comparative advantage in high value agriculture production. However, to realize this comparative advantage and compete on international markets, Moldovan high value agriculture producers and the Government will need to: (1) Aggressively seek export market opportunities; (2) upgrade production and the post harvest supply chain; (3) improve the enabling environment and create conditions conducive to high value agriculture (including reducing restrictions on new seed varieties and on imports of fertilizers and agriculture equipments); and (4) improve Moldova's compliance with sanitary and phytosanitary standards and ability to meet international standards.

To simplify implementation and increase efficiency, MCC Funding will be used to expand a planned USAID-administered agricultural development project and to target Transition to High Value Agriculture Project beneficiaries, such as producers within the rehabilitated systems and other value chain actors active in the high value agriculture markets. Subject to funding availability, USAID intends to contribute funding and administer and implement the program on behalf of MCA-Moldova and MCC. Specifically, MCC Funding will support the following tasks under the joint MCA-Moldova and USAID Growing High Value Agriculture Sales Activity:

(1) *Develop and Expand Market Opportunities for Moldovan High Value Agriculture Sub-Activity.* This sub-activity will focus on identifying market opportunities and understanding buyer requirements and specifications, with the objective of increasing export sales and attracting regional buyers and private sector investment to Moldova. As a part of the process of facilitating transactions and promoting Moldova as a source of high value agriculture in the region, several approaches for establishing a sustainable yet flexible network of buyers will be developed and tested.

(2) *Training to Upgrade Production and Meet Buyer Requirements Sub-Activity.* This sub-activity will develop a field and classroom-based program to help value chain actors, with primary focus on producers and producer groups; better understand and meet buyer requirements; reduce production and marketing costs; capture price premiums; and increase sales through improved high value agriculture production, post-harvest, and marketing practices. Training will include assistance to farmers to promote sustainable agricultural practices, specifically pest management, and soil and water conservation. Moldovan agriculture service providers, supplemented with international sector specialists as required, will implement a no-fee training program targeting beneficiaries both inside and outside the rehabilitated systems.

(3) *Demand-Driven Technical Assistance to Upgrade the High Value Agriculture Value Chain Sub-Activity.* This sub-activity is designed to support increased investment and improved performance in the high value agriculture value chain, with particular focus on the post-harvest infrastructure and equipment required to transition farmers to increased production of high value agriculture and enable producers, wholesalers and exporters to remain competitive and deliver fresh produce (properly packaged, stored and transported) to increasingly quality conscious buyers in the European Union, Commonwealth of Independent States, and domestic retail markets. A pre-approved group of local and international service providers will be established to provide customized consulting and business development services on a competitive, cost-sharing basis.

(4) *Implement Recommendations for an Improved Enabling Environment Sub-Activity.* This sub-activity will augment on-going efforts by USAID and other donors to identify and implement needed policy reforms in the agriculture sector which will improve competiveness and increase or preserve access to export markets. This task will: (A) Provide technical assistance to help the Government adopt legislation and policies to implement reforms that support high value agriculture, with specific attention to improving access to (and reducing import tariffs on) quality seeds, fertilizers, and other inputs, including high value agriculture-related equipment; and (B) establish sanitary and phytosanitary standards systems and procedures to support exports and reduce the risks of export bans through narrowly targeted upgrades in Government sanitary and phytosanitary controls, including laboratory equipment. As part of this component, the Ministry of Agriculture and Food Industry will be required to provide refurbished laboratory space, in conditions acceptable to USAID.

(b) Beneficiaries.

By 2029, the Parties expect that the Transition to High Value Agriculture Project will have benefitted at least

124,000 individuals, or at least 31,000 households. Beneficiaries of the Transition to High Value Agriculture Project include households with owners or shareholders of farming enterprises, farmers or owners of land, producers and intermediaries investing in and working in the high agriculture value sector, and laborers employed in the operation of enterprise farms within the command areas where MCC will rehabilitate the irrigation systems and producers and agribusinesses outside the systems targeted for rehabilitation that are already engaged in the high value agriculture sector.

Farm enterprises in the centralized irrigation system areas are expected to capture the majority of the Transition to High Value Agriculture Project's benefits. Up to 3,100 farm households are expected to benefit from the rehabilitation of centralized irrigation systems. Switching from non-irrigated to irrigated agriculture in Moldova can increase profitability by 200–500 percent or higher on a per hectare basis, depending on the crop mix. In the next 20 years, poor households could realize a cumulative increase in income equivalent to three years of current farm earnings, even with assumptions of gradual and partial adoption of irrigation. Individuals employed in seasonal labor will also benefit from the Transition to High Value Agriculture Project. Demand for seasonal labor is projected to increase as farms switch from grains to more labor-intensive high value agriculture crops. A projected 9,300 employees, most of whom are poor, will realize increased wage income due to greater demand for agricultural labor in the centralized irrigation system areas. Landowners will also benefit from the increased productivity and value of their land once it has access to irrigation. It is projected that approximately 15,500 individuals renting out their agricultural land will realize increased rent income of at least 20 percent.

The Access to Agricultural Finance Activity will directly benefit more than 100 post-production investors. The Growing High Value Agriculture Sales Activity, which is intended to use USAID funds, subject to availability, and MCC Funding, will assist individuals in the centralized irrigation system areas, as well as an additional 2,000 high value agriculture producers outside the centralized irrigation system areas, of whom at least 1,300 producers are expected to realize income gains. Additionally, the policy improvement and efforts to improve sanitary and phytosanitary standards of the Growing High Value Agriculture Sales Activity is expected to increase and safeguard incomes for all high value agriculture producers in Moldova, estimated at 83,000 households and 315,000 beneficiaries as of 2009.

(c) Environmental and Social Mitigation.

The Transition to High Value Agriculture Project is classified as "Category A" according to MCC Environmental Guidelines because it could potentially result in significant, long-term direct, indirect, and cumulative environmental and social impacts, including impacts to two international waterways. Environmental and social impact assessments have been initiated, which will inform detailed project design and establish environmental management plans and resettlement policy framework or action plans to be implemented during the construction and operation phases of the project

The Access to Agricultural Finance Activity will be designed and implemented in accordance with requirements set forth in MCC Environmental Guidelines for "Category D" (financial intermediary) projects, requiring pre-screening of loan applications for environmental and social impacts as part of the approval process. MCC Environmental Guidelines under Category D reserves for MCC the "right to set additional performance standards and monitoring requirements for subprojects on a case-by-case basis, depending on the nature of the intermediate facility."

(d) Donor Coordination.

MCC has coordinated closely with the two donors most active in the agriculture sector in Moldova—USAID and the World Bank—on the Transition to High Value Agriculture Project. MCC has also worked closely with the European Union, World Bank, Organization for Economic Co-operation and Development, and the United Nations Development Fund for Women on environmental and social issues such as water resource management and gender. Further, the World Bank Mission in Chisinau, Moldova, and World Bank sector and regional specialists in Washington, DC, have provided contacts, studies, lessons learned, and informal peer review at all stages in the process starting with early concerns about land tenure and consolidation issues. Input and collaboration between the World Bank and MCC have been the most significant and influential in the development of the access to agricultural finance, irrigation management transfer, and food safety components and interventions.

Also significant is the successful partnership between USAID, MCC and MCA-Moldova. USAID and MCC worked together to develop a joint project designed to build on USAID's 15 years of experience in the agriculture sector and, at the same time, support the significant MCC irrigation infrastructure investment. Subject to the availability of funds, the joint Growing High Value Agriculture Sales Activity is intended to provide the technical assistance and market development support needed to help producers transition to high value agriculture fruit and vegetable crops. The Growing High Value Agriculture Sales Activity, which will target, but will not be limited to, areas where MCC irrigation rehabilitation will occur, is designed to emphasize promotion of market opportunities within Moldova and encourage increased private sector and foreign investment in the high value agriculture sector. Subject to the availability of funds, USAID intends to contribute funding for the Growing High Value Agriculture Sales Activity, which would be administered by USAID on behalf of MCA-Moldova. This joint approach addresses and reduces implementation capacity concerns by allowing for improved implementation and project oversight and more efficient use of resources.

(e) Sustainability.

The Transition to High Value Agriculture Project is designed as a comprehensive project that will increase farmer incomes and break the cycle of poor water service, low water tariff revenue, underinvestment in irrigation system maintenance, and low investment by farmers in high value agriculture. Each of the four activities reinforces the other in ensuring project sustainability and building the capacity of local institutions and service providers.

The Irrigation Sector Reform Activity, and its Irrigation Management Transfer Sub-Activity and River Basin Management Sub-Activity, are designed to ensure that the rehabilitated centralized irrigation systems (MCC's primary high value agriculture investment) are effectively operated and maintained through the transfer of responsibility for operations and maintenance to the WUAs. A condition for commencing rehabilitation of these systems is the passage of a WUA Law that will support the legal transfer of responsibility for Government owned assets to WUAs. The WUA Law will require that WUA membership represents at least 50 percent of the users and 50 percent of the intended service area of the WUA. The WUA Law will also empower the WUAs with the

authority to establish and collect water tariffs sufficient to cover their fixed costs and ensure financial stability of the rehabilitated systems. The River Basin Management Sub-Activity will provide a comprehensive approach to water management to build the Government's capacity to ensure that water resources are effectively managed over the long term.

The Access to Agricultural Finance Activity and Growing High Value Agriculture Sales Activity address the need to upgrade production and the high value agriculture value chain in order for Moldovan high value agriculture producers to become and remain competitive in the long term. It will also promote water and soil conservation, integrated pest management, and other sustainable agricultural practices. Both of these activities are driven by market signals and demand from the value chain actors, ensuring that the most appropriate and targeted training and technical assistance is provided. Technical assistance programs in both activities will utilize local service providers whenever possible, and will provide training to those local service providers so that they are able to sustainably serve the market after the Compact is completed. The High Value Agriculture Post-Harvest Credit Facility is intended to extend beyond the end of the Compact to facilitate issuance of loans extending beyond the Compact.

(f) Policy, Legal and Regulatory Reforms.

Regulatory reform is required for the success of the Transition to High Value Agriculture Project. The publication in the "Monitorul Oficial" of the WUA Law acceptable to MCC, which law will be in full force and effect no later than three months after the date of publication, is a condition precedent to signing the detailed design studies contract for the centralized irrigation system rehabilitation. Registration of WUAs to operate and maintain the centralized irrigation systems to be rehabilitated, and publication in the "Monitorul Oficial" of the Water Law acceptable to MCC are conditions precedent to commencement of procurement for the centralized irrigation system construction works contract.

2. Road Rehabilitation Project

(a) Summary of Project and Activities.

The objectives of the Road Rehabilitation Project (the "*Road Rehabilitation Project*") are to: (i) Increase incomes of the local population by reducing the cost of transport, goods and services; (ii) reduce losses to the national economy resulting from the deteriorated road conditions; and (iii) reduce the number of road accidents through improved traffic conditions. Rooted in the National Development Strategy and the Land Transport Infrastructure Strategy (2008–2017), the Road Rehabilitation Project was developed with the assistance of external partners in the road sector (World Bank, European Bank for Reconstruction and Development, European Investment Bank, European Commission, and MCC, collectively the "*Joint Group*"). The strategy recommends the rehabilitation of the major trans-national axis that crosses Moldova from north to south.

The Road Rehabilitation Project will improve part of the M2 [1] road ("*M2*"), which is an arterial highway from the Moldovan capital, Chisinau, through the city of Soroca, to the Ukrainian border and beyond to Kyiv, the Ukrainian capital. This route contains significant traffic flows, serves as a significant link between Moldova and Ukraine for private, passenger, and commercial traffic, and has been prioritized by the Government for rehabilitation.

The Road Rehabilitation Project consists of the following:

(i) M2 Road Activity.

MCC Funding will be used to rehabilitate and upgrade a 93 km portion of the M2, beginning near Sarateni at the southern end and ending at the junction with the R7 road west to Drochia (the "Drochia junction") at the northern end (the "*M2 Road Activity*"). MCC Funding will also be used to replace or upgrade associated structures within this segment of the M2, such as bridges, drainage systems and culverts, to improve road maintenance and safety. The M2's improvement is expected to reduce vehicle operating costs, reduce travel time, change maintenance costs, cause an increase in the value of goods moved and cause an increase in frequent travel. Specifically, MCC Funding will support:

(1) *Construction costs:* These costs include, without limitation, pavement rehabilitation and strengthening, embankment construction, road safety improvements, replacement or upgrading of associated structures, such as bridges, drainage systems and culverts, and any activity associated with the environmental management plan developed with respect to the Activity.

(2) *Non-construction costs:* These costs include, without limitation, studies, construction supervision, environmental and social mitigation (including resettlement), and other project management costs and technical assistance to be incurred in connection with the M2 Road Activity.

(ii) Supplemental Feasibility Study/ESIA and Design.

MCC Funding will also be used for a feasibility study/environmental and social impact assessment for the road segment from Arionesti to the border crossing in Otaci, detailed design work, a resettlement action plan and an updated environmental and social impact assessment for the entire road section from the Drochia junction to the border crossing in Otaci.

(b) Beneficiaries.

The M2 Road Activity is expected to benefit approximately 78,000 households over the next 20 years, or approximately 302,000 beneficiaries. Rehabilitation of the M2 will benefit the users and owners of motorized vehicles utilizing the road, including local agricultural and other producers and buyers; providers and users of passenger transport services; and non-commercial owners of private motorized transport. In addition, sellers and merchandisers of products transported along this road will likely benefit. At present there are approximately 273,000 beneficiaries living along the road, and approximately 29,000 individuals from the road rehabilitation outside the region. Over 20 years, poor beneficiary households (earning less than US$2 purchasing power parity ("*PPP*") per day per capita) could realize a cumulative increase in income equivalent to more than one year of current income. Taking into account traffic originating from and destined for areas outside the adjacent areas, the beneficiary analysis estimates that about 15 percent of the beneficiaries of the investment will be among households that now live on less than US$2 per person per day (in PPP terms).

(c) Environmental and Social Mitigation.

The M2 Road Activity is classified as "Category B" according to MCC Environmental Guidelines. The M2 Road Activity is expected to produce site-specific and limited environmental and social impacts that can be mitigated and monitored. An environmental and social impact assessment has been initiated which will inform detailed product design and establish an environmental management plan and resettlement policy framework and action plans for construction.

(d) Donor Coordination.

In addition to general coordination with the Joint Group, the Road Rehabilitation Project will benefit from

[1] As referenced, the M2 includes approximately 9 km of the R7 road.

technical assistance being provided to the State Road Administration through the Road Sector Support Program funded by an approximate US$5 million World Bank credit. The program will fund consulting services for design and introduction of an axle load control system; consulting services for reform of road maintenance execution arrangements (including road asset valuation); technical and financial audits; support by local consultants in the areas of procurement, environment, and financial management; and training activities.

(e) Sustainability.

Sustainability of the Road Rehabilitation Project requires both routine and periodic maintenance, which can only be accomplished if there is adequate funding and if appropriate mechanisms are in place to carry out the maintenance. A lack of maintenance is evidenced by the state of deterioration of the road. At least 50 percent of the road needs to be reconstructed from the sub-base. Most of the bridges show severe corrosion of the reinforcement bars, causing a loss of required strength and concrete spalling.

The Government, with the assistance of the Joint Group, had adopted the Land Transport Infrastructure Strategy, which, along with other points, addresses the current deficiencies in road maintenance funding and execution. In particular, the Government committed in writing in February 2008 to amend the Road Fund Law to ensure that an adequate percentage of the revenue from the fuel excise tax, sources of revenue introduced in large part to fund road maintenance, would be automatically allocated to the Road Fund.

To increase the likelihood of sustaining the benefits of the rehabilitated M2, and to prepare a more sustainable basis for future investments in the roads sector, the Government will provide MCC with evidence that an amended Road Fund Law, providing a more reliable mechanism for adequate road maintenance funding, is in full force and effect, before invitations for construction bids are issued under the Compact. Measurable progress monitors are set forth in the Program Implementation Agreement as conditions precedent to disbursement for the Road Rehabilitation Project.

(f) Policy, Legal and Regulatory Reforms.

Policy, legal, and regulatory reforms are required to implement the Road Rehabilitation Project. As a condition precedent to commencement of procurement for construction, the Government will ensure the amendment of the Road Fund Law to provide sustainable funding for adequate road maintenance.

3. Implementation Framework

(a) Overview.

The implementation framework and the plan for ensuring adequate governance, oversight, management, monitoring and evaluation, and fiscal accountability for the use of MCC Funding are summarized below. MCC and the Government will enter into the Program Implementation Agreement, and any other agreements in furtherance of this Compact, all of which, together with this Compact, set out certain rights, responsibilities, duties and other terms relating to the implementation of the Program.

(b) MCC.

MCC will take all appropriate actions to carry out its responsibilities in connection with this Compact and the Program Implementation Agreement, including the exercise of its approval rights in connection with the implementation of the Program.

(c) MCA-Moldova.

In accordance with Section 3.2(b) of this Compact, MCA-Moldova will act on the Government's behalf to implement the Program and to exercise and perform the Government's rights and responsibilities with respect to the oversight, management, monitoring and evaluation, and implementation of the Program, including, without limitation, managing the implementation of Projects and their Activities, allocating resources, and managing procurements. The Government will ensure that MCA-Moldova takes all appropriate actions to implement the Program, including the exercise and performance of the rights and responsibilities designated to it by the Government pursuant to this Compact and the Program Implementation Agreement. Without limiting the foregoing, the Government will also ensure that MCA-Moldova has full decision-making autonomy, including, *inter alia,* the ability, without consultation with, or the consent or approval of, any other party, to (i) Enter into contracts in its own name, (ii) sue and be sued, (iii) establish an account in a financial institution in the name of MCA-Moldova and hold MCC Funding in that account, (iv) expend MCC Funding, (v) engage a fiscal agent who will act on behalf of MCA-Moldova on terms acceptable to MCC, (vi) engage one or more procurement agents who will act on behalf of MCA-Moldova, on terms acceptable to MCC, to manage the acquisition of the goods, works, and services required by MCA-Moldova to implement the activities funded by this Compact, and (vii) competitively engage one or more auditors to conduct audits of its accounts. The Government will take the necessary actions to establish MCA-Moldova, in accordance with the applicable conditions precedent to the disbursement of Compact Implementation Funding set forth in Annex IV to this Compact.

MCA-Moldova will be administered and managed by a Steering Committee and a Management Unit. In addition, MCA-Moldova will have the Consultative Group to continue the consultative process during implementation of the Program. The governance of MCA-Moldova will be set forth in more detail in the Establishment Decree, the Program Implementation Agreement, and the internal regulations of MCA-Moldova ("*MCA-Moldova Bylaws*"), which will, collectively, set forth the responsibilities of the Steering Committee, the Consultative Group and the Management Unit. The MCA-Moldova Bylaws will be developed and adopted in accordance with MCC's Guidelines for Accountable Entities and Implementation Structures, published on the MCC Web site (the "*Governance Guidelines*"), and will be in form and substance satisfactory to MCC.

(i) Steering Committee.

(1) *Composition.* MCA-Moldova will be governed by the steering committee, or the board of directors (the "*Steering Committee*"), which will consist of voting members representing those Government ministries and civil society and private sector organizations set forth in the Establishment Decree. The Steering Committee will also consist of those non-voting observers set forth in the Establishment Decree. All voting members will be selected in accordance with the MCA-Moldova Bylaws and must be sufficiently senior and qualified to make decisions on behalf of their respective ministries and civil society and private sector organizations, as applicable. Each voting member named to serve on the Steering Committee, and any replacement for any voting member or any alteration of the size or composition of the Steering Committee, will be subject to MCC prior approval. In the event that none of the civil society and private sector organizations represented as voting members on the Steering Committee are from an environmentally focused non-governmental organization, an additional observer from such an organization, subject to the prior receipt of a no-objection notice from MCC, will be appointed.

(2) *Roles and Responsibilities.* The Steering Committee will be responsible for overseeing the implementation of the

Program and will have final decision-making authority over the implementation of the Program. The Steering Committee will meet regularly; the frequency of meetings will be set forth in the MCA-Moldova Bylaws and will be in accordance with the Governance Guidelines. The specific roles of the voting members and non-voting observers will be set forth in the Establishment Decree and the MCA-Moldova Bylaws.

(ii) Consultative Group.

(1) *Composition.* Pursuant to the Establishment Decree, the composition of the consultative group will be selected in accordance with the MCA-Moldova Bylaws and the Governance Guidelines and subject to MCC approval (the "*Consultative Group*"). Without limiting the foregoing, the Establishment Decree provides that the Consultative Group will be composed of, *inter alia,* Program beneficiaries, regional and local government representatives, entities with an interest or involvement in the implementation of the Program, and any applicable civil society and private sector representatives. In addition, the Steering Committee may establish regional, informal consultative groups in the project intervention zones composed of, *inter alia,* Program beneficiaries, regional and local government representatives, entities with an interest or involvement in the implementation of the Program, and any applicable civil society and private sector representatives. The establishment and composition of any such regional, informal consultative groups will also be subject to MCC approval.

(2) *Roles and Responsibilities.* Consistent with the Governance Guidelines, the Consultative Group (and any informal, regional stakeholders committees established by the Steering Committee) will be responsible for continuing the consultative process throughout implementation of the Program. While the Consultative Group (and any informal, regional stakeholders committees established by the Steering Committee) will not have any decision-making authority, it will be responsible for, *inter alia,* reviewing, at the request of the Steering Committee or the Management Unit, certain reports, agreements, and documents related to the implementation of the Program in order to provide advice and input to MCA-Moldova regarding the implementation of the Program.

(iii) Management Unit.

(1) *Composition.* The management unit, which will be led by a competitively selected Executive Director, will be composed of competitively selected staff with expertise in the key components of the Program, including, without limitation, a Road Rehabilitation Project Director, Transition to High Value Agriculture Director, Centralized Irrigation System Rehabilitation Activity Director, as well as a Deputy Executive Director, a Legal Advisor, and other key Directors, including, without limitation, a Finance and Administrative Director, Communications and Documentation Director, a Procurement Director, a Monitoring and Evaluation Director, Environmental and Social Director, and Social and Gender Officer (the "*Management Unit*"). The Management Unit will also include such other personnel as provided for in the MCA-Moldova Bylaws. The directors will be supported by appropriate additional staff to enable the Management Unit to execute its roles and responsibilities.

(iv) *Roles and Responsibilities.* The Management Unit will be based in Chisinau, Moldova, and will be responsible for managing the day-to-day implementation of the Program, with oversight from the Steering Committee. The Management Unit will serve as the principal link between MCC and the Government, and will be accountable for the successful execution of the Program, each Project, and each Activity. As a Government entity, MCA-Moldova will be subject to Government audit requirements. As a recipient of MCC Funding, MCA-Moldova will also be subject to MCC audit requirements.

(d) Implementing Entities.

Subject to the terms and conditions of this Compact and any other related agreements entered into in connection with this Compact, the Government and MCC have identified certain principal public institutions that may or will serve as implementing entities (each, an "*Implementing Entity*") to implement and carry out certain Projects and/or Activities (and/or any component thereof) in furtherance of this Compact. Any Implementing Entity will be subject to review and approval by MCC. The Government will ensure that the roles and responsibilities of each Implementing Entity and other appropriate terms are set forth in an agreement between MCA-Moldova and each Implementing Entity, which agreement must be in form and substance satisfactory to MCC (each an "*Implementing Entity Agreement*").

(e) Fiscal Agent.

Unless MCC otherwise agrees in writing, the Government, directly or through MCA-Moldova, will engage a fiscal agent (a "*Fiscal Agent*"), who will be responsible for assisting the Government with its fiscal management and ensure appropriate fiscal accountability of MCC Funding, and whose duties will include those set forth in the Program Implementation Agreement.

(f) Procurement Agent.

Unless MCC otherwise agrees in writing, the Government, directly or through MCA-Moldova, will engage one or more procurement agents (each, a "*Procurement Agent*") to carry out and certify specified procurement activities in furtherance of this Compact. The roles and responsibilities of each Procurement Agent will be set forth in the Program Implementation Agreement or such agreement as the Government, directly or through MCA-Moldova, enters into with each Procurement Agent, which agreement will be in form and substance satisfactory to MCC. Each Procurement Agent will adhere to the procurement standards set forth in the MCC Program Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by MCA-Moldova pursuant to the Program Implementation Agreement, unless MCC otherwise agrees in writing.

Annex II—Multi-Year Financial Plan Summary

This Annex II summarizes the Multi-Year Financial Plan for the Program.

1. General

A multi-year financial plan summary ("*Multi-Year Financial Plan Summary*") is attached hereto as Exhibit A. By such time as is specified in the PIA, the Government will adopt, subject to MCC approval, a multi-year financial plan that includes, in addition to the multi-year summary of estimated MCC Funding and the Government's contribution of funds and resources, the annual and quarterly funding requirements for the Program (including administrative costs) and for each Project, projected both on a commitment and cash requirement basis ("*Multi-Year Financial Plan*").

Exhibit A—Multi-Year Financial Plan Summary

MULTI-YEAR FINANCIAL PLAN SUMMARY—PROJECTED DISBURSEMENTS
(US$)

Project	Prior to EIF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Transition to High Value Agriculture (THVA) Project							
Activity 1.1: Rehabilitation of Centralized Irrigation Systems (CIS)							
Activity 1.2: Irrigation Sector Reform (ISR)							
Activity 1.3: Access to Agricultural Finance (AAF)							
Activity 1.4: Growing High Value Agriculture Sales (GHS)							
Sub-Total	511,803	8,607,776	19,560,020	30,880,103	28,323,440	13,890,259	101,773,401
2. Road Rehabilitation Project							
Activity 2.1: M2 Sarateni—Drochia Junction							
Activity 2.2: M2 Drochia Junction—Otaci Studies							
Sub-Total	37,500	2,037,500	26,278,000	52,206,000	39,142,000	13,139,000	132,840,000
3. Monitoring and Evaluation (M&E)							
Monitoring and Evaluation							
Sub-Total	20,000	489,250	310,844	939,745	399,556	1,379,536	3,538,931
4. Program Administration and Audit							
MCA-Moldova							
Fiscal Agent/Procurement Agent							
Audit							
Sub-Total	362,691	4,822,771	4,680,772	4,554,660	4,750,702	4,676,072	23,847,668
Grand Total	[2]931,994	15,957,297	50,829,636	88,580,508	72,615,698	33,084,867	262,000,000

Annex III—Description of Monitoring and Evaluation Plan

This Annex III (this "*M&E Annex*") generally describes the components of the Monitoring and Evaluation Plan ("*M&E Plan*") for the Program. The actual content and form of the M&E Plan will be agreed to by MCC and the Government in accordance with the Program Implementation Agreement. The M&E Plan may be modified from time to time with MCC approval without requiring an amendment to this Annex III.

1. Overview

MCC and the Government will formulate and agree to, and the Government will implement, or cause to be implemented, an M&E Plan that specifies (a) How progress toward the Compact Goal, Program Objective and Project Objectives will be monitored ("*Monitoring Component*"), (b) a process and timeline for the monitoring of planned, ongoing, or completed Project Activities to determine their efficiency and effectiveness, and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program ("*Evaluation Component*"). Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available on the Web site of MCA-Moldova and elsewhere.

2. Program Logic

The M&E Plan will be built on a logic model which illustrates how the

[2] Total commitments of Compact Implementation Funding are expected to be approximately US$8.0 million. Disbursement of Compact Implementation Funding will continue after entry into force of the Compact.

Program, Projects and Activities contribute to the Compact Goal, the Program Objective and the Project Objectives.

3. Monitoring Component

To monitor progress toward the achievement of the impact and outcomes, the Monitoring Component of the M&E Plan will identify (a) The Indicators (as defined below), (b) the definitions of the Indicators, (c) the sources and methods for data collection, (d) the frequency for data collection, (e) the party or parties responsible, and (f) the timeline for reporting on each Indicator to MCC.

Further, the Monitoring Component will track changes in the selected Indicators for measuring progress towards the achievement of the objectives during the Compact Term. The M&E Plan will establish baselines which measure the situation prior to a development intervention, against which progress can be assessed or comparisons made (each a, "*Baseline*"). MCA-Moldova will collect Baselines on the selected Indicators or verify already collected Baselines where applicable and as set forth in the M&E Plan.

(a) *Indicators.* The M&E Plan will measure the results of the Program using quantitative, objective and reliable data ("*Indicators*"). Each Indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved ("*Target*"). The M&E Plan will be prepared in accordance with the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs. All Indicators will be disaggregated by gender, income level and age, and beneficiary types to the extent practicable. Subject to prior written approval from MCC, MCA-Moldova may add Indicators or refine the definitions and Targets of existing Indicators.

(i) Compact Indicators.

(1) *Goal.* The M&E Plan will contain the following Indicators related to the Compact Goal. The Target of these Indicators are national goals as specified in Moldova's "National Development Strategy" to which the Project contributes, but are not solely attributable to the Project:

(A) *Absolute poverty rate nationwide:* 30.2 percent to 20.0 percent by year 2015; and

(B) *Absolute rural poverty rate:* 34.1 percent to 22.6 percent by year 2015.

(2) *Other Indicators.* The M&E Plan will contain the Indicators listed in the following tables.

TABLE 1—TRANSITION TO HIGH VALUE AGRICULTURE PROJECT OBJECTIVE INDICATORS

Result	Indicator	Definition of indicator	Baseline [3]	Year 5
Incomes increase due to transition to high value agriculture interventions.	Increase in the annual profits of crop production per hectare.	Total annual profits of crop production in areas targeted by the Centralized Irrigation System Rehabilitation Activity ("Target Areas") (excluding rent and labor cost)/total Target Areas (US$) [4].	180	390
	Increase in the rent for land paid to lessors per hectare.	Average rent paid by lessee to lessor per hectare of rented land in Target Areas (US$) [5].	80	100
	Increase in the wage bill paid to labor per hectare.	Value of labor (total person-days of labor × average daily wage excluding household labor) per annum/total Target Areas (US$) [6].	40	180
	Increase in the annual profits among assisted farms outside of Target Areas.	Percent differential between the annual per hectare profit (excluding rent and labor costs) realized among assisted farms outside of Target Areas and a comparison farm group.	NA	20%
Moldova has examples of a model for transition to high value agriculture in centrally irrigated areas and an enabling environment (legal, financial, and market) for replication of the model.	Increase in the area irrigated in Target Areas.	Number of hectares of irrigated crops (high value agriculture, grains and technical crops) in Target Areas [7].	1,100	3,460
	Adoption of HVA crops in Target Areas.	Number of hectares of irrigated and non-irrigated high value agriculture crops (fruits, grapes, vegetables, potatoes, *etc.*) in Target Areas [8].	1,800	2,840

TABLE 1.1—REHABILITATION OF CENTRALIZED IRRIGATION SYSTEMS ACTIVITY INDICATORS

Result	Indicator	Definition of indicator	Baseline [9]	Year 5
Outcome Level Indicators				
Rehabilitated centralized irrigation systems can serve a large agricultural area.	Command area with access to functional systems expands.	Hectares of agricultural land with access to the functional centralized irrigation systems rehabilitated under Compact.	1,100	15,500

TABLE 1.1—REHABILITATION OF CENTRALIZED IRRIGATION SYSTEMS ACTIVITY INDICATORS—Continued

Result	Indicator	Definition of indicator	Baseline [9]	Year 5
Output Level Indicators				
Rehabilitated centralized irrigation systems can serve a large agricultural area.	Centralized irrigation systems rehabilitated.	Number of centralized irrigation systems with rehabilitation works completed under Compact.	NA	11

TABLE 1.2—IRRIGATION SECTOR REFORM ACTIVITY INDICATORS

Result	Indicator	Definition of indicator	Baseline	Year 5
Outcome Level Indicators				
Management of centralized irrigation systems shifted to users.	WUAs established under new law	Number of WUAs registered under new specific WUAs law.	NA	11
	MTAs signed	Number of MTAs signed between the Government, assisted WUAs, and MCA-Moldova.	NA	11
Effective governance and management in systems rehabilitated under the Compact.	Improved perception of quality of service by water users.	Percentage of centralized irrigation systems users satisfied with the timeliness, cost and administration of irrigation [10].	41	75
WUAs achieving financial sustainability.	Number of assisted WUAs where tariffs collected covers 100% of operating costs plus an amount for capital/replacement costs.	NA	11 or all systems rehabilitated.	
Active and representative governance.	Number of WUAs with annual plans and year end reports approved by their respective general assemblies.	NA	11 or all systems rehabilitated.	
Gender-balanced WUAs' management and governance.	Number of WUAs having at least 20% of board member positions filled by women.	NA	9 or 80% of systems rehabilitated.	
Enhanced management of water resources based on river basin management.	Revised water management policy framework—with long-term water rights defined—established.	The Water Law which establishes long-term water rights is in full force and effect.	Water Law circulated for comments.	Water Law in full force and effect.

TABLE 1.3—ACCESS TO AGRICULTURAL FINANCE ACTIVITY INDICATORS [11]

Result	Indicator	Definition of indicator	Baseline	Year 5
Outcome Level Indicators				
Post-harvest infrastructure and equipment is in place to support increases in high value agriculture.	New high value agriculture post-harvest infrastructure and equipment operating effectively.	Operational cold-storage capacity of high value agriculture post-harvest structures financed under the Access to Agriculture Finance Activity (metric tons).	0	[12]10,500.
		Percentage of the financed amount of the investment deemed to be additional [13].	0	75
Investment Development Support Services facilitate creation of post-harvest enterprises and result in new jobs.	New agricultural loans resulting from Investment Development Services.	Number of agricultural loans received by borrowers which received support from Investment Development Services.	0	55
Output Level Indicators				
Farmers and agricultural businesses have enhanced access to affordable and adequate finance.	Affordable financing provided for post-harvest infrastructure through the High Value Agriculture Post-Harvest Credit Facility.	Amount of loans provided under the Access to Agriculture Finance Activity for post-harvest infrastructure (US$).	0	14,900,000

TABLE 1.4—GROWING HIGH VALUE AGRICULTURE SALES (USAID-ADMINISTERED) ACTIVITY INDICATORS [14]

Result	Indicator	Definition of indicator	Baseline	Year 5
Outcome Level Indicators				
Trade relations of Moldovan high value agriculture suppliers are enhanced due to promotion activities.	Value of sales facilitated	Value of annual sales facilitated by the Activity contractor on behalf of Moldovan producers or producer groups (US$).	NA	10,500,000
Farmers, producer business cooperatives, and exporters meet buyer requirements, lower costs, capture price premiums, and increase sales due to technical assistance.	Farmers apply acquired knowledge.	Number of farmers adopting practices presented through technical assistance programs, among farmers within Target Areas and farmers outside Target Areas under the Growing High Value Agriculture Sales Activity.	NA	2,800
Enabling environment for high value agriculture production and export market access is improved due to implementation of policy and sanitary and phytosanitary standards recommendations.	Reduced risk of export bans due to improved export certification and inspection systems.	Moldova sanitary and phytosanitary services achieve compliance with IPPC, ISPM Guidelines 7, 20 and 23 and the Central Phytosanitary Laboratory is certified to ISO 9000 standards as confirmed by an independent auditor.	NA	Audit "passed."

TABLE 2—ROAD REHABILITATION INDICATORS

Result	Indicator	Definition of indicator	Baseline	Year 5
Objective Level Indicators				
Transportation conditions are enhanced.	Reduced costs to road users	Value of time savings and reduced vehicle operating costs with the project compared to no rehabilitation (modeled by HDM4) (US$).	0	112,000,000
	Increased vehicular activity	Average annual daily traffic on the road segment rehabilitated under Compact.	3,009	4,270.
Outcome Level Indicators				
Road quality is improved	Improved international roughness index.	International roughness index for the road segment rehabilitated under Compact [15].	12	2.
Road network is sustainably maintained.	Revised legislative basis for road maintenance funding designed to meet the needs for sustainability of roads infrastructure.	Appropriate legislation is in full force and effect in accordance with the Program Implementation Agreement to ensure a sufficient percentage of revenue from the fuel excise tax is automatically allocated to the Road Fund.	Draft Road Fund Law has been presented to the Joint Group of external partners.	Road Fund Law in full force and effect.
Output Level Indicators				
Roads are rehabilitated	Total length of roads rehabilitated	Total length of road sections rehabilitated (km).	0	93.

(b) *Data Collection and Reporting.* The M&E Plan will establish guidelines for data collection and reporting, and identify the responsible parties. Compliance with data collection and reporting timelines will be conditions for Disbursements for the relevant Project Activities as set forth in the Program Implementation Agreement. The M&E Plan will specify the data collection methodologies, procedures, and analysis required for reporting on results at all levels. The M&E Plan will describe any interim MCC approvals for data collection, analysis, and reporting plans.

(c) *Data Quality Reviews.* As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data across

[3] All currency figures are in 2009 values using a market conversion rate of 10.52 MDL/US$.

[4] After Year 5, MCC forecasts this figure will reach a peak value of 1,540 US$. The target refers

different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

(d) *Management Information System.* The M&E Plan will describe the information system that will be used to collect data, store, process and deliver information to relevant stakeholders in such a way that the Program information collected and verified pursuant to the M&E Plan is at all times accessible and useful to those who wish to use it. The system development will take into consideration the requirement and data needs of the components of the Program, and will be aligned with existing MCC systems, other service providers, and ministries.

(e) *Role of MCA–Moldova.* The monitoring and evaluation of this Compact spans discrete Projects and will involve a variety of governmental, non-governmental, and private sector institutions. Subject to Section 3.2(b) of the Compact, MCA–Moldova is responsible for implementation of the M&E Plan. MCA–Moldova will oversee all Compact-related monitoring and evaluation activities conducted for each of the Projects, ensuring that data from all implementing entities is consistent, accurately reported and aggregated into regular Compact performance reports as described in the M&E Plan.

4. Evaluation Component

The evaluation component of the M&E Plan will contain three types of evaluations: (a) Impact evaluations; (b) project performance evaluations; and (c) special studies. The evaluation component of the M&E Plan will describe the purpose of the evaluation, methodology, timeline, required MCC approvals, and the process for collection and analysis of data for each evaluation. The results of all evaluations will be made publicly available in accordance with MCC's guidelines for monitoring and evaluation plans posted from time to time on the MCC Web site (the "*MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs*").

(a) *Impact Evaluation.* The M&E Plan will include a description of the methods to be used for impact evaluations and plans for integrating the evaluation method into Project design. Based on in-country consultation with stakeholders, the strategies outlined below were jointly determined as having the strongest potential for rigorous impact evaluation. The M&E Plan will further outline in detail these methodologies. Final impact evaluation strategies are to be included in the M&E Plan. The following is a summary of the potential impact evaluation methodologies:

(i) Transition to High Value Agriculture Project.

(1) The Centralized Irrigation System Rehabilitation Activity and Irrigation Management Transfer Sub-Activity will be examined in conjunction with the MCC sponsored impact evaluation in order to measure the combined effect of improved access to water and the technical assistance offered under the Growing High Value Agriculture Sales Activity as well as the stand alone value of the irrigation rehabilitation. Over time, hectares irrigated, hectares producing high value agriculture crops, and farm profits in areas where the Centralized Irrigation System Rehabilitation Activity and Irrigation Management Transfer Activity are implemented should increase dramatically compared to areas outside the project area, and the path of causation would be clear, therefore methodologies employing randomization of access to the Centralized Irrigation System Rehabilitation Activity and Irrigation Management Transfer Activity will not be a necessary element of the evaluation. This strategy is contingent on timely execution of the Centralized Irrigation System Rehabilitation Activity that would allow at least one growing season after improved irrigation to be observed.

(2) For the Access to Agricultural Finance Activity, the incremental impact that can be attributed to MCC's investments will be estimated by comparing outcomes such as total investment and profitability between those who received loans through the program and a comparison group. A suitable method for creating a comparison group is expected to include an element of randomized credit provision. Challenges such as the availability of other donor financing and the potentially limited scope of post-harvest investment in Moldova may dictate amendments to this strategy during the evaluation design phase. Since gaps exist in many countries' financial markets where banks rely on a high level of collateral and equity markets are under-developed, it would be of value for Moldova, MCC, and the donor community to understand the benefits and costs of subsidized lending. A mid-term review will be part of the evaluation plan, and the activity may be terminated or scaled up depending upon the results of this mid-term evaluation.

(3) For the Growing High Value Agriculture Sales Activity, the evaluation is expected to determine how the Activity trainings affect prices, profit margins, and yields. As it is intended that the Growing High Value Agriculture Sales Activity of the Compact would be implemented by USAID, close coordination in the evaluation would be required. MCC and USAID are currently in the process of defining how this coordination would occur and confirming the feasibility of such coordination. Randomized selection criteria are expected to be an element of the evaluation.

(ii) Road Rehabilitation Project.

A rigorous evaluation of the impact of the Road Rehabilitation Project is not envisioned due to the lengthy time of construction and the natural time required for the economy to adapt to the improvement.

(b) *Final Evaluation.* The M&E Plan will make provision for final Project level evaluations ("*Final Evaluations*"). With the prior written approval of MCC, MCA–Moldova will engage independent

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and will be assessed only with respect to irrigation systems which have been rehabilitated and have completed one growing season after rehabilitation completion.

[5] The target refers and will be assessed only with respect to irrigation systems which have been rehabilitated and have completed one growing season after rehabilitation completion.

[6] After Year 5, MCC forecasts this figure will reach a peak value of 420 US$. The target refers and will be assessed only with respect to irrigation systems which have been rehabilitated and have completed one growing season after rehabilitation completion.

[7] After Year 5, MCC forecasts this figure will reach a peak value of 13,000 hectares.

[8] After Year 5, MCC forecasts this figure will reach a peak value of 9,300 hectares.

[9] All currency figures are in 2009 values using a market conversion rate of 10.52 MDL/US$.

[10] Index of perceptions/satisfaction with timeliness, cost, and administrative service is measured through a weighted average of percentages of users answering "4" and "5" to questions 20.1.3 (50 percent), 21.1.1 (25 percent), and 21.4.1 (25 percent) of the Moldova transition to high value agriculture Baseline Farm Survey completed in 2009.

[11] The achievements of these targets are subject to the continuation and completion of the Activity after the pilot phase.

[12] Based upon a projected cumulative five year loan volume of 14,900,000 US$, a price per metric ton for cold storage capacity of 750 US$, a loan-to-investment ratio of 60 percent, and approximately 50 percent of total loans financed devoted to cold storage. Cold storage facility is assumed to be operational within one year of the loan issuance.

[13] For example, similar individuals who do not access financing from the project are expected to find financing equivalent to or less than 25 percent of the financing received by project beneficiaries.

[14] The achievements of these targets are subject to full funding of this Activity by MCC (US$4.4 million) and USAID (US$9.0 million, subject to availability of funds). In the case of partial funding of this Activity, the targets will be revised by mutual agreement of MCC, USAID, and MCA-Moldova in the M&E Plan.

[15] The target represents the minimum International Roughness Index of the road segment during the life of the Compact.

evaluators to conduct the Final Evaluations at the end of each Project. The Final Evaluations will review progress during Compact implementation and provide a qualitative context for interpreting monitoring data and impact evaluation findings. They must at a minimum (i) evaluate the efficiency and effectiveness of the Project Activities, (ii) determine if and analyze the reasons why the Compact Goal, Program Objective and Project Objective(s), outcome(s) and output(s) were or were not achieved, (iii) identify positive and negative unintended results of the Program, (iv) provide lessons learned that may be applied to similar projects, and (v) assess the likelihood that results will be sustained over time.

(i) *Special Studies.* The M&E Plan will include a description of the methods to be used for special studies, as necessary, funded through this Compact or by MCC. Plans for conducting the special studies will be determined jointly between MCA–Moldova and MCC before the approval of the M&E Plan. The M&E Plan will identify and make provision for any other special studies, ad hoc evaluations, and research that may be needed as part of the monitoring and evaluating of this Compact. Either MCC or MCA–Moldova may request special studies or ad hoc evaluations of Projects, Project Activities, or the Program as a whole prior to the expiration of the Compact Term. When MCA–Moldova engages an evaluator, the engagement will be subject to the prior written approval of MCC. Contract terms must ensure non-biased results and the publication of results.

(c) *Request for Ad Hoc Evaluation or Special Study.* If MCA–Moldova requires an ad hoc independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Activity or to seek funding from other donors, no MCC Funding or MCA–Moldova resources may be applied to such evaluation or special study without MCC's prior written approval.

5. Other Components of the M&E Plan

In addition to the monitoring and evaluation components, the M&E Plan will include the following components for the Program, Projects and Project Activities, including, where appropriate, roles and responsibilities of the relevant parties and providers:

(a) *Costs.* A detailed cost estimate for all components of the M&E Plan; and

(b) *Assumptions and Risks.* Any assumption or risk external to the Program that underlies the accomplishment of the Program Objective, Project Objectives and Activity outcomes and outputs. However, such assumptions and risks will not excuse any Party's performance unless otherwise expressly agreed to in writing by the Parties.

6. Implementation of the M&E Plan

(a) *Approval and Implementation.* The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with the Program Implementation Agreement and any other relevant supplemental agreement, and the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

Annex IV Conditions to Disbursement of Compact Implementation Funding

This Annex IV sets forth the conditions precedent applicable to Disbursements of Compact Implementation Funding (each a "*CIF Disbursement*"). Capitalized terms used in this Annex IV and not defined in this Annex IV or in the Compact have the meanings assigned to such terms in the Program Implementation Agreement. Upon execution of the Program Implementation Agreement, each CIF Disbursement will be subject to the terms and conditions of the Program Implementation Agreement (including, without limitation, Section 3.3 thereof).

1. Conditions to the Initial CIF Disbursement

Each of the following conditions precedent must have been met to MCC's satisfaction prior to the initial CIF Disbursement:

(a) Prior to any CIF Disbursement into any Permitted Account in accordance with an approved Disbursement Request, MCA-Moldova will have delivered to MCC a complete, correct, and fully executed Disbursement Request for the relevant Disbursement Period, in form and substance satisfactory to MCC and submitted in accordance with the Reporting Guidelines. Each Disbursement Request will include the following reference number: GR08MDA10010.

(b)(i) Each Activity being funded by such CIF Disbursement is consistent with the goal of facilitating the implementation of the Compact (ii) there has been no violation of, and the use of the requested funds for the purposes requested will not violate, the limitations on the use or treatment of (1) MCC Funding, as set forth in this Compact, including under Section 2.7, or (2) Compact Implementation Funding; and (iii) no material breach of any covenant, obligation, or responsibility of the Government or MCA-Moldova under this Compact, the Program Implementation Agreement, any supplemental agreement, or any Program Guidelines has occurred or is continuing. MCA-Moldova will have delivered to MCC (x) evidence of the adoption and publication of the Establishment Decree, and (y) an up-to-date extract from the state registry verifying that MCA-Moldova is a fully-formed and registered public institution under the laws of Moldova.

(c) MCA-Moldova will be sufficiently mobilized in order for MCA-Moldova to be able to fully perform its obligations and to act on behalf of the Government.

(d) MCA-Moldova will have adopted a Procurement Plan, in form and substance satisfactory to MCC, with respect to the Compact Implementation Funding, and such Procurement Plan remains in full force and effect.

(e) MCA-Moldova will have adopted a Fiscal Accountability Plan, in form and substance satisfactory to MCC, and such Fiscal Accountability Plan remains in full force and effect.

(f) The Government will have adopted and published a decree, in form and substance satisfactory to MCC, administratively implementing the tax exemption mechanism as set forth in the Compact, and such decree will remain in full force and effect.

(g) The Fiscal Agent will have been duly appointed, and MCA-Moldova will have duly executed the Fiscal Agent Agreement, and such agreement will be in full force and effect without modification, alteration, rescission, or suspension of any kind, unless otherwise agreed by MCC, and no material breach has occurred or is continuing thereunder.

(h) The Procurement Agent will have been duly appointed, and MCA-Moldova will have duly executed an agreement with the Procurement Agent, and such agreement will be in full force and effect without modification, alteration, rescission, or suspension of any kind, unless otherwise agreed by MCC, and no material breach has occurred or is continuing thereunder.

(i) The Bank will have been duly appointed, and MCA-Moldova and the Fiscal Agent will have duly executed the Bank Agreement, and such agreement will be in full force and effect without modification, alteration, rescission, or suspension of any kind, unless otherwise agreed by MCC, and no material breach has occurred or is continuing thereunder.

(j) The Permitted Account will be established.

2. Conditions to Each CIF Disbursement Thereafter

Each of the following conditions precedent must have been met to MCC's satisfaction prior to the applicable CIF Disbursement:

(a) Prior to any CIF Disbursement into any Permitted Account in accordance with an approved Disbursement Request, MCA-Moldova will have delivered to MCC a complete, correct, and fully executed Disbursement Request for the relevant Disbursement Period, together with any applicable Periodic Reports covering such Disbursement Period, in each case in form and substance satisfactory to MCC and submitted in accordance with the Reporting Guidelines. Each Disbursement Request will include the following reference number: GR08MDA10010.

(b) (i) Each Activity being funded by such CIF Disbursement is consistent with the goal of facilitating the implementation of the Compact; (ii) there has been no violation of, and the use of the requested funds for the purposes requested will not violate, the limitations on the use or treatment of (1) MCC Funding, as set forth in this Compact, including under Section 2.7, or (2) Compact Implementation Funding; (iii) no material breach of any covenant, obligation, or responsibility of the Government or MCA-Moldova under this Compact, the Program Implementation Agreement, any supplemental agreement, or any Program Guidelines has occurred or is continuing; and (iv) any Taxes paid with MCC Funding through the date ninety (90) days prior to the start of the applicable Disbursement Period have been reimbursed by the Government in full in accordance with this Compact.

(c) The MCA-Moldova Procurement Plan will be in full force and effect.

(d) The MCA-Moldova Fiscal Accountability Plan will be in full force and effect.

(e) Each of the Fiscal Agent Agreement, the MCA-Moldova agreement with the Procurement Agent, and the Bank Agreement will be in full force and effect without modification, alteration, rescission, or suspension of any kind, unless otherwise agreed by MCC, and no material breach has occurred or is continuing thereunder.

(f) The Permitted Account will be in effect.

(g) The decree administratively implementing the tax exemption mechanism set forth in the Compact will be in full force and effect.

Annex V Definitions

Access to Agricultural Finance Activity has the meaning provided in paragraph 1(a) of Part B of Annex I.

Activity has the meaning provided in Part B of Annex I.

Additional Representative has the meaning provided in Section 4.2.

Audit Guidelines has the meaning provided in Section 3.8(a).

Baseline has the meaning provided in paragraph 3 of Annex III.

Centralized Irrigation System Rehabilitation Activity has the meaning provided in paragraph 1(a) of Part B of Annex I.

CIF Disbursement has the meaning provided in Annex IV.

CLD has the meaning provided in paragraph 1(a)(iii)(1) of Part B of Annex I.

Compact has the meaning provided in the Preamble.

Compact Goal has the meaning provided in Section 1.1.

Compact Implementation Funding has the meaning provided in Section 2.2(a).

Compact Records has the meaning provided in Section 3.7(a).

Compact Term has the meaning provided in Section 7.4.

Construction Vendor has the meaning provided in Schedule E of Annex VI.

Consultative Group has the meaning provided in paragraph 3(c)(ii)(1) of Part B of Annex I.

Covered Provider has the meaning provided in Section 3.7(c).

Customs Code has the meaning provided in Schedule F of Annex VI.

Customs Tariff Law has the meaning provided in Schedule B of Annex VI.

Disbursement has the meaning provided in Section 2.4.

Establishment Decree has the meaning provided in Section 3.2(b).

Evaluation Component has the meaning provided in paragraph 1 of Annex III.

Excess CIF Amount has the meaning provided in Section 2.2(d).

Exempt Employers has the meaning provided in Schedule D of Annex VI.

Exempt Individual has the meaning provided in Schedule D of Annex VI.

Exempt Personal Income has the meaning provided in Schedule D of Annex VI.

Exempt Vendor has the meaning provided in Schedule C of Annex VI.

Final Evaluations has the meaning provided in paragraph 4(b) of Annex III.

Fiscal Agent has the meaning provided in paragraph 3(e) of Part B of Annex I.

Governance Guidelines has the meaning provided in paragraph 3(c) of Part B of Annex I.

Government has the meaning provided in the Preamble.

Government Decision No. 1140 has the meaning provided in Schedule F of Annex VI.

Growing High Value Agriculture Sales Activity has the meaning provided in paragraph 1(a) of Part B of Annex I.

High Value Agriculture Post-Harvest Credit Facility has the meaning provided in paragraph 1(a)(iii) of Part B of Annex I.

Implementation Letter has the meaning provided in Section 3.5.

Implementing Entity has the meaning provided paragraph 3(d) of Part B of Annex I.

Implementing Entity Agreement has the meaning provided in paragraph 3(d) of Part B of Annex I.

Indicators has the meaning provided in paragraph 3(a) of Annex III.

Inspector General has the meaning provided in Section 3.8(a).

Investment Development Services has the meaning provided in paragraph of 1(a)(iii) of Part B of Annex I.

Irrigation Management Transfer Sub-Activity has the meaning provided in paragraph 1(a)(ii) of Part B of Annex I.

Irrigation Sector Reform Activity has the meaning provided in paragraph 1(a) of Part B of Annex I.

Joint Group has the meaning provided in paragraph 2(a) of Part B of Annex I.

M2 has the meaning provided in paragraph 2(a) of Part B of Annex I.

M2 Road Activity has the meaning provided in paragraph 2(a)(i) of Part B of Annex I.

M&E Annex has the meaning provided in Annex III.

M&E Plan has the meaning provided in Annex III.

Management Unit has the meaning provided in paragraph 3(c)(iii)(1) of Part B of Annex I.

MCA Act has the meaning provided in Section 2.2(a).

MCA-Moldova has the meaning provided in Section 3.2(b).

MCA-Moldova Bylaws has the meaning provided in paragraph 3(c) of Part B of Annex I.

MCC has the meaning provided in the Preamble.

MCC Environmental Guidelines has the meaning provided in Section 2.7(c).

MCC Funding has the meaning provided in Section 2.3.

MCC Gender Policy has the meaning provided in paragraph 3 of Part A of Annex I.

MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs has the meaning provided for in paragraph 4 of Annex III.

MCC Program Procurement Guidelines has the meaning provided in Section 3.6.

MCC Web site has the meaning provided in Section 2.7.

Moldova has the meaning provided in the Preamble.

Monitoring Component has the meaning provided in paragraph 1 of Annex III.

MTAs has the meaning provided in paragraph 1(a)(ii)(1) of Part B of Annex I.

Multi-Year Financial Plan has the meaning provided in paragraph 1 of Annex II.

Multi-Year Financial Plan Summary has the meaning provided in paragraph 1 of Annex II.

OMB has the meaning provided in Section 3.8(b).

OP 4.12 has the meaning provided in paragraph 3 of Part A of Annex I.

Other Taxes has the meaning provided in Schedule I of Annex VI.

Party and *Parties* has the meaning provided in the Preamble.

Permitted Account has the meaning provided in Section 2.4.

Personal Income Taxes has the meaning provided in Schedule D of Annex VI.

PFIs has the meaning provided in paragraph 1(a)(iii)(1) of Part B of Annex I.

PPP has the meaning provided in paragraph 2(b) of Part B of Annex I.

Principal Representative has the meaning provided in Section 4.2.

Procurement Agent has the meaning provided in paragraph 3(f) of Part B of Annex I.

Program has the meaning provided in the Preamble.

Program Assets include MCC Funding, interest accrued thereon, and any assets, goods or property (real, tangible or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding.

Program Funding has the meaning provided in Section 2.1.

Program Guidelines means collectively the Audit Guidelines, the MCC Environmental Guidelines, the Governance Guidelines, the MCC Program Procurement Guidelines, the Reporting Guidelines, the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs, and any other guidelines, policies or guidance papers from time to time published on the MCC Web site.

Program Implementation Agreement or *PIA* has the meaning provided in Section 3.1.

Program Objective has the meaning provided in Section 1.2.

Project(s) has the meaning provided in Section 6.2(b).

Project Objective(s) has the meaning provided in Section 1.3.

Provider has the meaning provided in Section 3.7(c).

Reporting Guidelines means the MCC "Guidance on Quarterly MCA Disbursement Request and Reporting Package" posted by MCC on the MCC Web site or otherwise publicly made available.

River Basin Management Sub-Activity has the meaning provided in paragraph 1(a)(ii) of Part B of Annex I.

Road Rehabilitation Project has the meaning provided in paragraph 2(a) in Part B of Annex I.

State Fiscal Inspectorate has the meaning provided in Schedule E of Annex VI.

Steering Committee has the meaning provided in paragraph 3(c)(i)(1) of Part B of Annex I.

Target has the meaning provided in paragraph 3(a) of Annex III.

Target Areas has the meaning provided in Table 1 of Annex III.

Tax Agent has the meaning provided in Schedule I of Annex VI.

Tax Code has the meaning provided in Schedule A of Annex VI.

Taxes has the meaning provided in Section 2.8(a).

Transition to High Value Agriculture Project has the meaning provided in paragraph 1(a) of Part B of Annex I.

United States Dollars or *US$* means the lawful currency of the United States of America.

USAID has the meaning provided in paragraph 1(a) of Part B of Annex I.

VAT has the meaning provided in Section 2.8(b).

Vendor has the meaning provided in Schedule A of Annex VI.

Water Law has the meaning provided in paragraph 1(a)(ii) of Part B of Annex I.

WUA has the meaning provided in paragraph 1(a) of Part B of Annex I.

WUA Law has the meaning provided in paragraph 1(a)(ii) of Part B of Annex I.

Annex VI Specific Tax Exemption Mechanisms

Schedule A Value Added Tax (VAT)

Legal Basis for Exemption

1. The Compact.

2. Article 4, clause (1) of the Tax Code of Moldova ("*Tax Code*") (Law 1163–XIII, dated April 24, 1997).

Beneficiaries of Exemption

1. MCA-Moldova.

2. Each Implementing Entity, and any vendor procuring services, goods or works in furtherance of the Compact (each a "*Vendor*").

Procedures

The beneficiaries of the exemption will procure services, goods and works exempted from VAT, except the procurement of petroleum products, which is addressed in Schedule E.

Purchase of Goods (Except Imported Goods), Services and Works

In order for the beneficiaries of the exemption to obtain the VAT exemption from suppliers of the goods (except imported goods), services and works supplied in Moldova, the MCA-Moldova must provide the beneficiary of the exemption with an official letter from MCA-Moldova, issued on official letterhead, which will confirm that such goods, services or works are exempted from VAT, and which will contain the name of the project and the name of the beneficiary of the exemption.

This letter will be attached to the applicable provider's invoice or waybill ("*factura*"). The factura will serve as strict evidence of delivery of the goods, provision of services or rendering of works. The "*factura*" will be countersigned by an authorized representative of the beneficiary of the exemption. An original of the factura will be kept by the applicable provider and will be provided in case of inspection by fiscal authorities to show the reason for exemption from VAT.

Imported Goods

For the importation of goods into Moldova, the exemption from VAT will be applicable while clearing the goods for customs. To receive the exemption from VAT, the beneficiary of the exemption will file a request to the customs office supported by:

- A letter from MCA-Moldova, issued on official letterhead, which will confirm that the goods are imported exclusively for the furtherance of the Compact, the name of the project and the name of the beneficiary of the exemption;
- Invoice for the goods;
- Copy of the purchase order or contract for the delivery of the applicable goods to be used in furtherance of the Projects;
- Transportation documents (CMR, TIR carnet, Airway bill, *etc.*); and
- Certificates, authorizations, licenses, if required by Moldovan laws and regulations for the importation of the goods.

Clearance will be granted by the customs offices with the exemption from VAT based on the submission of the above-mentioned documents

Schedule B Customs Duties

Legal Basis for Exemption

1. The Compact.
2. Article 28, clause (n), and Article 31 and Note 1 of Annex 2 of the Law on the Customs Tariff (the "*Customs Tariff Law*") (No. 1380–XIII, dated November 20, 1997).

Beneficiaries of Exemption

MCA-Moldova, each Implementing Entity, and any Vendor importing goods for the furtherance of the Compact.

Procedures

Clearance of the imported goods without customs duties will be performed by the customs offices.

In order to obtain clearance for imported goods, the beneficiary of the exemption will submit a request for such goods to be exempted from customs duties, supported by:

- A letter from MCA-Moldova, issued on official letterhead, which will confirm that the goods are imported for the exclusive use of the Compact, and which will contain the name of the project and the name of the beneficiary of the exemption;
- The invoice for the goods;
- A copy of the purchase order or contract for the goods;
- Transportation documents (CMR, TIR carnet, Airway bill, *etc.*); and
- Certificates, authorizations, licenses, if required for the importation of goods.

Schedule C Corporate Income Tax

Legal Basis for Exemption

1. The Compact.
2. Article 4, clause (1) of the Tax Code.

Beneficiaries of Exemption

1. MCA-Moldova.
2. Each Implementing Entity and any Vendor working in furtherance of the Compact (each an "*Exempt Vendor*"), other than Vendors that are nationals of Moldova.

Procedures

- MCA-Moldova and all Exempt Vendors will be entitled to an exemption from Moldovan tax on income earned from supplying goods, works or services in furtherance of the Compact.
- MCA-Moldova will not be required to withhold tax from payments made to an Exempt Vendor.
- The Exempt Vendor will not file any tax returns in Moldova for income earned from supplies of goods, works and services in furtherance of the Compact. In the event that an Exempt Vendor will earn taxable income from Moldovan sources other than from Compact-related activities, then such income will be recorded and accounted for by the Exempt Vendor separately from the income from Compact-related activities and will be outside the scope of the tax exemptions provided under this Compact.

Schedule D Individual Income Tax

Legal Basis for Exemption

1. The Compact.
2. Article 4, clause (1) of the Tax Code.

Beneficiaries of Exemption

All natural persons working in furtherance of the Compact (each "*Exempt Individual*"), other than nationals of Moldova. Non-Moldovan nationals working in furtherance of the Compact who, after passage of time, become Moldovan "tax residents" for the purposes of Moldovan tax law will also be deemed Exempt Individuals.

Procedures

- The Exempt Individuals will be exempt from any income, social security, medical insurance or other mandatory taxes and charges imposed by Moldova or any subdivision thereof, regarding personal income (the "*Personal Income Taxes*") received in connection with income earned from works and services performed in furtherance of the Compact (the "*Exempt Personal Income*").
- MCA-Moldova, the Implementing Entities, the Fiscal Agent and the Procurement Agent and any other Vendor who employs Exempt Individuals (the "*Exempt Employers*") will not withhold or pay Personal Income Taxes for the Exempt Individuals.
- The Exempt Individual will have no obligation to file an income tax return in Moldova in relation to Exempt Personal Income.
- The Exempt Employers will have no obligation under Moldovan law in connection with the completion of any mandatory filings, registrations and periodic reporting in relation to the Exempt Personal Income of the Exempt Individuals.

Schedule E Taxation of Petroleum Products

Legal Basis for Exemption

1. The Compact.
2. Article 4, clause (1) of the Tax Code.

Beneficiaries of Exemption

Vendors providing construction services to MCA-Moldova or another Vendor making large-scale procurements of petroleum products for use in connection with such construction projects (a "*Construction Vendor*").

Procedures

A Construction Vendor procuring and/or importing petroleum products to be used for the Compact Program will pay the VAT and excise duties at the point of purchase and request a refund of these taxes.

In order to receive such refund, a Construction Vendor should submit to State Fiscal Inspectorate under the Ministry of Finance of Moldova (the "*State Fiscal Inspectorate*") the following documents:

- An official letter from MCA-Moldova, issued on official letterhead, which will confirm the quantity/volume of petroleum products specified in such Construction Vendor's bid for a program contract, and which will contain the name of the construction project and the name of the beneficiary of the exemption;
- An official request issued by the Construction Vendor requesting that the State Fiscal Inspectorate refund VAT and excise-duty paid, certifying (i) the maximum quantity/volume of petroleum products specified in the beneficiary of the exemption's bid proposal for a Program contract (which amount will be the maximum allowable quantity subject to reimbursement), (ii) the quantity of petroleum products subject to reimbursement in the pending request, (iii) the quantity of petroleum products for which VAT and excise duties have been previously reimbursed to the beneficiary of the exemption under such contract, and (iv) that the petroleum products in the present request were used in connection with the named construction project; and
- The original fiscal invoice received from the supplier of the petroleum products, while procuring them in the territory of Moldova and/or customs declaration issued in the name of the Construction Vendor, while importing the petroleum products into Moldova.

The above-mentioned documents will be submitted to State Fiscal Inspectorate on a monthly basis for the petroleum purchases made during the previous calendar month.

The amount of VAT and excise-duties subject to refund should be determined by the Construction Vendors and confirmed by the State Fiscal Inspectorate based on the amounts the VAT and excise-duties paid at the moment of procuring of the petroleum products and indicated in the fiscal invoice(s) and/or customs declaration(s)

and according to the excise duty rates then applicable.

The amount of the VAT and excise-duties should be transfered to the bank account(s) of the Vendors opened in the banks, who have fiscal relations with budgetary system of Moldova. The decision on refund of these taxes will be taken by the State Fiscal Inspectorate within 45 days after receiving by the State Fiscal Inspectorate of the request.

Schedule F Temporary Admission of Equipment, Vehicles, and Household Goods

Legal Basis for Exemption

1. The Compact.
2. Articles 7 and 68 of the Customs Code of Moldova (the "*Customs Code*") (Law No. 1149–XIV, dated July 20, 2000).
3. Article 4, clause (1), Article 103, clause (2), sub-clause (c) of the Tax Code.
4. Article 28, clause (f) of the Customs Tariff Law (Law No. 1380–XIII, dated November 20, 1997).
5. Article 5, clause (3) and Article 7 of the Law on the Manner of Introduction into the Territory of the Republic of Moldova and Re-export of Goods by Individuals (Law No. 1569–XV dated December 20, 2002).
6. Chapter 7, Annex 1 of the Governmental Decision approving the regulation on implementation of the customs procedures, established by the Customs Code, No. 1140 ("*Government Decision No. 1140*") dated November 2, 2005.

Beneficiaries of Exemption

MCA-Moldova, any Implementing Entity, and any Vendor importing goods on a temporary basis to be used exclusively in furtherance of the Compact; as well as any Exempt Individual importing equipment, vehicles, and household goods for personal use.

Procedures

The temporary admission of equipment, vehicles, and household goods is granted by the customs office, without payment of VAT, customs duties, excise duties, customs procedure taxes, or any other Taxes, based on the request submitted by the beneficiary of the exemption. The request should provide the reasons for the temporary admission of the items in accordance with Government Decision No. 1140 and be supported by:

- A letter from MCA-Moldova, issued on official letterhead, which will confirm that the goods are temporarily imported for the exclusive use of the Compact or for the personal use of the Exempt Individual, and which will contain the name of the project and the name of the beneficiary of the exemption;
- An invoice for the goods, if applicable;
- A copy of the contract supporting the temporary admission of the goods, if applicable;
- Transportation documents (CMR, TIR carnet, Airway bill, *etc.*), if applicable; and
- Certificates, authorizations, licenses, if required for the importation of goods.

Authorization for temporary admission, with the above-mentioned exemptions, will be granted by the customs offices based on the submission of the above-mentioned documents.

Upon receipt of customs authorization, the beneficiary of the exemption will cause the customs declaration to be prepared for submission to the customs office, whereupon the customs office will clear the goods without payment of VAT, customs duties, excise duties, customs procedure taxes, or any other Taxes.

If the imported goods are owned by the beneficiary of the exemption, the above-mentioned invoices and contracts will not be required.

Schedule G Excise Duty

Legal Basis for Exemption

1. The Compact.
2. Article 4, clause (1), Article 124, clause (2), sub-clause (b) and Article 124, clause (3) of the Tax Code.

Beneficiaries of Exemption

MCA-Moldova, any Implementing Entity, and any Vendors.

Procedures

The exemption is applicable only when importing goods in furtherance of the implementation of the Compact, which are subject to excise duties, except the procurement of petroleum products, which is addressed in Schedule E. The exemption is granted together with the exemptions from VAT and customs duties. In order to get the goods cleared, the beneficiary of the exemption will submit a request for exemption, supported by:

- A letter from MCA-Moldova, issued on official letterhead, which will confirm that the goods are imported for the exclusive use of the Compact, and which will contain the name of the project and the name of the beneficiary of the exemption;
- The invoice for the goods;
- A copy of the purchase order or contract for the goods;
- Transportation documents (CMR, TIR carnet, Airway bill, *etc.*); and
- Certificates, authorizations, licenses, if required for the importation of goods.

Clearance will be granted by the customs offices with the exemption of the excise duties based on the submission of the above-mentioned documents.

Schedule H Customs Procedure Tax

Legal Basis for Exemption

1. The Compact.
2. Article 7 of the Customs Code (Law No. 1149–XIV dated July 20, 2000).
3. Annex 2 of the Customs Tariff Law (No. 1380–XIII, dated November 20, 1997).

Beneficiaries of Exemption

MCA-Moldova, each Implementing Entity, any Vendor importing goods for use in furtherance of the Compact, as well as any Exempt Individual importing goods for personal use.

Procedures

Clearance of the imported goods without customs procedure tax will be done by the customs offices. In order to obtain clearance for imported goods, the beneficiaries of the exemption will submit a request for such goods to be exempted from customs procedure taxes, supported by:

- A letter from MCA-Moldova, issued on official letterhead, which will confirm that the goods are imported for the exclusive use of the Compact, and which will contain the name of the project and the name of the beneficiary of the exemption;
- The invoice for the goods;
- A copy of the purchase order or contract for the goods;
- Transportation documents (CMR, TIR carnet, Airway bill, *etc.*), if applicable; and
- Certificates, authorizations, licenses, if required for the importation of goods.

If the imported goods are owned by the beneficiary of the exemption, the above-mentioned invoices and contracts will not be required.

Clearance will be granted by the customs offices with the exemption from the customs procedures tax based on the submission of the above-mentioned documents.

Schedule I Other Taxes

Legal Basis for Exemption

1. The Compact.
2. Article 4, clause (1) of the Tax Code.

Beneficiaries of Exemption

Any of MCA-Moldova, the Implementing Entities, and Vendors; as well as any Exempt Individual, importing or acquiring property or otherwise performing an act or action within the scope of the Compact that triggers payment of any tax included in the Tax Code, other than those addressed in Schedules A through Schedule H above (the "*Other Taxes*").

Procedures

- Whereas the Other Taxes may be chargeable not only by the tax offices, but also by third parties as agents of the tax offices (the "*Tax Agent*"), any beneficiary of exemption will require an official letter from MCA-Moldova for the purposes of filing it with the tax office or the Tax Agent in order to justify the claimed exemption of the relevant Other Tax.
- The official letter from MCA-Moldova is issued on official letterhead, which will confirm that the event that triggers payment of any Other Tax is within the scope of the Compact, and which contains the name of the project and the name of the beneficiary of the exemption.
- The Government will ensure that the Government actions implementing the exemptions covered by the Compact will address the procedures applicable to Other Taxes.

[FR Doc. 2010–1944 Filed 1–28–10; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–015)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the newly formed Education and Public Outreach Committee of the NASA Advisory Council. This will be the first meeting of this Committee.

DATES: February 17, 2010—10 a.m.–4 p.m. (EST).

ADDRESSES: NASA Headquarters, 300 E Street, SW., Washington, DC, Room CD61.

FOR FURTHER INFORMATION CONTACT: Ms. Erika G. Vick, Executive Secretary for the Education and Public Outreach Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–2209.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

- Associate Administrator for Public Affairs Briefing.
- Discussion of Social Media Opportunities and Challenges.
- Associate Administrator for Education Briefing.
- Discussion of Opportunities and Challenges to Reach K–12 Students.
- Discussion of how to Organize the Committee Work Plan.

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Ms. Erika Vick via e-mail at *Erika.Vick-1@nasa.gov* or by telephone at (202) 358–2209. Persons with disabilities who require assistance should indicate this.

Dated: January 22, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–1919 Filed 1–28–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–014)]

NASA Commercial Space Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Commercial Space Committee to the NASA Advisory Council.

DATES: Tuesday, February 16, 2010, 10 a.m.–5 p.m., Eastern.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 6H45, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John Emond, Innovative Partnerships Program, National Aeronautics and Space Administration, Washington, DC 20546. Phone 202–358–1686, fax: 202–358–3878, *john.l.emond@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes an overview of the intended objectives for the Commercial Space Committee and preliminary discussions on some of the topic areas that will be explored by the Committee in future meetings. These topic areas include but are not limited to exploring opportunities to stimulate and encourage commercial space as well as the progression of commercial capability to the ISS and to Low Earth Orbit/LEO. This committee will also explore opportunities for interagency collaboration on commercial space initiatives, and fostering commercialization on the International Space Station as a National Lab. The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to show a valid picture identification such as a driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center), and must state that they are attending the NASA Advisory Council Commercial Space Committee meeting in room 6H45, before receiving an access badge. All non-U.S citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), and place and date of entry into the U.S., fax to John Emond, NASA Advisory Council Commercial Space Committee Executive Secretary, FAX: (202) 358–3878, by no later than February 9, 2010. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting John Emond via e-mail at *john.l.emond@nasa.gov* or by telephone at (202) 358–1686 or fax: (202) 358–3878.

Dated: January 25, 2010.

P. Diane Rausch,

Advisory Committee Management Office, National Aeronautics and Space Administration.

[FR Doc. 2010–1814 Filed 1–28–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance for this collection. In accordance with the requirement of Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than three years.

Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information of respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by March 30, 2010, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Room 295, Arlington, VA 22230, or by e-mail to *splimpton@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpton@nsf.gov*. Individuals who use a telecommunications device 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 time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: International Cover Page Addendum.

OMB Control No.: 3145–0205.

Expiration Date of Approval: May 31, 2010.

Abstract: The Office of International Science and Engineering within the Office of the NSF Director will use the International Cover Page Addendum. Principal Investigators submitting proposals to this Office will be asked to complete an electronic version of the International Cover Page Addendum. The Addendum requests foreign counterpart investigator/host information and participant demographics not requested elsewhere in NSF proposal documents.

The information gathered with the International Cover Page Addendum serves four purposes. The first is to enable proposal assignment to the program officer responsible for activity with the primary countries involved. No current component of a standard NSF proposal requests this information. (The international cooperative activities box on the standard NSF Cover Page applies only to one specific type of activity, not the wide range of activities supported by OISE.) NSF proposal assignment applications are program element-based and therefore can not be used to determine assignment by country. The second use of the information is program management. OISE is committed to investing in activities in all regions of the world. With data from this form, the Office can determine submissions by geographic region. Thirdly, funding decisions can not be made without details for the international partner not included in any other part of the submission process. The fourth section, counts of scientists and students to be supported by the project, are also not available elsewhere in the proposal since OISE budgets do not include participant support costs. These factors are all important for OISE program management.

Estimated Number of Annual Respondents: 600.

Burden on the Public: 150 hours (15 mins each respondent).

Dated: January 26, 2010.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2010–1835 Filed 1–28–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site visit review of the Materials Research Science and Engineering Center (MRSEC) at the Georgia Institute of Technology by NSF Division of Materials Research (DMR) #1203.

Dates & Times: March 2, 2010, 7:30 a.m.–4:45 p.m.

Place: Georgia Tech University, Atlanta, GA.

Type of Meeting: Part-open.

Contact Person: Dr. Thomas Rieker, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4914.

Purpose of Meeting: To provide advice and recommendations concerning progress of the MRSEC at Georgia Tech.

Agenda

Tuesday March 2, 2010

7:30 a.m.–9:15 a.m. Closed—Executive Session.

9:15 a.m.–3:45 a.m. Open—Review of Georgia Tech MRSEC.

3:45 a.m.–4:45 a.m. Closed—Executive Session.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 26, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–1805 Filed 1–28–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03035572, License No. 52–25542–01, EA–09–147, NRC–2010–0028]

In the Matter of Beta Gamma Nuclear Radiology; Confirmatory Order Modifying License (Effective Immediately)

I

Beta Gamma Nuclear Radiology (BGNR) (Licensee) is the holder of medical License No. 52–25542–01, issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 on December 21, 2000. The license authorizes the operation of BGNR (facility) in accordance with conditions specified therein. The facility is located on the Licensee's site in Fajardo, Puerto Rico.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on October 27, 2009. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute.

II

On July 2, 2009, the NRC issued a letter to BGNR, enclosing a summary of an investigation conducted by the NRC Office of Investigations (OI) (Reference OI Investigation Report No. 1–2008–052). OI opened the investigation to determine whether BGNR had submitted falsified written directives in a May 5, 2008, response to an April 8, 2008, Severity Level (SL) IV Notice of Violation (NOV).

The SLIV NOV had been issued for BGNR's failure to prepare written directives prior to administering diagnostic doses of radioactive iodine on the dates of September 14, 2005, and February 19 and 26, 2008. In its May 5, 2008, response, BGNR disputed the SLIV NOV in a sworn and notarized letter stating that the BGNR Director, as the Authorized User, had in fact prepared written directives for the I–131 sodium iodide administrations prior to conducting them on September 14, 2005, and February 19 and 26, 2008, and that although the written directives had been misplaced, since the inspection, the written directives had been located. The letter enclosed copies of these written directives. During review of the letter, the NRC identified that the written directive for the administrations performed on September 14, 2005, was dated September 14, 2008, calling into question the validity of the date on which this directive, and the others, had been written.

Based on evidence developed during the investigation, the NRC identified an apparent violation, including that the BGNR Director, on behalf of BGNR, submitted falsified written directives to support BGNR's dispute of the SLIV NOV; and that as a result, BGNR maintained incomplete and inaccurate written directives in violation of 10 CFR 30.9.

The July 2, 2009 NRC letter informed BGNR that the NRC was considering escalated enforcement for the apparent violation. On July 6, 2009, BGNR requested the use of an ADR mediation session to resolve this matter. On October 27, 2009, the NRC and BGNR met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During the ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

A. BGNR and the NRC agree to the following facts:

1. BGNR provided inaccurate information, in a response contesting the April 8, 2008 SLIV NOV, in that, the BGNR director, acting on behalf of the licensee, stated that three written directives for diagnostic doses of iodine-131 were written prior to the administrations, when in fact, the written directives were signed and dated after the administrations, in violation of 10 CFR 30.9;

2. BGNR maintained incomplete or inaccurate written directives in violation of 10 CFR 30.9; and,

3. The violation of 10 CFR 35.40 contained in the NOV dated April 8, 2008 occurred as stated in the NOV.

B. BGNR will contract with a current or former Radiation Safety Officer (RSO), who has been authorized in that capacity on an NRC or Agreement State medical license, to perform comprehensive audits of BGNR's radiation safety program, including a review of the corrective actions documented in the ADR Confirmatory Order (Order). This will include the following actions:

1. Within 30 days of the issuance date of the Order, BGNR will submit the qualifications of the selected auditor to the NRC in writing;

2. Within 30 days of NRC approval of the auditor, the auditor will conduct the first audit, and the auditor will complete the first audit report within 90 days of NRC approval of the auditor;

3. Following the first audit, three additional audits will be conducted on a quarterly basis at BGNR (four audits completed within approximately one year); and,

4. Within 30 days of the completion of each audit, BGNR will submit the audit report to the NRC for review.

C. BGNR will request a license amendment from the NRC to designate a new RSO on the BGNR license who will be responsible for implementation and oversight of the radiation safety program, for a period of two years from the date of this Order. The license amendment request, including information regarding the qualifications of the proposed RSO in accordance with the requirements of 10 CFR part 35, will be submitted to the NRC within 30 days of the date of Order issuance.

D. BGNR will create a written policy, and train employees, regarding expectations for: (1) Employees providing complete and accurate information to the NRC; (2) compliance with NRC regulations; and, (3) the freedom to raise safety concerns with BGNR management and/or to the NRC without fear of retaliation; within 30 days of the date of the Order. All new employees will also be trained on this policy.

In recognition of these actions, the NRC agreed to issue a civil penalty in the amount of $5,000, and to issue BGNR an NOV containing a SL III violation.

On January 12, 2010, BGNR consented to issuing this Order with the commitments, as described in Section V below. BGNR further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since BGNR has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that BGNR's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and BGNR's consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30 *it is hereby ordered, effective immediately:*

A. BGNR will contract with a current or former Radiation Safety Officer (RSO), who has been authorized in that capacity on an NRC or Agreement State medical license, to perform comprehensive audits of the radiation safety program, including a review of the corrective actions documented in this Confirmatory Order. This will include the following actions:

1. Within 30 days of the issuance date of this Order, BGNR will submit the qualifications of the selected auditor to the NRC in writing;

2. Within 30 days of the NRC approval of the auditor, the auditor will conduct the first audit, and the auditor will complete the first audit report within 90 days of NRC approval of the auditor;

3. Following the first audit, three additional audits will be conducted on a quarterly basis at BGNR (four audits completed within approximately one year); and,

4. Within 30 days of completion of each audit, BGNR will submit the audit report to the NRC for review.

B. BGNR will request a license amendment from the NRC to designate a new RSO on the BGNR license who will be responsible for implementation and oversight of the radiation safety program for a period of two years from the date of this Order. The license amendment request, including information regarding the qualifications of the proposed RSO in accordance with the requirements of 10 CFR part 35, will be submitted to the NRC within 30 days of the date of Order issuance.

C. BGNR will create a written policy, and train employees, regarding expectations for: (1) employees providing complete and accurate information to the NRC; (2) compliance with NRC regulations; and, (3) the freedom to raise safety concerns with BGNR management and/or to the NRC without fear of retaliation; within 30 days of the date of the Order. All new employees will also be trained on this policy.

D. BGNR will pay a $5000 civil penalty in two equal installments; the first installment to be paid within 90 days of the date of this Order, and the second installment to be paid within 180 days of the date of this Order.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://*

www.nrc.gov/site-help/e-submittals.html, by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

Any person that requests a hearing shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. *A request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 21st day of January 2010.

Marc L. Dapas,

Deputy Regional Administrator.

[FR Doc. 2010–1825 Filed 1–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–09–041]

Juan E. Pérez Monté, M.D.; Confirmatory Order Modifying License (Effective Immediately)

I

Juan E. Pérez Monté, M.D. (Dr. Pérez) is named as the Radiation Safety Officer (RSO) on License No. 52–25542–01 issued by the NRC to Beta Gamma Nuclear Radiology (BGNR), a medical practice in Fajardo, Puerto Rico.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on October 27, 2009. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute.

II

On July 2, 2009, the U.S. Nuclear Regulatory Commission (NRC or Commission) issued a letter to Dr. Pérez, enclosing a summary of an investigation conducted by the NRC Office of Investigations (OI) (Reference OI Investigation Report No. 1–2008–052). OI opened the investigation to determine whether Beta Gamma Nuclear Radiology (BGNR) had submitted falsified written directives in a May 5, 2008, response to a April 8, 2008, Severity Level (SL) IV Notice of Violation (NOV).

The SLIV NOV had been issued for BGNR's failure to prepare written directives prior to administering diagnostic doses of radioactive iodine on the dates of September 14, 2005, and February 19 and 26, 2008. In its May 5, 2008, response, BGNR disputed the SLIV NOV in a sworn and notarized letter stating that Dr. Pérez, as the Authorized User, had in fact prepared written directives for the I–131 sodium iodide administrations prior to conducting them on September 14, 2005, and February 19 and 26, 2008, and that although the written directives had been misplaced, since the inspection, the written directives had been located. The letter enclosed copies of these written directives. During review of the letter, the NRC identified that the written directive for the administrations performed on September 14, 2005, was dated September 14, 2008, calling into question the validity of the date on which this directive, and the others, had been written.

Based on evidence developed during the investigation, the NRC identified an apparent violation, including that Dr. Pérez, on behalf of BGNR, deliberately submitted falsified written directives in violation of 10 CFR 30.10(a)(2), and as a result, caused BGNR to maintain inaccurate information contrary to 10 CFR 30.9, in violation of 10 CFR 30.10(a)(1).

The July 2, 2009, NRC letter informed Dr. Pérez that the NRC was considering escalated enforcement for the apparent violation. On July 6, 2009, Dr. Pérez requested the use of an ADR mediation session to resolve this matter. On October 27, 2009, the NRC and Dr. Pérez met in an ADR session mediated by a professional mediator, arranged through

Cornell University's Institute on Conflict Resolution. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

A. Dr. Pérez and the NRC agree that Dr. Pérez committed two violations of NRC requirements. Specifically, Dr. Pérez: (1) Deliberately submitted falsified written directives to support BGNR's dispute of the April 8, 2008, NOV in violation of 10 CFR 30.10(a)(2); and, (2) deliberately caused BGNR to maintain incomplete or inaccurate information as required by 10 CFR 30.9, in violation of 10 CFR 30.10(a)(1).

B. Dr. Pérez will write an article regarding: (1) Lessons learned from the ADR experience; (2) the importance of providing accurate information to the NRC; and, (3) compliance with NRC requirements; and will complete the following actions:

1. Within six months of the date of the Order, Dr. Pérez will submit the article for publication to the following: Galenus (Puerto Rico), the Journal of the Health Physics Society, and the Journal of Nuclear Medicine; and,

2. Dr. Pérez will also submit the article to the NRC for approval, at least two weeks prior to submitting to the publications listed above.

C. Dr. Pérez will write a presentation regarding: (1) Lessons learned from the ADR experience; (2) the importance of providing accurate information to the NRC; and, (3) compliance with NRC requirements. Dr. Pérez will submit to the NRC the planned presentation for approval at least two weeks before delivering the actual presentation to the Puerto Rico chapter of the Society of Nuclear Medicine.

D. Dr. Pérez will offer to make the same or a similar presentation at the next scheduled national meetings of the Health Physics Society and the Society of Nuclear Medicine. If the request to make a presentation is accepted, he will submit the planned presentation to the NRC for approval at least two weeks before delivery of the presentation at these meetings.

E. Dr. Pérez will remove himself as RSO from any NRC or Agreement State licenses within 30 days of Order issuance, and will not be re-designated or perform the functions of RSO for any NRC or Agreement State license for two years from the date of Order issuance.

In recognition of these actions, the NRC agreed to not issue Dr. Pérez an order prohibiting involvement in NRC-licensed activities, but rather, to issue a Notice of Violation containing a Severity Level III violation. On January 12, 2010, Dr. Pérez consented to issuing this Order with the commitments, as described in Section V below. Dr. Pérez further agreed that this Order is to be effective upon issuance and that he has waived his right to a hearing.

IV

Since Dr. Pérez has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Order.

I find that Dr. Pérez' commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Dr. Pérez' commitments be confirmed by this Order. Based on the above and Dr. Pérez' consent, this Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, *it is hereby ordered, effective immediately:*

A. Dr. Pérez will write an article regarding: (1) Lessons learned from the ADR experience; (2) the importance of providing accurate information to the NRC; and, (3) compliance with NRC requirements; and will complete the following actions:

1. Within six months of the date of the Order, Dr. Pérez will submit the article for publication to the following: Galenus (Puerto Rico), the Journal of the Health Physics Society, and the Journal of Nuclear Medicine; and,

2. Dr. Pérez will also submit the article to the NRC for approval, at least two weeks prior to submitting to the publications listed above.

B. Prior to the next scheduled national meetings of the Health Physics Society and the Society of Nuclear Medicine, Dr. Pérez will write a presentation regarding: (1) Lessons learned from the ADR experience; (2) the importance of providing accurate information to the NRC; and, (3) compliance with NRC requirements. Dr. Pérez will submit to the NRC the planned presentation for approval at least two weeks before delivering the actual presentation to the Puerto Rico chapter of the Society of Nuclear Medicine.

C. Dr. Pérez will offer to make the same or a similar presentation at the next scheduled national meetings of the Health Physics Society and the Society of Nuclear Medicine. If the request to make a presentation is accepted, he will submit the planned presentation to the NRC for approval at least two weeks before delivery of the presentation at these meetings.

D. Dr. Pérez will be removed as RSO from any NRC or Agreement State licenses within 30 days of Order issuance, and will not be re-designated or perform the functions of RSO for any NRC or Agreement State licenses for two years from the date of Order issuance.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Dr. Pérez, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal

server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Any person that requests a hearing shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If the hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received. *A request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 21st day of January 2010.

For the Nuclear Regulatory Commission.

Marc L. Dapas,

Deputy Regional Administrator.

[FR Doc. 2010–1824 Filed 1–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on February 17, 2010, Room T2–B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, February 17, 2010—1:30 p.m.–5 p.m.

The Subcommittee will review changes to NUREG–1536, Standard Review Plan for Spent Fuel Storage Systems at a General License Facility. The Subcommittee will hear presentations by and hold discussions with NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher L. Brown (telephone: 301–415–7111, e-mail: *Christopher.Brown@nrc.gov*), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 52829–52830).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in major inconvenience.

Dated: January 25, 2010.

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–1822 Filed 1–28–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS)

Meeting of the ACRS Subcommittee on EPR; Notice of Meeting

The ACRS U.S. Evolutionary Power Reactor (EPR) Subcommittee will hold a meeting on February 18–19, 2010, 11545 Rockville Pike, T2–B3, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to AREVA, NP, pursuant to 5 U.S.C. 552b(c)(4).

The proposed agenda for the subject meeting shall be as follows:

Thursday, February 18, 2010, 8:30 p.m.–5 p.m.

Friday, February 19, 2010, 8:30 p.m.–5 p.m.

The Subcommittee will review selected chapters of the Safety Evaluation Report with Open Items concerning the U.S. EPR Design Certification (DCD) Application and the Calvert Cliffs Unit 3 Combined License (COL) Application. The Subcommittee will hear presentations by and hold discussions with representatives of AREVA, NP, UniStar Nuclear Operating Services, LLC, the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Derek Widmayer (Telephone 301–415–7366, E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in major inconvenience.

Dated: January 25, 2010.

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–1823 Filed 1–28–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Subcommittee on Forensic Science; Committee on Science; National Science and Technology Council

ACTION: Notice of Panel Session. Public input is requested concerning appropriate Federal Executive Branch responses to the National Academy of Sciences 2009 report: "Strengthening Forensic Science in the United States: A Path Forward" (*http://www.nap.edu/catalog.php?record_id=12589#toc*).

SUMMARY: The Subcommittee on Forensic Science (SOFS) of the National Science and Technology Council's (NSTC's) Committee on Science will host a public forum in collaboration with the annual scientific meeting of the American Academy of Forensic Sciences (AAFS). The role of the SOFS is to coordinate Federal activities and advise the Executive Office of the President on national efforts to improve forensic science and its application in America's justice system. This special session will serve to provide attendees with an update on the Subcommittee's work and provide an opportunity for the public to ask questions and provide comments.

Dates and Addresses: The session will be held in conjunction with the 62nd Annual Scientific Meeting of the American Academy of Forensic Sciences, at the Washington State Convention and Trade Center, 800 Convention Place, Seattle, WA 98101 on Friday, February 26, 2010, from 7 p.m. to 8:30 p.m. Check the meeting registration desk for room location.

Information regarding the 62nd AAFS Annual Meeting is available at the AAFS Web site: *http://www.aafs.org.*

Note: Persons solely attending the SOFS public session do not need to register for the AAFS Annual Meeting to attend. There will be no admission charge for persons solely attending the public meeting. Seating is limited and will be on a first come, first served basis. For those who cannot attend but wish to provide written comments or questions, please do so by sending an email to the Subcommittee's Executive Secretary, Robin Jones, at: *Robin.W.Jones@usdoj.gov,* no later than Friday, February 19, 2010.

FOR FURTHER INFORMATION CONTACT: Additional information and links to the Subcommittee on Forensic Science can be obtained through the Office of Science and Technology Policy's NSTC Web site at *http://www.ostp.gov/cs/nstc* or by calling 202–353–2436.

Kenneth E. Melson,

Co-Chair, Subcommittee on Forensic Science.

[FR Doc. 2010–1813 Filed 1–28–10; 8:45 am]

BILLING CODE 4410–FY–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–4(e) and Form 19b–4(e), OMB Control No. 3235–0504, SEC File No. 270–447.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below. The Code of Federal Regulation citation to this collection of information is 17 CFR 240.19b–4(e) under the Securities Exchange Act of 1934 (17 U.S.C 78a *et seq.*) (the "Act").

Rule 19b–4(e) permits a self-regulatory organization ("SRO") to immediately list and trade a new derivative securities product so long as such product is in compliance with the criteria of Rule 19b–4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e), it is necessary that the SRO maintain, on-site, a copy of Form 19b–4(e) under the Act. Rule 19b–4(e) requires SROs to file a summary form, Form 19b–4(e), and thereby notify the Commission, within five business days after the commencement of trading a new derivative securities product. In addition, the Commission reviews SRO compliance with Rule 19b–4(e) through its routine inspections of the SROs.

The collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e).

The respondents to the collection of information are SROs (as defined by the Act), all of which are national securities exchanges.

Twelve respondents file an average total of 3,180 responses per year, which corresponds to an estimated annual response burden of 3,180 hours.

Compliance with Rule 19b–4(e) is mandatory. Information received in response to Rule 19b–4(e) shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: January 22, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1846 Filed 1–28–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 23c–3 and Form N–23c–3, SEC File No. 270–373, OMB Control No. 3235–0422.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350 *et. seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 23c–3 (17 CFR 270.23c–3) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) is entitled: "Repurchase of Securities of Closed-End Companies." The rule permits certain closed-end investment companies ("closed-end funds" or "funds") to offer to repurchase from shareholders a limited number of shares at net asset value. The rule includes several reporting and recordkeeping requirements. The fund must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval System ("EDGAR")) attached to Form N–23c–3 (17 CFR 274.221), a filing that provides limited information about the fund and the type of offer the fund is making.[1] The fund must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity

[1] Form N–23c–3 requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act (15 U.S.C. 80a–24) and the rules that implement section 24.[2]

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer, which may differ from previous offers on such matters as the maximum amount of shares to be repurchased (the maximum repurchase amount may range from 5% to 25% of outstanding shares). The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N–23c–3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end investment company is intended to facilitate the review of these materials by the Commission or FINRA to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

Compliance with the collection of information requirements of the rule and form is mandatory only for those funds that rely on the rule in order to repurchase shares of the fund. The information provided to the Commission on Form N–23c–3 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The Commission staff estimates that 31 funds make use of rule 23c–3 annually, including one fund that is relying upon rule 23c–3 for the first time. The Commission staff estimates that on average a fund spends 89 hours annually in complying with the requirements of the rule and Form N–23c–3, with funds relying upon rule 23c–3 for the first time incurring an additional one-time burden of 28 hours. The Commission therefore estimates the total annual burden of the rule's and form's paperwork requirements to be 2787 hours.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: January 25, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1847 Filed 1–28–10; 8:45 am]

BILLING CODE 8011–01–P

[2] Rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3), however, would generally exempt the fund from that requirement when the materials are filed instead with the Financial Industry Regulatory Authority ("FINRA"). These materials are virtually always submitted to FINRA, instead of the Commission, under FINRA procedures which apply to the underwriter of every fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61398; File No. SR–Phlx–2009–116]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, by NASDAQ OMX PHLX, Inc. Relating to Transaction Fees and Rebates for Options Overlying Standard and Poor's Depositary Receipts ("SPDRs")

January 22, 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 December 31, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. On January 5, 2010, the Exchange filed Amendment No. 1 thereto. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule by adopting, for a two-month pilot period, per contract transaction fees for options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY").[3] The fees would apply to: (i) Transaction sides that remove liquidity from the Exchange's disseminated market, and (ii) Firm and broker-dealer quotes and orders that are included in the Exchange's disseminated market.

Additionally, the Exchange proposes to offer a transaction rebate to certain liquidity providers, as described more fully below.

While changes to the Exchange's fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after January 4, 2010. The proposed changes to the fee schedule will be effective on a pilot basis, scheduled to expire March 2, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[3] SPY options are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase liquidity and to attract order flow in SPY options on the Exchange. The purpose of this Amendment No. 1 is to correct a typographical error by stating that the Exchange proposes to assess a transaction charge of $0.35 per contract to Firms and $0.45 per contract to broker-dealers for adding liquidity.

Transaction Charges for Removing Liquidity

The Exchange proposes to assess a per-contract transaction charge in SPY options on six different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange. The per-contract transaction charge would depend on the category of market participant submitting an order or quote to the Exchange that removes liquidity.

The proposed amendments to the Exchange's Fee Schedule would break down market participants by the following six categories: (i) Specialists, Streaming Quote Traders ("SQTs"),[4] and Remote Streaming Quote Traders ("RSQTs"),[5] (ii) customers that submit orders that are not Directed Orders [6] ("Non-Directed Customers"); (iii) customers that submit Directed Orders ("Directed Customers"); [7] (iv) specialists, SQTs and RSQTs that receive Directed Orders ("Directed Participants" or "Directed Specialists, RSQTs, or SQTs" [8]); (v) Firms; and (vi) broker-dealers.

The per-contract transaction charges to be assessed on participants who submit proprietary quotes and/or orders that remove liquidity in SPY options from the Exchange in SPY options are, by category:

Category	Charge
Specialist, SQT, RSQT.	$0.40 per contract.
Non-Directed Customer.	$0.40 per contract.
Directed Customer	$0.25 per contract.
Directed Participants	$0.30 per contract.
Firms	$0.45 per contract.
Broker-Dealers	$0.45 per contract.

Transaction Charges for Adding Liquidity

The Exchange proposes to assess a transaction charge of $0.35 per contract to Firms and $0.45 per contract to broker-dealers.

Rebates

In order to promote and encourage liquidity in SPY options, the Exchange proposes to amend its fee schedule to include a per-contract rebates relating to transaction charges for orders or quotations that add liquidity in SPY options. The amount of the rebate would depend on the category of participant whose order or quote was executed as part of the PHLX Best Bid and Offer. Specifically, the per-contract rebates are, by category:

Category	Rebate
Specialist, SQT, RSQT.	$0.20 per contract.
Non-Directed Customer.	$0.05 per contract.
Directed Customer	$0.20 per contract.
Directed Participants	$0.25 per contract.
Firms	N/A
Broker-Dealers	N/A

Applicability of Other Fees

- The $900,000 monthly cap that is currently applicable to ROTs and specialists transacting equity options will not be applicable to the fees described herein.[9]
- The $85,000 Firm Related Equity Option Cap will not be applicable to the fees described herein.[10]
- The Exchange pays a per-contract Market Access Provider ("MAP") Subsidy to any Exchange member organization that qualifies as an Eligible MAP. The MAP Subsidy will not apply to electronic transactions in SPY.[11] [12]
- Payment for Order Flow fees [13] will not be collected on transactions in SPY.
- All electronic auctions will be free to Non-Directed Customers, Directed Customers, Directed Participants, Specialists, SQTs and RSQTs.[14] Electronic auctions include, without limitation, the Complex Order Live Auction ("COLA"),[15] and Quote and Market Exhaust auctions.[16] Firms and broker-dealers will be assessed the appropriate charge for removing liquidity.
- The fees described herein will not apply to contracts executed during the Exchange's opening process.[17] Firms and broker-dealers will be assessed the appropriate charge for removing liquidity.
- The Exchange pays an Options Floor Broker Subsidy to member organizations with Exchange registered floor brokers for eligible contracts that are entered into the Exchange's Options Floor Broker Management System. The Options Floor Broker Subsidy will be applicable to the transactions described herein.[18]
- The Exchange assesses a Cancellation Fee of $2.10 per order on member organizations for each

[4] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

[5] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[6] "Directed Order" means any customer order (other than a stop or stop-limit order as defined in Rule 1066) to buy or sell which has been directed to a particular specialist, RSQT, or SQT by an Order Flow Provider, as defined below. To qualify as a Directed Order, an order must be delivered to the Exchange via AUTOM.

[7] For the purposes of this fee, a Directed Customer is an order from a customer directed to a Directed Participant for execution. A Directed Participant is a Specialist, SQT, or RSQT that executes an order directed to it for execution.

[8] *See* Exchange Rule 1080(l), "* * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

[9] *See* proposed rule change SR–Phlx–2009–104.

[10] *See* proposed rule change SR–Phlx–2009–104.

[11] An "Eligible MAP" is defined in the Exchange's Fee Schedule in the Market Access Provider Subsidy.

[12] *See* Securities Exchange Act Release No. 59537 (March 9, 2009), 74 FR 11151 (March 16, 2009) (SR–Phlx–2009–19).

[13] *See* Securities Exchange Act Release No. 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx–2009–38).

[14] With respect to electronic auctions, it is systemically difficult to determine which participant(s) would qualify for a rebate, therefore the Exchange has determined not to apply the rebate to transactions resulting from electronic auctions.

[15] COLA is the automated Complex Order Live Auction process. A COLA may take place upon identification of the existence of a COLA-eligible order either: (1) Following a COOP, or (2) during normal trading if the Phlx XL system receives a Complex Order that improves the cPBBO. *See* Exchange Rule 1080.

[16] Market Exhaust occurs when there are no Phlx XL II participant (specialist, SQT or RSQT) quotations in the Exchange's disseminated market for a particular series and an initiating order in the series is received. In such a circumstance, the Phlx XL II system, using Market Exhaust, will initiate a Market Exhaust auction for the initiating order. Under Market Exhaust, any order volume that is routed to away markets will be marked as an Intermarket Sweep Order or "ISO." *See* Exchange Rule 1082.

[17] *See* Exchange Rule 1017.

[18] *See* Securities Exchange Act Release No. 60578 (August 27, 2009), 74 FR 45666 (September 3, 2009) (SR–Phlx–2009–72).

cancelled electronically delivered customer order in excess of the number of customer orders executed on the Exchange by that member organization in a given month.[19] The Cancellation Fee will continue to apply.

- Transaction fees for Linkage "P" and "P/A" Orders would be applicable to the transaction listed herein.[20]

- Regular Equity Option transaction fees will apply to Complex Orders that are electronically executed against a contra-side order with the same Complex Order Strategy.

- Single contra-side orders that are executed against the individual components of Complex Orders will be charged under the proposed Fee Schedule. The individual components of such a Complex Order will not be charged.

- SPY transactions executed via open outcry will be subject to the standard equity options fee schedule. However, if one side of the transaction is executed using the Options Floor Broker Management System [21] and any other side of the trade was the result of an electronically submitted order or a quote, then the fees proposed herein will apply to the FBMS contracts and contracts that are executed electronically all sides of the transaction.

The proposed changes to the fee schedule will be effective for transactions settling on or after January 4, 2010, and will be effective for a pilot period scheduled to expire March 2, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [22] in general, and furthers the objectives of Section 6(b)(4) of the Act [23] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The impact of the amendments upon the net fees paid by a particular market participant will depend on a number of variables, including its monthly volumes, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity).

Specifically, the Exchange believes that its proposal to charge a different fee and to pay a different rebate for Non-Directed Customers relative to Directed Customers is an equitable allocation of reasonable fees and other charges among Exchange members, and is consistent with the current fee schedule and industry fee assessments of member firms that allow for different rates to be charged for different order types originated by dissimilarly classified market participants.[24]

The Exchange notes that the vast majority of order flow that is routed to the Exchange from away markets disseminating inferior prices is customer order flow that is not directed to a particular specialist, SQT or RSQT. The Exchange believes that this Non-Directed Customer order flow represents orders that were previously routed to the Exchange as Principal Acting as Agent Orders ("P/A Orders") [25] via the Intermarket Option Linkage ("Linkage") under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Plan"). The participating U.S. options exchanges determined to withdraw from the Plan and, on June 17, 2008, the Exchange filed an executed copy of the Options Order Protection and Locked/Crossed Market Plan ("New Plan"), joining all other approved options markets in adopting the New Plan. The concept of P/A orders routed through a central Linkage "hub" does not exist under the New Plan. P/A Orders were routed to remove liquidity from the Exchange under the Plan; orders routed from away markets to remove liquidity are now routed directly to the Exchange, in large part as Non-Directed Customer orders.

The Exchange assessed transaction fees applicable to the execution of P/A Orders, but did not assess transaction fees on customer orders sent to the Exchange outside the Linkage. The Exchange also charged different per-contract transaction fees for P/A Orders and Principal Orders ("P Orders") [26] sent to remove liquidity from the Exchange The Exchange charged $0.45 per option contract for P Orders sent to the Exchange and $.30 per contract for P/A Orders.[27] The Exchange believes that Non-Directed Customers now "stand in the shoes" of what were previously P/A Orders, and the proposed transaction charges applicable to Non-Directed Customers are not unfairly discriminatory relative to the proposed fees for Directed Customers, based upon the precedent of charging for P/A Orders but not for customer orders sent outside the Linkage.

Order flow providers that control customer order flow and route customer orders to exchanges are responsible to obtain the best pricing available for their customers. An order flow provider has the ability to enter into arrangements whereby they may receive consideration for directing the customer order to a specific market maker (specialists, SQTs and/or RSQTs). Under the proposal, a Directed Customer would be charged a lower per-contract transaction fee, and would receive a higher rebate, based on such an arrangement.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that the fees it charges for options overlying SPYs remain competitive with fees charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[19] *See* Securities Exchange Act Release No. 60188 (June 29, 2009), 74 FR 32986 (July 9, 2009) (SR–Phlx–2009–48).

[20] *See* Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR–Phlx–2009–53). This pilot is scheduled to expire on July 31, 2010. The Exchange understands that certain exchanges continue to utilize Linkage to send P/A Orders.

[21] The Options Floor Broker Management System ("FBMS") is a component of the Exchange's system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trial provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor. *See* Exchange Rule 1080, Commentary .06.

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(4).

[24] NYSE Amex currently charges different rates to different market participants in assessing its firm facilitation fee. *See* Securities Exchange Act Release No. 60378 (July 23, 2009), 74 FR 38245 (July 31, 2009) (SR–NYSEAmex 2009–38).

[25] A P/A order is an order for the principal account of a specialist (or equivalent entity on another participant exchange that is authorized to represent public customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent.

[26] A Principal Order is an order for the principal account of an Eligible Market Maker and is not a P/A Order.

[27] *See* Securities Exchange Act Release No. 60210 (July 1, 2009), 74 FR 32989 (July 9, 2009) (SR–Phlx–2009–53).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [28] and paragraph (f)(2) of Rule 19b–4 [29] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–116 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–116. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–116 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1843 Filed 1–28–10; 8:45 am]

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[28] 15 U.S.C. 78s(b)(3)(A)(ii).

[29] 17 CFR 240.19b–4(f)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61393; File No. SR–NYSEArca–2010–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 6.87

January 21, 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 January 8, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 6.87—Obvious Errors and Catastrophic Errors. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. 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.

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 certain changes to Rule 6.87—Obvious Errors and Catastrophic Errors. Under the current rule, an obvious error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by a specified amount. The "Theoretical Price" of an option series is currently defined in rule 6.87(a)(2) as the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, that comprise the National Best Bid/Offer ("NBBO") as disseminated by the Options Price Reporting Authority ("OPRA") If there are no quotes for comparison, the Theoretical Price is determined by a designated Trading Official.[4]

The Exchange is now proposing to permit Trading Officials to establish the Theoretical Price when the NBBO for the affected series, just prior to the erroneous transaction, is at least two times the permitted bid/ask differential pursuant to the guidelines contained in Rule 6.37A(b). This provision is similar to Rule 1092(b)(ii) of Nasdaq OMX Phlx ("PHLX") and Rule 6.25(a)(1)(iv) of The Chicago Board Options Exchange ("CBOE").

2. Statutory Basis

This proposed rule change is designed to allow an Exchange officer to review a transaction in order to provide the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Trading Officials are employees or officers of the Exchange and are not affiliated with OTP Holders or OTP Firms.

opportunity for potential relief to a party affected by an obvious error. The Exchange believes that for these reasons the proposed rule change is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change will incorporate a uniform approach in determining obvious errors that is consistent with other national options exchanges.

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 [7] and Rule 19b–4(f)(6) thereunder.[8] 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 [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

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–2010–03 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–2010–03. 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,[11] 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 inspection and copying 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–2010–03 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1844 Filed 1–28–10; 8:45 am]

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[11] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61405; File No. SR–Phlx–2009–101]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving a Proposed Rule Change Relating to Collection of Exchange Fees

January 21, 2010.

I. Introduction

On December 8, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 909, Security for Exchange Fees and Other Claims, to require member organizations to provide a clearing account number at the National Securities Clearing Corporation ("NSCC") for purposes of permitting the Exchange to debit any undisputed or final fees, fines, charges and/or other monetary sanctions or monies owed to the Exchange.[3] The proposed rule change was published for comment in the **Federal Register** on December 17, 2009.[4] The Commission

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] This includes, among other things, fines which result from: Violation of Rule 60, Order and Decorum; violations of the Minor Rule Plan pursuant to Rule 970; monetary sanctions imposed by the Business Conduct Committee relating to a Letter of Caution; and monetary sanctions imposed by a Hearing Panel in connection with Disciplinary Violations. *See also* Notice, *infra* note 4, for further information regarding disciplinary and non-disciplinary sanctions.

[4] *See* Securities Exchange Act Release No. 61141 (December 10, 2009), 74 FR 67003 (December 17, 2009) ("Notice").

received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, Phlx Rule 909 requires member organizations and applicants for registration to provide and maintain a security deposit, unless the member organization maintains excess net capital of at least the amount established by the Exchange. The Exchange proposes to eliminate the requirement to provide and maintain a security deposit and would instead require member organizations and applicants to provide a clearing account number for an account at NSCC in order to permit the Exchange to debit undisputed or final fees, fines, charges and/or other monetary sanctions or monies owed to the Exchange or other charges related to Rule 924.[5] Additionally, the Exchange proposes to amend the title of Rule 909 from "Security for Exchange Fees and Other Claims" to "Collection of Exchange Fees and Other Claims" in order to more accurately describe the proposed rule.

Under the proposal, the Exchange would send a monthly invoice to each member organization on approximately the fourth through sixth business day of the month following the month in which the charges were incurred.[6] In addition, the Exchange would send a file to the member's clearing firm which will indicate the amounts to be debited from each member. If a member is self-clearing, no such file would be sent, since the member would receive the invoice indicating the amount to be debited. If a member disputes an invoice in writing to the Exchange's designated staff by the fifteenth of the month, and the amount in dispute is at least $10,000 or greater, the Exchange would not include the disputed amount in the debit.[7]

The Exchange then would send a file to NSCC on approximately the twenty-third of the month following the month in which the charges were incurred to initiate the debit of the appropriate amount. Once NSCC receives the file from the Exchange, NSCC would debit the amount indicated from the clearing members' account.[8]

The Exchange would provide members with a thirty-day period, upon Commission approval of this proposal, to provide an NSCC number to the Phlx Membership Department if the member has not already provided one in the past.[9]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Commission notes that Phlx would only initiate a debit for an *undisputed* or *final* fee, fine, charge, or other monetary sanction or money owed to the Exchange. In addition, because members would receive invoices approximately two weeks before any funds are debited, members would have a means to monitor the accuracy of their invoices and, if necessary, would have time to contact the Exchange staff prior to amounts being debited.

Further, the Exchange has informed the Commission that the vast majority of the Exchange's members already voluntarily participate in the automatic-debit program, which the proposed rule would make mandatory. Those members that do not currently participate will have thirty days from approval of this proposal to provide the NSCC number to the Exchange. Finally, the Commission notes that no comments were received regarding the proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, (SR–Phlx–2009–101), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1848 Filed 1–28–10; 8:45 am]

BILLING CODE 8011–01–P

[5] Phlx Rule 924 (Obligations of Members and Member Organizations to the Exchange) states, among other things, that members and member organizations shall be liable for such fees, fines, dues, penalties and other amounts imposed by the Exchange.

[6] For example, invoices for the month of October might be sent on November 5.

[7] If the fifteenth day is not a business day, then the member would have until the following business day.

[8] If the member clears through an Exchange clearing member, the estimated transactions fees owed to the Exchange are typically debited by the clearing member on a daily basis using daily transaction detail reports provided by the Exchange to the clearing member in order to ensure adequate funds have been escrowed.

[9] The Exchange noted that many of its members have already provided voluntarily the Exchange with an NSCC clearing account number, and those members' accounts are currently being debited on a monthly basis. *See* Notice, *supra* note 4, at note 10.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61409; File No. SR–NYSE–2010–04]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend for 12 Months the Pilot Program Permitting the Exchange's Ownership Interest in BIDS Holdings L.P. (BIDS) and the Affiliation of BIDS With the New York Block Exchange LLC

January 22, 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 January 11, 2010, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal pursuant to Rule 19b–4(f)(6) under the Act [3] and requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b–4(f)(6)(iii).[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for an additional 12 months the January 22, 2010 expiration date of the pilot program that provides an exception to NYSE Rule 2B by permitting the Exchange's equity ownership interest in BIDS Holdings L.P. ("BIDS"), which is the parent company of a member of the Exchange, and BIDS's affiliation with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6)(iii).

the New York Block Exchange LLC, an affiliate of the Exchange. There is no proposed rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 22, 2009, the Commission approved the governance structure proposed by the Exchange with respect to the New York Block Exchange ("NYBX"), a new electronic trading facility of the Exchange for NYSE-listed securities that was established by means of a joint venture between the Exchange and BIDS.[5] The governance structure that was approved is reflected in the Limited Liability Company Agreement of New York Block Exchange LLC (the "Company"), the entity that owns and operates NYBX. Under the governance structure approved by the Commission, the Exchange and BIDS each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc., owns less than 10% of the aggregate limited partnership interest in BIDS. BIDS is the parent company of BIDS Trading, L.P. ("BIDS Trading"), which became a member of the Exchange in connection with the establishment of NYBX.

The foregoing ownership arrangements would violate NYSE Rule 2B without an exception from the Commission.[6] First, the Exchange's indirect ownership interest in BIDS Trading violates the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS Trading is an affiliate of an affiliate of the Exchange,[7] which violates the prohibition in Rule 2B against a member of the Exchange having such status. Consequently, in the Approval Order, the Commission permitted an exception to these two potential violations of NYSE Rule 2B, subject to a number of limitations and conditions. One of the conditions for Commission approval was that the proposed exception from NYSE Rule 2B to permit NYSE's indirect ownership/interest in BIDS Trading and BIDS Trading's affiliation with the Company (which is an affiliate of NYSE) would be for a pilot period of 12 months.[8]

In discussing the pilot basis of the exception to NYSE Rule 2B, the Approval Order noted that the pilot period "will provide NYSE and the Commission an opportunity to assess whether there might be any adverse consequences of the exception and whether a permanent exception is warranted."[9] The 12-month pilot period is due to expire on January 22, 2010. While the Exchange believes that the experience to date operating under the exception to Rule 2B fully justifies making the exception permanent, the Exchange now seeks to extend the ending date for the pilot program for another 12 months to January 22, 2011 to allow additional time, if necessary, for the Commission to obtain and review the information it needs in order to make its determination regarding any adverse consequences of the exception and whether a permanent exception is warranted. During the proposed extension of the pilot program period, the Exchange's current indirect ownership interest in BIDS Trading[10] and BIDS Trading's affiliation with the Company would continue to be permitted.

If the Commission should determine prior to the end of the extended pilot period that a permanent exception to NYSE Rule 2B is warranted, the Exchange would have the option of submitting a proposed rule change to accomplish this and simultaneously terminate the pilot program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[11] of the Act,[12] in general, and furthers the objectives of Section 6(b)(1)[13] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of Section 6(b)(5)[14] of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

In the Approval Order, the Commission determined that the proposed exception from NYSE Rule 2B to permit NYSE's indirect ownership interest in BIDS Trading and BIDS Trading's affiliation with the Company was consistent with the Act, including Section 6(b)(5) thereof.[15] As the basis for its determination, the Commission cited the specific limitations and conditions listed in the Approval Order to which its approval of the exception to NYSE Rule 2B was subject,[16] stating: "These conditions appear reasonably designed to mitigate concerns about potential conflicts of interest and unfair competitive advantage. * * * These conditions appear reasonably designed to promote robust and independent regulation of BIDS. * * * The Commission believes that, taken together, these conditions are reasonably designed to mitigate potential conflicts between the Exchange's commercial interest in BIDS

[5] *See* Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving SR–NYSE–2008–120) ("Approval Order").

[6] NYSE Rule 2B provides, in relevant part, that: "[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. * * * The term affiliate shall have the meaning specified in Rule 12b–2 under the Act."

[7] Specifically, the Company is an affiliate of the Exchange, and BIDS Trading is an affiliate of the Company based on their common control by BIDS. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS.

[8] *See* Approval Order, 74 FR at 5018.

[9] *Id.* at 5019.

[10] Another condition for the exception to NYSE Rule 2B specified in the Approval Order was that the Exchange's equity interest in BIDS must remain less than 9%, absent prior Commission approval of any increase. *See id.* at 5018. Subsequently, the Commission approved a proposal by the Exchange to slightly increase the ceiling on its equity ownership in BIDS to less than 10%, and that will be the applicable limitation during the extension of the pilot period. *See* Securities Exchange Act Release No. 61257 (December 30, 2009), 75 FR 500 (January 5, 2010) (order approving SR–NYSE–2009–116).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78.

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Approval Order, 74 FR at 5018–5019.

[16] *Id.* at 5018.

and its regulatory responsibilities with respect to BIDS."[17] Because these same limitations and conditions will continue to be applicable during the extension of the pilot period, other than the ending date of the pilot period and the recently approved small increase in the ceiling on the Exchange's equity interest in BIDS, the Exchange believes that the exception from NYSE Rule 2B described above will continue to be consistent with the Act during that extension.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder because it does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[18]

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, because the proposal would preserve the benefits of the Exchange's pilot program without interruption as the Exchange and the Commission monitor and assess whether any adverse consequences have resulted from the exceptions to NYSE Rule 2B and if the exceptions continue to be appropriate. Therefore, the Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.[19]

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–NYSE–2010–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–04. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–04 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1850 Filed 1–28–10; 8:45 am]

BILLING CODE 8011–01–P

[17] *Id.* at 5019.

[18] In addition, Rule 19b–4(f)(6) requires the Exchange to give 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 satisfied this requirement.

[19] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61411; File No. SR–ISE–2010–05]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Market Maker Trading Licenses for Foreign Currency Options

January 22, 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 January 14, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Exchange has filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 2213 regarding market maker trading licenses for the Exchange's foreign currency options. The text of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

proposed rule change is available on the Exchange's Web site *http://www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend its rules regarding Foreign Currency Options ("FX Options") [5] traded on the Exchange. Specifically, ISE proposes to amend its Rule 2213 regarding market maker trading licenses for the Exchange's FX Options.

Under the Exchange's current rules, FX Primary Market Makers ("FXPMMs") are required to purchase, through a sealed bid auction, a trading license in order to serve as a market maker in a particular foreign currency pair. FXPMMs must also provide market quality commitments regarding (i) the average quotation size it will disseminate in the foreign currency option, and (ii) the maximum quotation spread it will disseminate in such product at least ninety percent of the time. At the end of each auction, the Exchange determines the winning bidder for an FXPMM trading license based on bid amount and market quality commitment. There is only one FXPMM per currency pair. The minimum price for a FXPMM trading license is currently $5,000.

The Exchange also sells FX Competitive Marker Maker ("FXCMM") trading licenses. Pursuant to Exchange rules, FXCMM trading licenses are sold pursuant to a "Dutch" auction.[6] FXCMMs are not required to submit any market quality commitments. The Exchange sells up to 10 FXCMM trading licenses per currency pair. The minimum price for a FXCMM trading license is currently $500.

The Exchange now proposes to eliminate the minimum bid requirement for both FXPMM and FXCMM trading licenses. ISE believes doing so will promote competition among market makers by allowing smaller firms to compete without the additional burden of a minimum fee. Further, some currency pairs are more popular than others so a minimum bid requirement for some of the lesser popular currency pairs invites less interest from potential market makers. While the minimum bid amounts do not amount to a large capital outlay, firms that are contemplating entry into the FX options business will be further incentivized to do so because their start-up costs will be reduced. FXPMMs will still be required to submit a monetary bid and market quality commitments and FXCMMs will still be required to submit only a monetary bid, to compete for a trading license to serve as a market maker in FX Options listed by the Exchange in the future.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's [8] requirements that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change will allow smaller firms to compete for a trading license without the additional burden of a minimum fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [9] of the Act and Rule 19b–4(f)(6) [10] thereunder. The Exchange provided the Commission with 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 the proposed rule change.

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–ISE–2010–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission,

[5] ISE began trading FX options on April 17, 2007 pursuant to Commission approval. *See* Securities Exchange Act Release No. 55575 (April 3, 2007), 72 FR 17963 (April 10, 2007) (SR–ISE–2006–59).

[6] *See* ISE Rule 2213(g).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–05 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1853 Filed 1–28–10; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61397; File No. SR–Phlx–2010–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Deleting Obsolete Provisions Relating to the Opening

January 22, 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 January 14, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Phlx has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 1017, Openings in Options, to delete the portions of the rule that pertain to the Phlx XL trading system, which has since been replaced by the Phlx XL II trading system. Accordingly, all of the commentary (.01 through .03) as well as paragraphs (a)–(g) will be deleted, with the exception of the last sentence of paragraph (a) defining a Phlx XL II participant and sub-paragraph (iii) of paragraph (c), which will continue to state that to be considered in the determination of the opening price and to participate in the opening trade, orders represented by Floor Brokers must be entered onto the book electronically. Paragraphs (h) and (i) are proposed to be amended by deleting references to the old trading system, Phlx XL.

The Exchange also proposes to delete Options Floor Procedure Advice ("Advice") A–12, Opening Rotations, and Advice A–14, Equity Option And Index Option Opening Parameters, which are also outdated.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, 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.

[3] 17 CFR 240.19b–4(f)(6).

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 update various rules pertaining to the opening by deleting outdated language. In July 2009, the Exchange fully rolled out its new options trading system, Phlx XL II.[4] Accordingly, many portions of Rule 1017, which pertained to the old trading system, Phlx XL, no longer apply. A few of the provisions applied to both Phlx XL and Phlx XL II; those are being amended to delete reference to Phlx XL, such that they remain applicable to Phlx XL II.

Similarly, the Exchange is proposing to delete two Options Floor Procedure Advices ("Advices"). Historically, Advices replicated the provisions of the Exchange's rules that were most pertinent for the trading floor community to keep handy, in lieu of the large, unwieldy rulebook; the Exchange adopted, for many years, both rules and advices that contained nearly identical language where the rule/advice was the subject of a fine schedule under the Exchange's minor rule plan in order for the trading floor to have easy access to these provisions (which the Exchange printed and distributed) and in order for those persons who administered fines to have easy access to consult the applicable fine schedules.[5]

The first Advice proposed to be deleted is Advice A–12, which pertains principally to Phlx XL and is therefore obsolete; the portions that refer to Phlx XL II merely cross-reference Rule 1017 and state that the opening is conducted automatically. Accordingly, Advice A–12, which is merely descriptive, is no longer needed because there is no behavior to which to apply the fine schedule.[6] Similarly, Advice A–14 is also proposed to be deleted, because it is merely explanatory and cannot be violated; it was updated to reflect Phlx XL II processes, but should instead have been deleted. Specifically, it describes

[4] Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[5] At the time, such fines were administered by "Floor Officials," who have since been replaced by "Options Exchange Officials."

[6] Advices are administered as part of the Exchange's minor rule plan; the Exchange proposes to remove Advices A–12 and A–14 from the minor rule plan.

how the system establishes opening parameters. By proposing to delete these advices, the Exchange is also proposes to amend its minor rule plan to delete these advices from it, because no fine schedule will apply. The content of both Advices remains covered by Rule 1017.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [7] in general, and furthers the objectives of Section 6(b)(5) of the Act [8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by removing obsolete language such that the rules are more clear.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

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–Phlx–2010–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–07. 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 inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–07 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1845 Filed 1–28–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61413; File No. SR–NSCC–2009–12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Fee Schedule

January 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 31, 2009, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(ii) of the Act [2] and Rule 19b–4(f)(2) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise certain fees for NSCC services and make other technical changes to the NSCC Fee Schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] 17 CFR 240.19b–4(f)(2).

[4] The Commission has modified the text of the summaries prepared by NSCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC proposes revising certain service fees and making other technical changes to its Fee Schedule. Increased fees are proposed for Fund/SERV transactions and certain clearance activity.[5] There will also be an increase in the monthly fee for the mutual fund Profile Phase II Service;[6] however, NSCC is introducing a corresponding credit for users of the service with twenty-five or fewer funds in their fund family.

NSCC also proposes eliminating or reducing certain fees. The monthly fee charged to members that act on behalf of brokers or dealers will be eliminated, and the Flip Trades fee will be reduced.

Fee structure changes and other technical Fee Schedule modifications are proposed. The fee structure for trade processing accounts will be revised from a tiered structure to a flat monthly charge per account. A change reflecting that flat fee will remove monthly maximum cumulative charges associated with Trade Input, the Trade Processing System, and the Global Clearance Network Service.[7] Provisions in the Fee Schedule stating that Trade Recording Fees are charged for all Online Comparison System and Intra-day Comparison System trades placed in NSCC's comparison system will be removed.[8] This is because those systems no longer submit locked-in bond or foreign security trades to NSCC. Additional Fee Schedule changes will remove monthly maximum cumulative membership fees for Fund/SERV, Networking, and Mutual Fund Commission Settlement, relocate the Clearance Activity Fee to demonstrate its position in NSCC's processing flow,[9] and provide a technical adjustment to the number of Participant Fees.

These proposed fee revisions are consistent with NSCC's overall pricing philosophy of aligning service fees with underlying costs. The effective date for these fee adjustments was January 4, 2010. The changes to NSCC's Fee Schedule can be found in Exhibit 5 to proposed rule change SR–NSCC–2009–12 at *http://www.dtcc.com/downloads/legal/rule_filings/2009/nscc/2009-12.pdf.*

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[10] and the rules and regulations thereunder because it updates NSCC's fee schedule to provide an equitable allocation of fees among its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and Rule 19b–4(f)(2)[12] thereunder because the proposed rule change is establishing or changing a due, fee, or other charge applicable only to a member. At any time within sixty days of the filing of such 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

- Electronic comments may be submitted by using 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–NSCC–2009–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2009–12. 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 inspection and copying in the Commission's Public Reference Section, 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 filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2009/nscc/2009-12.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSCC–2009–12 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1854 Filed 1–28–10; 8:45 am]

BILLING CODE 8011–01–P

[5] The Clearance Activity Fee formerly appeared on the NSCC Fee Schedule as the Trade Netting Fee. NSCC proposes changing the name to Clearance Activity Fee to reflect that the fee covers trade recording as well as netting services. The fee uses a tiered structure graduated to the number of sides submitted monthly for trade recording and netting. It also includes a value into the net fee and a value out of the net fee.

[6] NSCC offers two levels of the Profile service. Profile Phase I transmits mutual fund price and rate information. Profile Phase II stores data elements such as accumulation, breakpoints, and commission eligibility that relate to mutual fund processing rules.

[7] This charge will no longer apply to Municipal Comparison-Only Members.

[8] These changes are reflected in a footnote to section *I.C.* of the Fee Schedule.

[9] The introductory paragraph of the Trade Clearance Fees section will also be revised to reflect that the fee includes trade recording services.

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61415; File No. SR–NSCC–2010–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Eliminate Guarantee of Payment in Connection With the Envelope Settlement Service

January 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] notice is hereby given that on January 4, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. 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 purpose of the proposed rule change is to make modifications to NSCC's Rules & Procedures ("Rules") to eliminate NSCC's guarantee of payment in connection with the Envelope Settlement Service ("ESS") as provided for under Rule 9, Addendum D, Addendum K, and Procedure XV of the Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Envelope Settlement Service ("ESS") is primarily provided for under Rule 9 and Addendum D of the Rules with related provisions in Addendum K and Procedure XV, each of which is proposed to be amended as further described below.

ESS allows an NSCC member ("Member") through the facilities of NSCC, to physically deliver a sealed envelope [4] containing securities and such other items as NSCC may permit from time to time, to a specified receiving Member. NSCC then delivers the envelope to the receiving Member.

The delivering Member must attach to each envelope (in duplicate), a credit list, which reflects the total money value, if any, of the envelope's contents. If after receipt of the envelope NSCC determines that the envelope delivered is properly listed on the accompanying credit list, NSCC stamps the duplicate credit list and makes it immediately available to the Member's representative making the delivery. Envelopes listed on the credit list shall be deemed to have been accepted by NSCC when the duplicate credit list is stamped.

As a related feature of ESS, the payment shown on the credit list is processed as part of the Members' daily end of day net money settlement obligations in reliance on the agreement between the delivering and receiving parties that that amount is the contract amount.

Pursuant to this rule change, the NSCC will amend Rule 9 and related provisions so that the NSCC does not guarantee the payment obligation to the receiving Member in an ESS delivery and so that credits and debits of the payment amount of an envelope may be reversed. The rationale for these changes is to protect the NSCC against the risk of Member non-payment.

The payment reversal may be effected by the NSCC even if the receiving Member has taken possession of the envelope; however, if the receiving Member has not yet taken possession of the envelope at the time of a payment reversal, NSCC will return the envelope to the delivering Member. Any dispute between the delivering and receiving Members must be resolved by them outside the facilities of the NSCC.

The primary substantive changes are in Rule 9, Addendum D and Addendum K with a conforming change to Procedure XV. Technical clean-up changes are also made in each.

Changes to Rule 9 affirmatively provide that NSCC does not guarantee the payment obligation in ESS and that payment credits and debits may be reversed. Technical and conforming changes clarify the concepts of delivering and receiving Members and that settlement processing is subject not only to the rights of the NSCC under Section 2 of Rule 12 but also to the new reversal provision in Section 4 of Rule 9.

Addendum D is similarly amended to conform to amended Rule 9 to state that ESS is not guaranteed and that payment credits and debits may be reversed as provided in Rule 9. Clarification that settlement processing is subject to the rights of NSCC under Rule 9, new Section 4, and Rule 12, Section 2, is also carried over to Addendum D. Addendum D also covers other services for which no change is being made in this filing. Therefore, certain of the revisions to Addendum D clarify that the amendments are limited to ESS. Historical statements in Addendum D have been eliminated.

The change to Addendum K deletes the provision that formerly provided a guarantee for ESS and thereby deemed ESS to be a "System" within the meaning of Rule 4; without the guarantee, ESS will not be considered a "System."

Consistent with this change, clearing fund deposits allocated to ESS will be eliminated under Procedure XV, which will reduce the cost to members using ESS. The change to Procedure XV clarifies that when the clearing fund component titled "For Other Transactions" (that is, for other than CNS transactions and balance order transactions) is computed, ESS will not be included.

In considering the elimination of the guarantee, NSCC surveyed selected Members and learned that they did not consider it vital that NSCC be responsible for their ESS payment obligations and that they do not rely on the NSCC to guarantee such payments. The proposed rule changes will therefore conform to current market expectations.

However, Members expressed a strong desire for NSCC to maintain the central delivery service. The proposed changes are designed to meet this expressed need of certain Members while reducing risk to NSCC and its Members generally. The burden of risk is shifted to those that should bear it, outside NSCC's facilities. The changes will also insulate other Members from any impact on net settlement due to an ESS payment dispute.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] Rule 9 provides that except as NSCC may determine to be appropriate or necessary, NSCC will not examine the contents of the envelopes or verify the amounts of money shown on the credit list, and it shall not be responsible with respect thereto except to deliver the envelopes accepted by it to the authorized representatives of the Members to whom they are addressed.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [5] and the rules and regulations thereunder applicable to NSCC because the proposed rule change facilitates the prompt and accurate clearance and settlement of securities transactions by protecting the NSCC's net settlement process while continuing to provide a central delivery point for physical deliveries of envelopes with constrained payment processing. The changes will reduce the NSCC's exposure to potential losses from Member defaults, insolvencies, mistakes, and fraud and will appropriately shift the risk outside NSCC, to the contracting Members in an ESS transaction.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2010–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2010–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of the NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-01.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2010–01 and should be submitted on or before February 19, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1852 Filed 1–28–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61407; File No. SR–NYSE–2010–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Amend Certain of Its Initial Listing Requirements

January 21, 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 January 7, 2010, New York Stock Exchange LLC (the "NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its initial listing requirements as they relate to companies listing in connection with a firm commitment underwritten public offering whose common stock is registered under the Securities Exchange Act of 1934 prior to listing but not listed on a national securities exchange.

The text of the proposed rule change is available on the Exchange's Web site *(http://www.nyse.com),* at the Exchange's Office of the Secretary and at the Commission's Public Reference room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 102.01B of the Exchange's Listed Company Manual (the "Manual") requires that a company listing at the time of its initial public offering ("IPO") or as a result of a spin-off or under the Affiliated Company standard of Section 102.01C(iii) must demonstrate an aggregate market value of publicly-held shares ("public float") of $40 million at the time of listing. All other companies must have a public float of $100 million at the time of initial listing. For purposes of Section 102.01B, an IPO is defined as an offering by an issuer which, immediately prior to its original listing, does not have a class of common stock registered under the Act. The distribution requirements set forth in Section 103.01A for companies listing under the NYSE's listing standards for non-U.S. companies also utilize the same definition of an IPO. Section 102.01B and 103.01A both provide that—in connection with an IPO—the NYSE will rely on a written commitment from the company's underwriter to represent the anticipated value of the company's offering to demonstrate the company's compliance with the applicable public float requirement.[4]

The Exchange proposes to add a new definition for use in Sections 102.01B and 103.01A. The proposed definition would classify a company as listing at the time of its "Initial Firm Commitment Underwritten Public Offering" if (i) Such company has a class of common stock registered under the Act, (ii) such common stock has not been listed on a national securities exchange during the period since the commencement of its current registration under the Act,[5] and (iii) such company is listing in connection with a firm commitment underwritten public offering that is its first firm commitment underwritten public offering of its common stock since the registration of its common stock under the Act. The Exchange would apply the $40 million public float requirement of Section 102.01B to a company listing in connection with its Initial Firm Commitment Underwritten Public Offering. Notwithstanding the fact that a company is listing in connection with its Initial Firm Commitment Underwritten Public Offering, the Exchange will apply the $100 million market value of publicly-held shares standard of Section 102.01B if there is significant trading volume in the company's securities in the over-the-counter market prior to listing. In addition, the Exchange will generally apply the $100 million test if the company has previously registered on one or more Securities Act registration statements the sale of significant numbers of shares of the class that the company proposes to list, unless there is evidence that subsequent trading has been very limited.

Companies not listing in connection with an IPO are generally transferring their listing from another national securities exchange. These companies have a history of trading in a liquid market and, in general, there is no reason to believe that their public float will significantly increase in size simply as a result of transferring to the NYSE. On the other hand, companies listing in connection with an IPO have generally not previously had a trading market with significant liquidity and it has been the NYSE's experience that officers, directors and holders of more than 10% of the company's stock—whose shares are not counted as part of the public float—in many cases sell significant amounts of stock into the public markets after listing. This possibility of sales of shares by insiders after the IPO gives rise to a reasonable expectation that a company's public float will increase significantly over time after its IPO and the Exchange believes that the lower public float requirement for IPOs is an appropriate response to that fact.

While most companies listing on the NYSE do so upon consummation of an IPO, a spin-off or a carve-out or upon transfer from another exchange, the NYSE occasionally receives applications for listing from companies whose common stock was registered under the Act prior to listing but which were neither listed on another exchange nor had a liquid trading market prior to listing. Typically, these are companies that have never undertaken a firm commitment underwritten public offering but have voluntarily registered their common stock under the Act or incurred an obligation to register under Section 12(g) of the Act because the number of holders of their common stock exceeded the minimum established under SEC rules. These companies may seek to list in connection with a public offering which the company and the market will view as essentially identical to an IPO—as it is the first broadly distributed public equity offering by the company—but which will not meet the NYSE's definition of an IPO, as the company's common stock was registered under the Act immediately prior to the listing. These companies will generally not have a large public float at the time of initial listing, as there will not have been any prior transaction that led to a significant distribution event and, in the absence of a listing, the company will not have had a liquid trading market. The Exchange believes that these companies are more similar to companies listing in connection with an IPO than to companies transferring from another exchange. As with companies listing in connection with an IPO, these companies are undertaking their first major public distribution of their stock and will have their first truly liquid trading market after listing. As such, the Exchange believes that there is a reasonable basis for concluding that the public float of these companies will increase over time in the same way as is the case for a company after its IPO. Consequently, the Exchange believes it is generally appropriate to subject companies listing in connection with an Initial Firm Commitment Underwritten Public Offering to the same public float requirements as companies listing in connection with an IPO. Notwithstanding the foregoing, the Exchange recognizes that there are companies that have significant trading volume on the over-the-counter market and which are more similar to companies trading on a national securities exchange than to the closely-held companies with illiquid stocks for which the Initial Firm Commitment Underwritten Public Offering provision is proposed. The Exchange will continue to apply the $100 million public float requirement to those types of companies. In addition, there are companies traded on the over-the-counter market that have sold significant numbers of equity securities pursuant to Securities Act registration statements, either in direct placements or best efforts underwritings. The Exchange will generally apply the $100 million public float requirement to those companies, unless there is only very limited trading activity in such securities in the over-the-counter market, as they are also more similar to companies trading on a national securities exchange than to the closely-held companies with illiquid stocks for which the Initial Firm Commitment Underwritten Public Offering provision is proposed.

The Exchange also believes that it is appropriate to amend Sections 102.01B and 103.01A to allow the Exchange to

[4] Section 103.01A requires a worldwide public float of $100 million for all listings.

[5] A company which had previously been listed but was taken private prior to its current registration under the Act would qualify.

(i) base its determination as to whether a company listing in connection with an Initial Firm Commitment Underwritten Public Offering has complied with the $4 stock price initial listing requirement on the public offering price in the Initial Firm Commitment Underwritten Public Offering and (ii) rely on a letter from the company's underwriter in the Initial Firm Commitment Underwritten Public Offering as evidence of compliance with the applicable public float requirement. These changes do not modify the quantitative public float requirement for companies whose common stock was registered prior to listing but which are not transferring from another exchange. Rather, (i) in the case of the $4 stock price requirement, it recognizes the fact that the offering price is a better gauge of the stock's likely trading price after listing than would be provided by any limited trading occurring in the over-the-counter market, and (ii) in the case of the public float requirement, it recognizes the fact that companies listing in connection with an Initial Firm Commitment Underwritten Public Offering typically will not have a significant public float prior to consummating their offering, but will be able to demonstrate the required public float at the time of listing. The Exchange also proposes to amend the domestic company financial listing standards of Section 102.01C and the non-U.S. company financial listing standards of Section 103.01B to permit the Exchange to rely on a letter from the company's underwriter as evidence of compliance with the market capitalization requirements of the various financial listing standards for companies listing in connection with an Initial Firm Commitment Underwritten Public Offering.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. The Exchange notes that the $40 million public float requirement for domestic IPOs and $100 million worldwide public float requirement for non-U.S. companies are both higher than the public float requirements under the various Nasdaq Global Market initial listing standards, which range from $8 million to $20 million. The Exchange also notes that Nasdaq Global Market does not distinguish between IPOs and other new listing for purposes of establishing its quantitative public float requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular in that it is designed to promote just and equitable principles of trade, to 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. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that, while it will allow certain companies to list subject to a lower public float requirement, that lower requirement is still set at a high enough level that only companies that are suitable for listing on the Exchange will qualify to list. In addition, in expanding the circumstances in which the Exchange may rely on underwriters' letters to determine compliance with market capitalization requirements, the proposed rule change is not substantively changing the Exchange's quantitative initial listing requirements.

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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of such 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 Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–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,[10] 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

[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, the Commission notes that Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–02 and should be submitted on or before February 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1849 Filed 1–28–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0081]

Drug Addiction and Alcoholism

AGENCY: Social Security Administration.

ACTION: Request for Comments.

SUMMARY: We are requesting your comments about our operating procedures for determining disability for persons whose drug addiction or alcoholism (DAA) may be a contributing factor material to our determination of disability.

DATES: To ensure that your comments are considered, we must receive them no later than March 30, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0081 so that we may associate your comments with the correct document.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function to find docket number SSA–2009–0081. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Social Security Administration, Room 4624 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

The law provides that a person shall not be considered disabled for purposes of the Social Security Disability Insurance or the Supplemental Security Income programs if his or her DAA is a contributing factor material to our determination of disability. Sections 223(d)(2)(C) and 1614(a)(3)(J) of the Social Security Act (Act) (42 U.S.C. 423(d)(2)(C) and 1382c(a)(3)(J)). If we find that a person is disabled and we have medical evidence of DAA, we must decide whether the DAA is material to our determination of disability. To do this, we evaluate which of the person's disabling physical and mental limitations would remain if he or she stopped using drugs or alcohol. We then determine whether any or all of these remaining limitations would be disabling. The DAA is material to our determination of disability when we find that the person's remaining limitations would not be disabling. 20 CFR 404.1535, 416.935.

To provide guidance on how we interpret the DAA provisions of the Act, we issued instructions to our employees in an Emergency Message on August 30, 1996.[1] We later included some of those instructions in our Program Operations Manual System (POMS).[2] Since 1996 we have used these instructions and our regulations[3] to determine whether a person's DAA is a contributing factor material to our determination of disability.

Request for Comments

We are asking for your comments on the procedures we follow when evaluating DAA. In particular, we would like your opinion about what, if any, changes you think we should make to our instructions. For example, do you have any suggestions about:

- What evidence we should consider to be medical evidence of DAA?
- How we should evaluate claims of people who have a combination of DAA and at least one other *physical* impairment?
- How we should evaluate the claims of people who have a combination of DAA and at least one other *mental* impairment?
- Whether we should include using cigarettes and other tobacco products in our instructions?
- How long a period of abstinence or nonuse we should consider to determine whether DAA is material to our determination of disability?
- Whether there is any special guidance we can provide for people with DAA who are homeless?

Please see the information under **ADDRESSES** earlier in this document for methods to give us your comments. We will not respond to your comments, but we will consider them when we decide whether and how we should update our current instructions.

Dated: January 22, 2010.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2010–1834 Filed 1–28–10; 8:45 am]

BILLING CODE 4191–02–P

[1] You can read the Emergency Message here: *https://secure.ssa.gov/apps10/public/reference.nsf/1c87f767ab05e983852574da00547b35/4e8211854b65c36d852574da005a91e0!OpenDocument.*

[2] You can read the POMS instruction here: *https://secure.ssa.gov/apps10/poms.nsf/lnx/0490070050.*

[3] 20 CFR 404.1535 and 416.935.

DEPARTMENT OF STATE

[Public Notice: 6888]

60-Day Notice of Proposed Information Collection: DS–5501, Electronic Diversity Visa Entry Form, OMB Control Number 1405–0153

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Electronic Diversity Visa Entry Form.
- *OMB Control Number:* 1405–0153.
- *Type of Request:* Extension of currently approved collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).
- *Form Number:* DS–5501.
- *Respondents:* Aliens entering the Diversity Visa Lottery.
- *Estimated Number of Respondents:* 6,000,000.
- *Estimated Number of Responses:* 6,000,000.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 3,000,000 hours.
- *Frequency:* Once per entry.
- *Obligation To Respond:* Required to obtain benefits.

DATE(S): The Department will accept comments from the public up to 60 days from March 30, 2010.

You may submit comments by any of the following methods:

- *E-mail: VisaRegs@state.gov* (Subject line must read DS–5501 Reauthorization).
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulations Division, Visa Services—DS–5501 Reauthorization, 2401 E. Street, NW., Washington, DC 20520–30106.
- *Fax:* (202) 663–3898.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Robert Harper of the Office of Visa Services, U.S. Department of State, 2401 E. Street, NW., L–603, Washington, DC 20522, who may be reached on 202–663–2910.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The Department of State utilizes the Electronic Diversity Visa Lottery (EDV) Entry Form to elicit information necessary to ascertain the applicability of the legal provisions of the diversity program. Primary requirements are that the applicant is from a low admission country, is a high school graduate, or has two years of experience in a job that requires two years of training. The individuals complete the electronic entry forms and then applications are randomly selected for participation in the program.

Methodology

The EDV Entry Form is available online at *http://www.dvlottery.state.gov* and can only be submitted electronically during the annual registration period.

Dated: January 15, 2010.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–1863 Filed 1–28–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6362]

Renewal of the U.S. Advisory Commission for Public Diplomacy

SUMMARY: The Department of State has renewed the Charter of the U.S. Advisory Commission for Public Diplomacy.

The Advisory Commission was originally established under Section 604 of the United States Information and Exchange Act of 1948, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. It was reauthorized pursuant to Public Law 111–70 (2009).

The Commission is a bipartisan panel appointed by the President and created by Congress in 1948 to assess public diplomacy policies and programs of the U.S. government and publicly funded nongovernmental organizations. It submits reports to the Congress, the President, and the Secretary of State to develop a better understanding of and support for public diplomacy programs and activities.

FOR FURTHER INFORMATION CONTACT: Carl Chan, ACPD Executive Director) at (202) 632–2823 or via e-mail at *chanck@state.gov*.

Dated: January 22, 2010.

Carl Chan,

Executive Director, ACPD, Department of State.

[FR Doc. 2010–1865 Filed 1–28–10; 8:45 am]

BILLING CODE 4710–11–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of approved projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: November 1, 2009, through December 31, 2009.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Approvals Issued

Approvals By Rule Issued Under 18 CFR 806.22(e):

1. Tyco Electronics Corporation, Lickdale Facility, ABR–20091222, Union Township, Lebanon County, Pa.; Consumptive Use of up to 0.080 mgd; Approval Date: December 18, 2009.

Approvals By Rule Issued Under 18 CFR 806.22(f):

1. East Resources, Inc., Pad ID: Stehmer 420, ABR–20091101, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 15, 2009.
2. East Resources, Inc., Pad ID: Johnson 435, ABR–20091102, Shippen Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.
3. J–W Operating Company, Pad ID: Pardee & Curtin Lumber Co. C–09H, ABR–20091103, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 4.500 mgd; Approval Date: November 16, 2009.
4. Citrus Energy, Pad ID: Procter & Gamble Mehoopany Plant 2 1H, ABR–20091104, Washington Township, Wyoming County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: November 16, 2009.
5. Fortuna Energy, Inc., Pad ID: Eick 013, ABR–20091105; Columbia Township, Bradford County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: November 16, 2009.
6. East Resources, Inc., Pad ID: Brown 425, ABR–20091106, Delmar Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.
7. East Resources, Inc., Pad ID: Barrett 410, ABR–20091107, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.
8. East Resources, Inc., Pad ID: Starks 461, ABR–20091108, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.
9. Chesapeake Appalachia, LLC, Pad ID: Doss, ABR–20091109, Albany Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 16, 2009.
10. East Resources, Inc., Pad ID: Yungwirth 307, ABR–20091110, Charleston Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.
11. East Resources, Inc., Pad ID: West 299, ABR–20091111, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.
12. Chesapeake Appalachia, LLC, Pad ID: CSI, ABR–20091112, Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: November 16, 2009.
13. East Resources, Inc., Pad ID: Button 402, ABR–20091113, Jackson Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: November 16, 2009.
14. EXCO–North Coast Energy, Inc., Pad ID: Fidatti-Bianconi, ABR–20091114, Scott Township, Lackawanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: November 16, 2009.
15. Chief Oil & Gas, LLC, Pad ID: Teel Unit #1H, ABR–20091115, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: November 16, 2009.
16. EOG Resources, Inc., Pad ID: Guinan IV, ABR–20091116, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: November 18, 2009.
17. EOG Resources, Inc., Pad ID: Guinan 2H, ABR–20091117, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 18, 2009.
18. Pennsylvania General Energy Company, L.L.C., Pad ID: COP Tract 724—Pad A, ABR–20091118, Gamble Township, Lycoming County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: November 19, 2009, including a partial waiver of 18 CFR Section 806.15.
19. EOG Resources, Inc., Pad ID: Hoppaugh 1V, ABR–20091119, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: November 20, 2009.
20. EOG Resources, Inc., Pad ID: Hoppaugh 2H, ABR–20091120, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.
21. EOG Resources, Inc., Pad ID: Hoppaugh 3H, ABR–20091121, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.
22. EOG Resources, Inc., Pad ID: Lee 1H, ABR–20091122, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.
23. EOG Resources, Inc., Pad ID: Lee 2H, ABR–20091123, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.
24. EOG Resources, Inc., Pad ID: Lee 2H, ABR–20091124, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: November 23, 2009.
25. Rice Drilling B LLC, Pad ID: Ultimate Warrior #1, ABR–20091125, Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of up to 1.000 mgd; Approval Date: November 30, 2009.
26. Chief Oil & Gas, LLC, Pad ID: Hodge Unit Drilling Pad #1, ABR–20091201, Juniata Township, Blair County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: December 1, 2009.
27. Citrus Energy Corporation, Pad ID: Martin #1V, ABR–20091202, Sugarloaf Township, Columbia County, Consumptive Use of up to 5.000 mgd; Approval Date: December 1, 2009.
28. XTO Energy Incorporated, Pad ID: Jenzano, ABR–20090713.1, Franklin Township, Lycoming County, Pa.; Consumptive Use total of up to 3.000 mgd; Approval Date: December 1, 2009.
29. EOG Resources, Inc., Pad ID: Houseknecht 1H, ABR–20090423.1, Springfield Township, Bradford County, Pa.; Consumptive Use total of up to 1.999 mgd; Approval Date: December 2, 2009.
30. EOG Resources, Inc., Pad ID: Ward M 1H, ABR–20090421.1, Springfield Township, Bradford County, Pa.; Consumptive Use total of up to 1.990 mgd; Approval Date: December 2, 2009.
31. EOG Resources, Inc., Pad ID: Jones IV, ABR–20091203, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: December 2, 2009.
32. Chief Oil & Gas, LLC, Pad ID: Teel Unit Drilling Pad #2H, ABR–20091204, Springville Township, Susquehanna County, Pa.;

Consumptive Use of up to 2.000 mgd; Approval Date: December 3, 2009.

33. Chief Oil & Gas, LLC, Pad ID: Teel Unit Drilling Pad #3H, ABR–20091205, Springville Township, Susquehanna County, Pa.; Consumptive Use of up to 2.000 mgd; Approval Date: December 3, 2009.
34. East Resources, Inc., Pad ID: Chapman 237, ABR–20091206, Sullivan Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 8, 2009.
35. East Resources, Inc., Pad ID: Houck 433, ABR–20091207, Shippen Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 9, 2009.
36. Chesapeake Appalachia, LLC, Pad ID: Stoorza, ABR–20091208, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.
37. Chesapeake Appalachia, LLC, Pad ID: Roger, ABR–20091209, Auburn Township, Susquehanna County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.
38. Chesapeake Appalachia, LLC, Pad ID: Readinger, ABR–20091210, West Burlington Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.
39. Chesapeake Appalachia, LLC, Pad ID: Miller, ABR–20091211, Towanda Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.
40. Chesapeake Appalachia, LLC, Pad ID: Grippo, ABR–20091212, Terry Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.
41. Chesapeake Appalachia, LLC, Pad ID: Duffield, ABR–20091213, Tuscarora Township, Bradford County, Pa.; Consumptive Use of up to 7.500 mgd; Approval Date: December 9, 2009.
42. Chief Oil & Gas, LLC, Pad ID: Clear Springs Dairy Drilling Pad #1, ABR–20091214, Burlington Township, Bradford County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: December 14, 2009.
43. East Resources, Inc., Pad ID: Jenkins 523, ABR–20091215, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 14, 2009.
44. East Resources, Inc., Pad ID: Pannebaker 515, ABR–20091216, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 14, 2009.
45. East Resources, Inc., Pad ID: Starks 460, ABR–20091217, Richmond Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 14, 2009.
46. East Resources, Inc., Pad ID: Oldroyd 509, ABR–20091218, Rutland Township, Tioga County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 14, 2009.
47. XTO Energy Incorporated, Pad ID: Hazlak, ABR–20090715.1, Franklin Township, Lycoming County, Pa.; Consumptive Use total of up to 3.000 mgd; Approval Date: December 14, 2009.
48. XTO Energy Incorporated, Pad ID: Temple, ABR–20090714.1, Moreland Township, Lycoming County, Pa.; Consumptive Use total of up to 3.000 mgd; Approval Date: December 14, 2009.
49. EOG Resources, Inc., Pad ID: Harkness 1V, ABR–20091219, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: December 14, 2009.
50. EOG Resources, Inc., Pad ID: Harkness 2H, ABR–20091220, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: December 14, 2009.
51. EOG Resources, Inc., Pad ID: Harkness 3H, ABR–20091221, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 1.999 mgd; Approval Date: December 14, 2009.
52. Seneca Resources Corporation, Pad ID: T. Wivell Horizontal Pad, ABR–20090814.1, Covington Township, Tioga County, Pa.; Consumptive Use total of up to 4.000 mgd; Approval Date: December 18, 2009.
53. Cabot Oil & Gas Corporation, Pad ID: HibbardAM P1, ABR–20091223, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: December 21, 2009.
54. Cabot Oil & Gas Corporation, Pad ID: HibbardAM P2, ABR–20091224, Dimock Township, Susquehanna County, Pa.; Consumptive Use of up to 3.575 mgd; Approval Date: December 21, 2009.
55. XTO Energy Incorporated, Pad ID: King Unit, ABR–20091225, Shrewsbury Township, Lycoming County, Pa.; Consumptive Use of up to 3.000 mgd; Approval Date: December 22, 2009.
56. XTO Energy Incorporated, Pad ID: Booth, ABR–20091226, Shrewsbury Township, Lycoming County, Pa.; Consumptive Use of up to 4.000 mgd; Approval Date: December 28, 2009.
57. Seneca Resources Corporation, Pad ID: Rich Valley 1V Pad, ABR–20091227, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 0.500 mgd; Approval Date: December 28, 2009.
58. Citrus Energy Corporation, Pad ID: Farver #1V, ABR–20091228, Benton Township, Columbia County, Pa.; Consumptive Use of up to 5.000 mgd; Approval Date: December 28, 2009.
59. Seneca Resources Corporation, Pad ID: Wolfinger, ABR–20091229, Shippen Township, Cameron County, Pa.; Consumptive Use of up to 0.500 mgd; Approval Date: December 28, 2009, including a partial waiver of 18 CFR Section 806.15.
60. Ultra Resources, Inc., Pad ID: Marshlands H. Bergey Unit #1, ABR–20091230, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.
61. Ultra Resources, Inc., Pad ID: Marshlands K. Thomas Unit #1, ABR–20091231, Elk Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.
62. Ultra Resources, Inc., Pad ID: Lick Run Pad, ABR–20091232, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.
63. Ultra Resources, Inc., Pad ID: Hillside Pad, ABR–20091233, Gaines Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.
64. Ultra Resources, Inc., Pad ID: Button B 901 Pad, ABR–20091234, West Branch Township, Tioga County, Pa.; Consumptive Use of up to 4.990 mgd; Approval Date: December 29, 2009.
65. EOG Resources, Inc., Pad ID: Kenyon 1V, ABR–20091235, Springfield Township, Bradford County, Pa.; Consumptive Use of up to 0.999 mgd; Approval Date: December 29, 2009.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: January 19, 2010.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2010–1782 Filed 1–28–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–61]

Petition for Exemption; Summary of Petition Received

Correction

In notice document 2010–808 beginning on page 2925 in the issue of Tuesday, January 19, 2010, make the following correction:

On page 2925, in the third column, under the **DATE:** heading, "August 10, 2010" is corrected to read "February 8, 2010".

[FR Doc. C1–2010–808 Filed 1–28–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Notice No. 59; Docket No. FRA–2000–7257]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

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

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of RSAC's Working Group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Designated Federal Officer/Administrative Officer, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of August 14, 2009 (74 FR 41181). The 40th full RSAC Committee meeting was held September 10, 2009, and the 41st meeting is scheduled for February 11, 2010, at the Marriott Washington Wardman Park Hotel located at 2660 Woodley Road, NW., Washington, DC.

Since its first meeting in April of 1996, the RSAC has accepted 32 tasks. The status for each of the open tasks (neither completed nor terminated) is provided below:

Open Tasks

Task 96–4—Tourist and Historic Railroads. Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. *Contact: Grady Cothen, (202) 493–6302.*

Task 03–01—Passenger Safety. This task includes updating and enhancing the regulations pertaining to passenger safety, based on research and experience. This task was accepted on May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth, in writing, a specific description of the task. The Working Group reports planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting held November 6–7, 2003, four task groups were established: Emergency Preparedness; Mechanical; Crashworthiness; and Track/Vehicle Interaction. The task forces met and reported on activities for Working Group consideration at the third meeting held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The Working Group met on March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on General Passenger Safety. The full Passenger Safety Working Group met on April 17–18, 2007; December 11–12, 2007; November 13, 2008; and June 8, 2009. On August 5, 2009, the Working Group was requested to establish an Engineering Task Force to consider technical criteria and procedures for qualifying alternative passenger equipment designs as equivalent in safety to equipment meeting the design standards in the Passenger Equipment Safety Standards. The next meeting of the Working Group is scheduled for the February–March 2010 timeframe. *Contact: Charles Bielitz, (202) 493–6314.*

(*Engineering Task Force*) The Passenger Safety Working Group approved a request from the FRA to establish an Engineering Task Force under the Passenger Safety Working Group in August 2009. The mission of the Task Force is to produce a set of technical evaluation criteria and procedures for passenger rail equipment built to alternative designs. The technical evaluation criteria and procedures would provide a means of establishing whether an alternative design would result in performance at least equal to the structural design standards set forth in the Passenger Equipment Safety Standards (Title 49 Code of Federal Regulations (CFR) Part 238). The initial focus of this effort will be on Tier I standards. When completed, the criteria and procedures would form a technical basis for making determinations concerning equivalent safety pursuant to 49 CFR Section 238.201 and provide a technical framework for presenting evidence to FRA in support of any request for waiver of the compressive (buff) strength requirement set forth in 49 CFR Section 238.203. *See,* generally, 49 CFR Part 211 (Rules of Practice). The criteria and procedures could be incorporated into Part 238 at a later date after notice and opportunity for public comment. The Engineering Task Force was formed and a kickoff meeting was held on September 23–24, 2009. The group met again on November 3–4, 2009, and January 7–8, 2010. A follow-on meeting is scheduled for March 9–10, 2010.

(Emergency Preparedness Task Force) At the Working Group meeting of March 9–10, 2005, the Working Group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency communication, emergency egress, and rescue access. These recommendations were presented to and approved by the full RSAC Committee on May 18, 2005. The Working Group met on September 7–8, 2005, and additional, supplementary recommendations were presented to and accepted by the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006 (71 FR 50275) and was open for comment until October 23, 2006. The Working Group agreed upon recommendations for the final rule, including resolution of final comments received, during the April 17–18, 2007, meeting. The recommendations were presented to and approved by the full RSAC on June 26, 2007. The Passenger

Train Emergency Systems final rule, focusing on emergency communication, emergency egress, and rescue access, was published on February 1, 2008 (73 FR 6370). The Task Force met on October 17–18, 2007, and reached consensus on draft rule text for a followup NPRM on passenger train emergency systems, focusing on low location emergency exit path marking, emergency lighting, and emergence signage. The Task Force presented the draft rule text to the Passenger Safety Working Group on December 11–12, 2007, and the consensus draft rule text was presented to and approved by full RSAC vote during the February 20, 2008, meeting. During the May 13–14, 2008 meeting, the Task Force recommended clarifying the applicability of backup emergency communication system requirements in the February 1, 2008, final rule, and FRA announced its intention to exercise limited enforcement discretion for a new provision amending instruction requirements for emergency window exit removal. The Working Group ratified these recommendations on June 19, 2008. The Task Force met again on March 31, 2009, to clarify issues, raised by members, related to the followup NPRM. The modified rule text was presented to and approved by the Passenger Safety Working Group on June 8, 2009. The Working Group requested that FRA draft the rule text requiring daily inspection of removable panels or windows in vestibule doors, and entrust the Emergency Preparedness Task Force with reviewing the text. FRA sent the draft text to the Task Force for review and comment on August 4, 2009. The draft rule text was approved by the Passenger Safety Working Group by mail ballot on December 23, 2009. No additional Task Force meetings are currently scheduled. *Contact: Brenda Moscoso, (202) 493–6282.*

(Mechanical Task Force) (Completed) Initial recommendations on mechanical issues (revisions to 49 CFR Part 238) were approved by the full Committee on January 26, 2005. At the Working Group meeting of September 7–8, 2005, the Task Force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005 (70 FR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006 (71 FR 61835), effective December 18, 2006.

(Crashworthiness Task Force) (Completed) Among its efforts, the Crashworthiness Task Force provided consensus recommendations on static end strength, which were adopted by the Working Group on September 7–8, 2005. The full Committee accepted the recommendations on October 11, 2005. The Front-End Strength of Cab Cars and Multiple-Unit Locomotives NPRM was published in the **Federal Register** on August 1, 2007 (72 FR 42016), with comments due by October 1, 2007. A number of comments were entered into the docket, and a Crashworthiness Task Force meeting was held September 9, 2008, to resolve comments on the NPRM. Based on the consensus language agreed to at the meeting, FRA has prepared the text of the final rule incorporating the resolutions made at the Task Force meeting, and the final rule language was adopted at the Passenger Safety Working Group meeting held on November 13, 2008. The language was presented and approved at the December 10, 2008, full RSAC meeting. The final rule was issued on December 31, 2009, and published on January 8, 2010 (75 FR 1180). *Contact: Gary Fairbanks, (202) 493–6322.*

(Vehicle/Track Interaction Task Force) The Task Force is developing proposed revisions to 49 CFR Parts 213 and 238, principally regarding high-speed passenger service. The Task Force met on October 9–11 and again on November 19–20, 2007, in Washington, DC, and presented the final Task Force Report and final recommendations and proposed rule text for approval by the Passenger Safety Working Group at the December 11–12, 2007, meeting. The final report and the proposed rule text were approved by the Working Group and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group last met on February 27–28, 2008, and FRA is currently crafting an NPRM with a target publication date of March 2010. No additional Task Force meetings are currently scheduled, but the Task Force may be called back to review NPRM comments. *Contact: John Mardente, (202) 493–1335.*

(General Passenger Safety Task Force) At the Working Group meeting on April 17–18, 2007, the Task Force presented a progress report to the Working Group. The Task Force met on July 18–19, 2007, and afterwards it reported proposed reporting cause codes for injuries involving the platform gap, which were approved by the Working Group by mail ballot in September 2007. The full RSAC approved the recommendations for changes to 49 CFR Section 225 accident/incident cause codes on October 25, 2007. The General Passenger Safety Task Force presented draft guidance material for management of the gap that was considered and approved by the Working Group during the December 11–12, 2007, meeting and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group met April 23–24, 2008; December 3–4, 2008; and April 21–23 and October 7–8, 2009. The Task Force continues work on passenger train door securement, "second train in station", trespasser incidents, and System Safety-based solutions by developing a regulatory approach to System Safety. The Task Force has created two Task Groups to focus on these issues. The Door Safety Task Group has reached consensus on 47 out of 48 safety issues addressed in the area of passenger train door mechanical and operational requirements and will present draft regulatory language to the General Passenger Safety Task Force at the next meeting. The System Safety Task Group has produced draft regulatory language for a System Safety Rule and will present its recommendation to the General Passenger Safety Task Force at the next meeting. No additional General Passenger Safety Task Force meetings are currently scheduled. *Contact: Dan Knote, (631) 567–1596.*

Task 05–01—Review of Roadway Worker Protection Issues. This task was accepted on January 26, 2005, to review 49 CFR Part 214, Subpart C, Roadway Worker Protection (RWP), and related sections of Subpart A; recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A Working Group was established, and reported to the RSAC any specific actions identified as appropriate. The first meeting of the Working Group was held on April 12–14, 2005. The group drafted and accepted regulatory language for various revisions, clarifications, and additions to 32 separate items in 19 sections of the rule. However, two parties raised technical concerns regarding the draft language concerning electronic display of track authorities. The Working Group reported recommendations to the full Committee at the June 26, 2007, meeting. Through the NPRM process, FRA will address this issue, along with eight additional items on which the Working Group was unable to reach a consensus. Comments were received and were considered during the drafting of the NPRM. In early 2008, the external working group members were solicited

to review the consensus text for errata review.

In order to address the heightened concerns raised with the current regulations for adjacent-track on-track safety, an NPRM was published on July 17, 2008, that focused on this element of the RWP rule alone. As this was an NPRM, FRA sought comment on the entire proposal, including those portions that FRA sought to clarify. However, on August 13, 2008, the NPRM was withdrawn to permit further consideration of the RSAC-reported consensus language.

FRA has decided to separately issue a second proposed rule on adjacent track protection, which will be handled on an accelerated basis. The second NPRM concerning adjacent-controlled track was published on November 25, 2009, and comments are due to the docket by January 25, 2010. The remaining larger NPRM for the for various revisions, clarifications, and additions to 31 separate items in 19 sections of the rule and FRA's recommendations for the eight nonconsensus items is planned for early 2010. *Contact: Christopher Schulte, (610) 521–8201.*

Task 05–02—Reduce Human Factor-Caused Train Accident/Incidents. This task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. The Railroad Operating Rules Working Group was formed, and the Group extensively reviewed the issues presented. The final Working Group meeting devoted to developing a proposed rule was held February 8–9, 2006. The Working Group was not able to deliver a consensus regulatory proposal but did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006 (FR 71 60372), with public comments due by December 11, 2006. Two reviews were held, one on February 8–9, 2007, the other on April 4–5, 2007. Consensus was reached on four items and those items were presented and accepted by the full RSAC Committee at the June 26, 2007, meeting. A final rule was published in the **Federal Register** on February 13, 2008 (73 FR 8442), with an effective date of April 14, 2008. FRA received four petitions for reconsideration of that final rule. The final rule that responded to the petitions for consideration was published in the **Federal Register** on June 16, 2008, and concluded the rulemaking. Working group meetings were held September 27–28, 2007; January 17–18, 2008; May 21–22, 2008; and September 25–26, 2008. The Working Group has considered issues related to issuance of Emergency Order No. 26 (prohibition on use of certain electronic devices while on duty) and "after arrival mandatory directives," among other issues. The Working Group continues to work on after arrival orders; and, at the September 25, 2008, meeting, voted to create a Highway-Rail Grade Crossing Task Force to review highway-rail grade crossing accident reports regarding incidents of crossing warning systems providing "short or no warning" resulting from or contributed to "by train operational issues" with the intent to recommend new accident/incident reporting codes that would better explain such events, and which may provide information for remedial action going forward. A follow-on task is to review and provide recommendations regarding supplementary reporting of train operations-related no-warning or short-warning incidents that are not technically warning system activation failures but which result in an accident/incident or a near miss. The Task Force has been formed and will meet in 2010 after other Rail Safety Improvement Act of 2008 (RSIA) priorities are met. *Contact: Douglas Taylor, (202) 493–6255.*

Task 06–01—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise as appropriate. A Working Group was established with the mandate to report any planned activity to the full Committee at each scheduled full RSAC meeting, to include milestones for completion of projects, and to progress toward completion. The first Working Group meeting was held May 8–10, 2006. Working Group meetings were held on August 8–9, 2006; September 25–26, 2006; and October 30–31, 2006; and the Working Group presented recommendations regarding revisions to requirements for locomotive sanders to the full RSAC on September 21, 2006. The NPRM regarding sanders was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the Working Group for clarification, and FRA published a final rule on October 19, 2007 (72 FR 59216). The Working Group met on January 9–10, 2007; November 27–28, 2007; February 5–6, 2008; May 20–21, 2008; August 5–6, 2008; October 22–23, 2008; January 6–7, 2009; and April 15–16, 2009. The group has now completed the review of 49 CFR Part 229 and was unable to reach consensus regarding locomotive cab temperatures standards, locomotive alerters, and remote control locomotives. The group reached consensus regarding critical locomotive electronic standard, updated annual/biennial air brake standards, clarification of the "air brakes operate as intended" requirement, locomotive pilot clearance within hump classification yards, clarification of the "high voltage" warning requirement, an update of "headlight lamp" requirements, and language to allow locomotive records to be stored electronically. The Working Group presented a draft Part 229 rule text revision covering these items to the Committee for consideration at the September 10, 2009, meeting and received approval. FRA has proceeded with drafting an NPRM, with a target publication date of March 2010. The Working Group may be called back to address comments received on the NPRM after publication. *Contact: George Scerbo, (202) 493–6249.*

Task 06–02—Track Safety Standards and Continuous Welded Rail (CWR). (Completed) Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59), the 2005 Surface Transportation Authorization Act, requires FRA to issue requirements for inspection of joint bars in continuous welded rail (CWR) to detect cracks that could affect the integrity of the track structure (49 U.S.C. 20142(e)). FRA published an interim final rule (IFR) establishing new requirements for inspections on November 2, 2005 (70 FR 66288). On October 11, 2005, FRA offered the RSAC a task to review comments on this IFR, but conditions could not be established under which the Committee could have undertaken this with a view toward consensus. Comments on the IFR were received through December 19, 2005. FRA reviewed the comments. On February 22, 2006, the RSAC accepted this task to review and revise the CWR related to provisions of the Track Safety Standards, with particular emphasis on reduction of derailments and consequent injuries and damage caused by defective conditions, including joint failures, in track using CWR. A Working Group was established. The first Working Group meeting was held April 3–4, 2006, at which time the Working Group reviewed comments on the IFR. The second Working Group meeting was held April 26–28, 2006. The Working Group also met May 24–25, 2006, and July 19–20, 2006. The Working Group reported consensus recommendations for the final rule that were accepted by the full RSAC Committee by mail ballot on August 11, 2006. The final rule was published in the **Federal Register** on

October 11, 2006 (71 FR 59677). The Working Group continued review of 49 CFR Section 213.119, with a view to proposing further revisions to update the standards. The Working Group met January 30–31, 2007; April 10–11, 2007; June 27–28, 2007; August 15–16, 2007; October 23–24, 2007; and January, 8–9, 2008. The Working Group reported consensus recommendations for revisions to 49 CFR Section 213.119 regulations to the full RSAC Committee on February 20, 2008, and the recommendations were accepted. FRA published an NPRM on December 1, 2008, and published a final rule on August 25, 2009. A correcting amendment was published in the **Federal Register** on October 21, 2009, that addresses compliance dates for commuter railroads, intercity passenger railroads, and other additional railroads with CWR. The amendment establishes compliance dates of November 23, 2009, for commuter railroads and intercity passenger railroads; and February 22, 2010, for Class III railroads and any other additional railroads with CWR. See Tasks 07–01 and 08–03, below. *Contact: Ken Rusk, (202) 493–6236.*

Task 06–03—Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment and the public by establishing standards and procedures for determining the medical fitness for duty of personnel engaged in safety-critical functions. A Working Group has been established and will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held December 12–13, 2006. The Working Group has held follow-on meetings on the following dates; February 20–21, 2007; July 24–25, 2007; August 29–30, 2007; October 31–November 1, 2007; December 4–5, 2007; February 13–14, 2008; March 26–27 and April 22–23, 2008, and December 8–9, 2009. At the April 2008 meeting, FRA announced that the agency would prepare an NPRM draft based on the discussions to date and schedule a further meeting for review of the document. At the December 2009 meeting, the draft NPRM was presented to the Group. The draft NPRM is currently in FRA coordination and the language is being revised based on comments. At the December 2009 meeting, the Group was also presented RSAC Task 2009–02, Critical Incident Response. The task is to provide advice regarding development of implementing regulations for Critical Incident Stress Plans as required by the RSIA. When the draft NPRM is accepted by the Medical Standards Working Group, the two parts of the rulemaking will be presented to the full RSAC for approval. The Medical Standards Working Group is scheduled to meet next on February 16–17, 2010, with a follow-on meeting scheduled for March 11–12, 2010.

(*Physicians Task Force*) A Physicians Task Force, established by the Working Group in May 2007, is proceeding to develop accompanying medical guidelines that will be used to provide consistent criteria for determining the medical fitness for duty of the safety critical positions. These guidelines will be presented for the Medical Standards Working Group consideration when complete. The Physicians Task Force has had meetings or conference calls on July 24, 2007; August 20, 2007; October 15, 2007; October 31, 2007; June 23–24, 2008; September 8–10, 2008; October 8, 2008; November 12–13, 2008; December 8–10, 2008; January 27–28, 2009; February 24–25, 2009; March 11–12, 2009; March 31–April 1, 2009; April 15, 2009; April 22, 2009; May 13, 2009; May 20, 2009; June 17, 2009. The Task Force is currently scheduled to meet next on January 21–22, 2010. *Contact: Dr. Bernard Arseneau, (202) 493–6002.*

Task 07–01—Track Safety Standards. This task was accepted on February 22, 2007, to consider specific improvements to the Track Safety Standards or other responsive actions, supplementing work already underway on CWR, specifically to: (1) Review controls applied to reuse of rail in CWR "plug rail"; (2) review the issue of cracks emanating from bond wire attachments; (3) consider improvements in the Track Safety Standards related to fastening of rail to concrete ties; and (4) ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. The tasks were assigned to the Track Safety Standards Working Group. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held on June 27–28, 2007, and the group met again on August 15–16 and October 23–24, 2007. Two Task Forces were created under the Working Group: Concrete Ties and Rail Integrity. The Concrete Ties Task Force met on November 26–27, 2007; February 13–14, 2008; April 16–17, 2008; July 9–10, 2008; and September 17–18, 2008. The Concrete Ties Task Force finalized consensus language regarding concrete crossties (49 CFR Part 213) and presented a recommendation to the Track Standards Working Group at the November 20, 2008, Working Group meeting. The language was approved by both the Working Group and the December 10, 2008, RSAC meeting and the Task Force was dissolved. FRA is preparing an NPRM with a target publication date of March 2010. *Contact: Ken Rusk, (202) 493–6236.*

Task 08–03—Track Safety Standards Rail Integrity. This task was accepted on September 10, 2008 to consider specific improvements to the Track Safety Standards or other responsive actions designed to enhance rail integrity. The Rail Integrity Task Force was created in October 2007 under Task 07–01 and first met on November 28–29, 2007. The Task Force met on February 12–13, 2008; April 15–16, 2008; July 8–9, 2008; September 16–17, 2008; February 3–4, 2009; June 16–17, 2009; October 29–30, 2009; and January 20–21, 2010. Consensus has been achieved on bond wires, and a common understanding on internal rail flaw inspections has been reached. "Valid test" and "qualified operator" have been defined and will be issued as a technical bulletin. The Task Force has reached consensus to recommend to the Working Group that the item regarding "the effect of rail head wear, surface conditions and other relevant factors on the acquisition and interpretation of internal rail flaw test results" be closed. The Task Force does not recommend regulatory action concerning head wear. Surface conditions and their affect on test integrity has been discussed and understood during dialogue concerning common understanding on internal rail flaw inspections. The Task Force believes that new technology has been developed that improves test performance and will impact the affect of head wear and surface conditions on interpretation of internal rail flaw test results. No additional Rail Integrity Task Force meetings are scheduled at this time. *Contact: Carlo Patrick, (202) 493–6399.*

Task No. 08–04—Positive Train Control (PTC). (Completed) This task was accepted on December 10, 2008, to provide advice regarding development of implementing regulations for PTC systems and their deployment under the RSIA. The task included a requirement to convene an initial meeting not later than January 2009 and to report recommendations back to the RSAC no later than April 24, 2009. The PTC Working Group was created in December 2008 by Working Group member nominations from committee member organizations under Task 08–

04, and the kickoff meeting was held on January 26–27, 2009. The group met again on February 11–13 and 25–27, March 17–18, and March 31–April 1, 2009. On April 2, 2009, the RSAC approved the request by the working group for agreement to vote on the draft rule text recommendations from the Working Group by mail ballot. On May 11, 2009, by majority vote via mail ballot, the RSAC Committee accepted the recommendations of the PTC Working Group and forwarded those recommendations to the FRA Administrator, with the understanding that there are other issues for which FRA would be making proposals with respect to their resolution. The NPRM was published on July 21, 2009 (74 FR 36152), with comments due by August 20, 2009. In addition, a public hearing was held on August 13, 2009 (74 FR 36152). The PTC TC was reconvened on August 31–September 2, 2009, to discuss comments received on the NPRM, and the PTC Working Group presented consensus rule text items to the RSAC for approval at the September 10, 2009, meeting. The PTC consensus rule text was approved by majority RSAC vote by electronic ballot on September 24, 2009, and the final rule was published on January 15, 2010.

(*PTC Implementation Plan Task Force*) A Task Force was formed to assist FRA in developing a model template for a successful PTC Implementation Plan (PTCIP) and in development of an example risk prioritization methodology. PTCIPs are required to be submitted by April 16, 2010, under the mandate of the RSIA. FRA posted a final version of a PTCIP template and an example risk prioritization methodology model for prioritization of line segment implementation to the public FRA Web site on January 12, 2010, the same day as the final rule was made available for public review. *Contact: Tom McFarlin, (202) 493–6203.*

Task No. 08–05—Railroad Bridge Safety Assurance. This task was accepted on December 10, 2008, to develop a draft rule encompassing the requirements of Section 417 of RSIA, Railroad Bridge Safety Assurance. This Section directs the Secretary of Transportation to promulgate regulations, not later than 12 months after the October 16, 2008, date of enactment, requiring owners of track carried on one or more railroad bridges to adopt a bridge safety management program to reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure. The Railroad Bridge Working Group, created under Task 08–01, was directed to reconvene, and the kickoff meeting was held January 28–29, 2009. The Working Group also met on February 23–24, 2009, where they reached agreement on consensus language covering all but two issues. The Working Group presented the draft language to the full Committee at the April 2, 2009, meeting, and the Committee approved the consensus recommendations by vote as the recommendations of the Committee to the FRA Administrator. The NPRM was published on August 17, 2009, with a comment period open until October 1, 2009. The Working Group was reconvened on December 15, 2009, to address NPRM comments. The final rule is currently in coordination, with a target publication date of March 2010. *Contact: Gordon Davids, (202) 493–6320.*

Task No. 08–0—Conductor Certification. This task was accepted on December 10, 2008, to develop regulations for certification of railroad conductors, as required by the RSIA, and to consider any appropriate related amendments to existing regulations and report recommendations for a proposed final rule or an IFR (as determined by FRA in consultation with the Office of the Secretary of Transportation and the Office of Management and Budget) by October 16, 2009. The Conductor Certification Working Group was officially formed by nominations from member organizations in April 2009 and the first meeting was held on July 21–23, 2009. Additional meetings are scheduled for August 25–27, 2009; September 15–17, 2009; October 20–22, 2009; November 17–19, 2009; and December 16–18, 2009. Tentative consensus was reached on the vast majority of the regulatory text. An electronic ballot is being circulated for formal Working Group consensus and a recommendation is anticipated to the full RSAC at the February 11, 2010, meeting. *Contact: Mark McKeon, (202) 493–6350.*

Task No. 09–01—Passenger Hours of Service. This task was accepted on April 2, 2009, to provide advice regarding development of implementing regulations for the hours of service of operating employees of commuter and intercity passenger railroads under the RSIA. The Group has been tasked to review available data concerning the effects of fatigue on the performance of subject employees, and consider the role of fatigue prevention in determining maximum hours of service. The Group has also been tasked to consider the potential for alternative approaches to hour of service using available tools for evaluating the impact of various crew schedules, and determine the effect of alternative approaches on the availability of employees to support passenger service. The Group is charged to report whether existing hours of service restrictions are effective in preventing fatigue among subject employees, whether an alternative approach to hours of service for the subject employees would enhance safety, and whether alternative restrictions on hours of service could be coupled with other fatigue countermeasures to promote the fitness of employees for safety-critical duties. The Passenger Hours of Service Working Group was officially formed through the formal Committee member nomination process in May 2009 and the first meeting was held on June 24, 2009. A Passenger Hours of Service Task Force was formed to review collected data, and met on January 14–15, 2009. A follow-on Working Group meeting is currently scheduled for February 2–3, 2009. *Contact: Grady Cothen, (202) 493–6302.*

Completed Tasks

Task 96–1—(Completed) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6—(Completed) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7—(Completed) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed) This planning task evaluated the need for action responsive to recommendations contained in a report to Congress titled, *Locomotive Crashworthiness & Working Conditions.*

Task 97–1—(Completed) Developing crashworthiness specifications (49 CFR Part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

Task 97–2—(Completed) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of

locomotives, proposing standards where appropriate.

Task 97–3—(Completed) Developing event recorder data survivability standards.

Task 97–4 and *Task 97–5*—(Completed) Defining PTC functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—(Completed) Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

Task 97–7—(Completed) Determining damages qualifying an event as a reportable train accident.

Task 00–1—(Completed–Task Withdrawn) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment; and persons applying, removing, or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1—(Completed) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration, U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports.*

Task 08–01—(Completed) *Report on the Nation's Railroad Bridges.* Report to the Federal Railroad Administrator on the current state of railroad bridge safety management; update the findings and conclusions of the 1993 Summary Report of the FRA Railroad Bridge Safety Survey.

Task No. 08–06—(Completed) Hours of Service Recordkeeping and Reporting. Develop revised recordkeeping and reporting requirements for hours of service of railroad employees. Final rule published May 27, 2009, with an effective date of July 16, 2009 (74 FR 25330).

Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC, on January 25, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–1788 Filed 1–28–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Charter Bank: Santa Fe, New Mexico; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for Charter Bank, Santa Fe, New Mexico, (OTS No. 08337) on January 22, 2010.

Dated: January 25, 2010.

By the Office of Thrift Supervision.

Sandra E. Evans,

Federal Register Liaison.

[FR Doc. 2010–1779 Filed 1–28–10; 8:45 am]

BILLING CODE 6720–01–M

Federal Register

Friday,
January 29, 2010

Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 272 and 273

Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[FNS–2007–0006]

RIN 0584–AD30

Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements 11 provisions of the Farm Security and Rural Investment Act of 2002 (FSRIA) that establish new eligibility and certification requirements for the receipt of food stamps. The provisions of the final rule will simplify program administration, allow States greater flexibility, and provide enhanced access to eligible populations. This rule will allow States, at their option, to treat legally obligated child support payments to a non-household member as an income exclusion rather than a deduction; allow a State option to exclude certain types of income and resources that are not counted under the State's Temporary Assistance for Needy Families (TANF) cash assistance or Medicaid programs; replace the current, fixed standard deduction with a deduction that varies according to household size and is adjusted annually for cost-of-living increases; allow States to simplify the Standard Utility Allowance (SUA) if the State elects to use the SUA rather than actual utility costs for all households; allow States to use a standard deduction from income of $143 per month for homeless households with some shelter expenses; allow States to disregard reported changes in deductions during certification periods (except for changes associated with new residence or earned income) until the next recertification; increase the resource limit for households with a disabled member from $2,000 to $3,000 consistent with the limit for households with an elderly member; allow States to extend simplified reporting of changes to all households; require State agencies that have a Web site to post applications on these sites in the same languages that the State uses for its written applications; allow States to extend from the current 3 months up to 5 months the period of time households may receive transitional food stamp benefits when they cease to receive TANF cash assistance; and restore food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry, are under 18 years of age regardless of date of entry, or have lived in the United States for 5 years as qualified aliens beginning on the date of entry.

DATES: *Effective Date:* This final rule is effective April 1, 2010.

Implementation Dates:

1. Sections 273.4(a)(6)(ii)(H), 273.8(b), and 273.9(d)(1)—amendments of this final rule were to be implemented October 1, 2002.
2. Sections 273.4(a)(6)(ii)(B) through (a)(6)(ii)(F) and 273.4(a)(6)(iii)—amendments of this rule were to be implemented April 1, 2003.
3. Sections 273.4(a)(6)(ii)(J) and 273.4(c)(3)(vi)—amendments of this rule were to be implemented October 1, 2003.
4. State agencies must implement §§ 273.4(c)(2)(v), 273.4(c)(3)(iv), 273.4(c)(3)(vii), 273.9(b)(1)(vi), and 273.9(c)(3)(ii)(A) amendments no later than August 1, 2010.
5. State agencies may implement all other amendments on or after April 1, 2010.
6. States that implemented discretionary provisions, either under existing regulations or policy guidance issued by the Department, prior to the publication of this final rule have until August 1, 2010 to amend their policies to conform to the final rule requirements.

FOR FURTHER INFORMATION CONTACT: Angela Kline, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service (FNS), USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2495. Her e-mail address is: *Angela.Kline@FNS.USDA.Gov.*

SUPPLEMENTARY INFORMATION:

Background

The Farm Security and Rural Investment Act of 2002 (FSRIA), Public Law 107–171, enacted May 13, 2002, amended the Food Stamp Act of 1977, 7 U.S.C. 2011, *et seq.* (the Act), by establishing new eligibility and certification requirements for the receipt of food stamps. On April 16, 2004, we published a rule proposing to codify (published in the Code of Federal Regulations) the eligibility and certification requirements of the FSRIA. The period for comment on the proposed rule ended June 15, 2004. We received comments from 19 State and local agencies, 90 advocate groups, and 6 individuals. In this final rule, we will not discuss comments that supported our proposals. We will not discuss, in detail, comments that concerned merely technical corrections or inadvertent omissions; we have simply made the corrections. We will not discuss several provisions on which we received no comments. We will adopt these provisions as proposed. For a full understanding of the background of the provisions in this rule, see the proposed rulemaking which was published in the **Federal Register** on April 16, 2004 (69 FR 20724). With the exceptions noted above, we will discuss each provision and the comments made.

Availability of Food Stamp Program Applications on the Internet—7 CFR 273.2(c)

Section 11(e)(2)(B)(ii) of the Food Stamp Act (7 U.S.C. 2020(e)(2)(B)(ii)) requires State agencies to develop a Food Stamp Program application. Section 4114 of FSRIA amended Section 11(e)(2)(b)(ii) to require State agencies that maintain a Web site to make their State food stamp application available on that Web site in each language in which the State agency makes a printed application available. This final rule amends current regulations at 7 CFR 273.2(c)(3) to implement this provision. Section 4114 of FSRIA also required State agencies to provide the addresses and phone numbers of all State food stamp offices and a statement that the household should return the application form to its nearest local office.

Commenters suggested other information that the Department should require State agencies to place on their Web site such as fax numbers and the service area of each local office or some other means to connect individuals to the correct local office. We note that many State agencies do provide detailed local office information on their Web sites. However, we decided that requiring specific information about each local office such as a fax number and the service area of each office can be unduly burdensome to the State agencies, and should be a state option rather than a Federal mandate. The purpose of the statutory provision is to allow households to obtain a food stamp application without having to visit the local office and provide applicants with information to assist them in the application process. We believe that the commenter's proposal is best handled at the State level.

The Department proposed to include a reference to Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) in 7 CFR 273.2(c)(3) to ensure that documents on a State's Web site are

accessible to persons with disabilities. Commenters suggested that the regulatory language specify examples of the kinds of services States must offer in order to make their applications accessible to people with disabilities. They also suggested that the Department reference helpful guidance written by the Architectural and Transportation Barriers Compliance Board on improving access to individuals with disabilities and how to comply with such guidance. Finally, they wanted the Department to provide information in the preamble of the final rule about various assessment tools available to determine whether or not a State meets accessibility standards.

Although the Department appreciates these recommendations, it is impracticable to include such guidance in a regulation due to its extensive detail. As stated by the commenters, other agencies have already provided helpful guidance on improving access to individuals with disabilities. The Department encourages State agencies that administer the Food Stamp Program to consult information such as the guidance written by the Architectural and Transportation Barriers Compliance Board in the development of accessible systems.

Commenters asked the Department to provide a report on State compliance with this provision in the preamble to the final rule. The Department will not provide such a report in the final rule because of the ever changing nature of State systems. Additionally, the Department does not provide reports in the **Federal Register** on State compliance with other regulatory provisions; therefore, it is not appropriate to provide a report on this provision.

However, the Department has made it clear to all State agencies that the information provided on their Web site must be easily accessible. The Department also developed a page on its own Web site to assist participants in accessing program information for all 50 States and the District of Columbia. The Department's Web site contains a map and list of all 50 States and the District of Columbia. Participants can click on their State and obtain, at a minimum, an English language application form, acquire the food stamp hotline number for their State, and find the nearest food stamp office.

Partial Restoration of Benefits to Legal Immigrants—7 CFR 273.4

1. Expanded Eligibility for Certain Noncitizens

Section 4401 of FSRIA substantially expanded eligibility for the Food Stamp Program for legal immigrants. Prior to the enactment of Section 4401, Section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), as amended, limited eligibility for food stamps to United States citizens, non-citizen nationals, and certain alien groups. The requirements of Section 402 of PRWORA, as well as the alien eligibility requirements contained in Section 6(f) of the Act (7 U.S.C. 2015(f)), were implemented through current regulations at 7 CFR 273.4(a). That section lists the groups eligible for food stamps which include qualified aliens, as defined under 7 CFR 273.4(a)(5)(i), who meet at least one of the criteria specified at 7 CFR 273.4(a)(5)(ii). Some of the criteria make a noncitizen eligible for only 7 years, while other criteria make the noncitizen permanently eligible for the program. The proposed rule contained a detailed discussion of these requirements; interested parties can refer to the current regulations and proposed rule for further discussion.

Section 4401 of FSRIA amended Section 402 of PRWORA to expand food stamp eligibility for certain additional qualified aliens. First, Section 4401 extends eligibility for food stamps to any qualified alien who has resided in the United States for 5 years or more as a qualified alien. As written, Section 4401 could be read to require that the alien has been in a qualified status at the time he or she entered the United States in order to be eligible under this provision. However, in reviewing the legislative history behind FSRIA in the development of the proposed rule, the Department came to the conclusion that it was not the intent of Congress to deny the benefits of the provision to aliens who are not qualified when they enter the United States but later attain qualified status. Therefore, the Department proposed to amend current regulations at 7 CFR 273.4(a)(5)(ii) to extend eligibility for the Food Stamp Program to any alien who has resided in the United States in a qualified alien status as defined in PRWORA for 5 years.

While most commenters approved of the language in the proposed rule, they asked the Department to clarify the 5-year residency requirement to incorporate guidelines regarding the calculation of the 5-year period. First, they asked us to clarify that the 5 years do not have to be consecutive. Second, they asked us to clarify that temporary absences of less than 6 months from the United States, with no intention of abandoning U.S. residency, do not terminate or interrupt the individual's period of U.S. residency. Third, they asked us to clarify that prior residence in any one or any combination of the immigrant statuses that confer eligibility counts toward the 5-year residency policy. Finally, to ensure that, when the U.S. Citizenship and Immigration Services grants qualified status retroactively, the retroactive time counts toward the 5-year requirement. The Department has considered these requests and the final rule reflects the recommended clarifications.

The 5-year residency rule effectively eliminates the 7-year time limit on food stamp participation for qualified aliens who are eligible for the program because they meet the criteria (for example, refugee or asylee status) set out in PRWORA and at current regulations 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(F). Because the 5-year residency rule effectively eliminates the 7-year time limit on food stamp eligibility, the Department proposed to amend current regulations at 7 CFR 273.4(a)(5)(ii)(B) through (a)(5)(ii)(F) to remove the reference to the 7-year time limit. One commenter noted that while it is technically correct to strike the now irrelevant 7-year time limit language, they felt that the proposed regulations would have required a confusing, redundant two-pronged test. They suggested that the changes proposed by Section 4401 gave FNS an opportunity for a substantial reorganization of 7 CFR 273.4(a).

The commenter suggested that the Department move the "refugee" group to its own unencumbered section under 7 CFR 273.4(a) and separately group the remaining qualified immigrants who must meet the two-pronged test. They felt that eligibility workers would have difficulty determining what rule is applicable to the household and become confused about how a member of a refugee group can be both "qualified" and "eligible" under the same set of facts but other non-citizens must meet a two-pronged test involving age, duration of status, disability, work history or veteran status. The commenter also recommended that the Department insert an additional provision to resolve any confusion around situations where an individual presents proof of lawful permanent residence (LPR) such as a Permanent Resident Card, I–551, which may have a "date of entry" based on when LPR status was granted, but the

immigrant may have previously entered in refugee or asylee status.

FNS has considered these suggestions, but maintains that the two-pronged test is a statutory requirement that must be addressed in the regulations. FNS finds that State agencies generally simplify their eligibility requirements for eligibility workers. We have attempted to simplify this provision by listing the requirements for eligibility for qualified aliens in one section at, 7 CFR 273.4(a)(6)(ii). In this section, we delete any reference to the 7-year time limit and delineate between those aliens that do not have to meet the 5-year residency requirement at 7 CFR 273.4(a)(6)(ii)(A)–273.4(a)(6)(ii)(J) and those that must meet the 5-year residency requirement at 7 CFR 273.4(a)(6)(iii) in order to establish eligibility. We did not relocate the refugee group to a separate group as there are other exceptions to the 5-year residency requirement and we felt that all of the eligibility requirements for qualified aliens should be grouped together. We did not add a provision regarding the date of entry as current regulations at 7 CFR 273.4(a)(6)(iv) address aliens who change from one status to another.

The 5-year residency rule also makes parolees and conditional entrants who retain qualified alien status for 5 years eligible for the program. Under the current rules, these two categories of qualified aliens have to meet one of the requirements under 7 CFR 273.4(a)(5)(ii) in addition to meeting the requirements for parolee or conditional entrant status. The Department proposed to amend the current regulations to accommodate this change in the law. These aliens are listed as qualified aliens in paragraph 273.4(a)(6)(i) of the final rule and are subject to the 5-year residency requirement listed at paragraph 273.4(a)(6)(iii) of the final rule. Section 4401 also effectively reduces the applicability of the 40 quarters of work requirement for aliens lawfully admitted for permanent residence under PRWORA and current regulation 7 CFR 273.4(a)(5)(ii)(A). Under the current rules, to be eligible to participate in the Food Stamp Program, an alien who is a qualified alien because he or she was admitted for permanent residence must have or be credited with 40 qualifying quarters of work to qualify for this exception. Thus, generally, a lawful permanent resident must work for 10 years before becoming eligible to participate in the Food Stamp Program. However, as a result of Section 4401, a lawful permanent resident will now become eligible for food stamps after residing in the United States for 5 years whether he or she has any qualifying quarters or not. The 40 quarters requirement is only applicable in cases of lawful permanent residents who have been in the United States less than 5 years but can still claim 40 qualifying quarters of work, such as in the case of an individual who claims quarters credited from the work of a parent earned before the applicant became 18.

One commenter asked the Department to conform its regulations to those of the Supplemental Security Income (SSI) program and provide that quarters credited from a spouse are not lost if the couple divorces unless food stamp benefits actually terminate. The commenter believes that USDA should conform its policy to that of other programs, including SSI, to further simplify program administration. According to the commenter, individuals who meet the non-citizen requirements for SSI based on the quarters of a spouse retain SSI eligibility upon divorce but lose food stamp eligibility at their next recertification.

Pursuant to 8 U.S.C. 1645, when determining the number of qualifying quarters of coverage under title II of the Social Security Act (SSA) (42 U.S.C. 401, *et. seq.*), an alien shall be credited with all of the qualifying quarters worked by a spouse of such alien during their marriage if the alien remains married to such spouse. Under the guidelines of the Social Security Administration, provided in Section SI 00502.135 of the Program Operations Manual (POMS), the qualifying quarters of a spouse cannot be credited if the marriage has ended, unless by death, before a determination of alien eligibility is made for aliens lawfully admitted for permanent residence. However, the POMS also states that qualifying quarters credited from a spouse are not lost if the marriage ends for any reason after a determination of eligibility is made unless the benefits terminate and a new claim is required.

Unlike food stamp benefits which expire if there is no determination of eligibility for the new certification period, SSI benefits are provided on a continual basis with the Social Security Administration performing redeterminations on a schedule that is based on the likelihood that a recipient's situation may change. This difference has led the two agencies to apply different methodologies for crediting qualifying quarters worked by a spouse.

In 2000, the Department received a similar comment to the proposed Noncitizen Eligibility and Certification Provisions (NECP) Rule. The analysis of this comment can be found in the final rule at 65 FR 70134 on November 21, 2000. At that time, the Department rejected the proposal to conform their policies to mirror those of the SSI program. However, the Department did amend the regulation to allow the State agency to continue eligibility until the household's next recertification once they determine eligibility based on quarters of coverage of the spouse.

The commenter asked for the Department to revisit this issue based on a belief that the Department unnecessarily relied on the technicality that food stamps are provided on a time-limited certification period. The commenter felt that this reliance on a technicality in 2000 was unnecessary because the statute only requires that the couple "remain married" at the time the quarters are credited, not that they continue to be married at the time of recertification.

Although Congress intended to simplify program administration under the FSRIA, this was not an issue that they addressed. The FSRIA lists specific programs that the Department needs to work with to develop uniform policies. Congress did not include SSI in this list of specific programs. Additionally, the current regulations are consistent with the administration of the Food Stamp Program. As stated above, the certification period of the Food Stamp Program does not mirror that of the SSI program. Therefore, the Department developed a regulation that came as close to the SSI program policy as it could without violating the overall principles of the Food Stamp Program. All federal benefit programs are different in their administration of benefits because Congress implemented laws that fit the overall goals of each program. Therefore, the agencies governing these programs need to comply with Congressional intent and develop rules to achieve the specific goals of each program.

Although the 40 qualifying quarters requirement has been minimized as an eligibility requirement, it continues to play a role in the area of deeming of the income of a sponsor to a sponsored alien. Except for aliens exempt from the deeming requirement in accordance with 7 CFR 273.4(c)(3), the deeming requirement applies until the alien has worked or can receive credit for 40 qualifying quarters of work, gains United States citizenship, or his or her sponsor dies. Thus, even though a lawful permanent resident may be eligible for the Food Stamp Program after 5 years without any qualifying quarters of work, the deeming requirement may apply to the individual until he or she works or can receive credit for 40 qualifying quarters.

The Department did receive comments regarding the deeming rules which will be discussed in detail below.

In addition to extending eligibility to aliens who satisfy the 5-year residency requirement, Section 4401 also extends eligibility to two other groups of qualified aliens. First, Section 4401 extends eligibility for the Food Stamp Program to all qualified aliens who meet the definition of disabled at Section 3(r) of the Act, regardless of the date they began residing in the United States. Second, Section 4401 extends eligibility to all qualified aliens who are under the age of 18. The Department proposed to amend current regulations at 7 CFR 273.4(a)(5)(ii) to incorporate the revised eligibility requirements for certain qualified aliens.

Under the Act, individuals are considered disabled if they receive certain federal or State disability benefits. Most of the benefits listed in the Act require an individual to provide proof of a disability. The Act also provides that persons receiving disability-related Medicaid, State-funded medical assistance benefits, and State General Assistance (GA) benefits may be considered disabled for food stamp purposes if they are determined disabled using criteria as stringent as federal SSI criteria. One commenter noted that some States will provide disability-related general or medical assistance to residents based on age. They were concerned that although some of these individuals also meet the SSI definition of disabled, they may be denied food stamps because they did not have to provide proof of their disability to receive their State-funded assistance. To ensure that this does not happen, the commenter suggested that the final rule clarify that an individual may qualify as disabled for food stamp purposes if the individual has been determined by the State to have a disability that meets SSI standards, as long as the individual is receiving a State-funded, needs-based, benefit. Although these points are addressed in the preamble to the proposed rule and in program policies, the commenter wanted to have these policies codified to avoid the anomaly of denying food stamps to disabled elders while allowing food stamps to non-elderly disabled persons.

The Department has considered these comments and has determined that the issue presented by the commenter is so limited that it is not necessary to codify. Additionally, the Act requires the individual to receive these benefits based on their disability. The fact that the State agency has elected to provide benefits to individuals based on their age and not their disability is not something that the Department can control. The Department must comply with the Act and maintain the provision that the individual receive benefits based on disability criteria. There is nothing in the Act that requires State agencies to accommodate disabled individuals and make a disability determination to qualify under this provision. Therefore, the Department cannot amend this provision of the proposed rule and finalizes it as proposed.

One commenter discovered what they believed to be conflicting language in the proposed rule. They noted that the preamble states that Section 4401 extends eligibility to qualified aliens who meet the definition of disabled and further discussion states that they need to be qualified aliens legally residing in the United States.

The language in the preamble to the proposed rule that refers to the term "lawfully residing" is in a discussion about the current regulations. The proposed rule clearly states that the requirement that an individual be "lawfully residing" as of a certain date would be amended. The proposed language for 7 CFR 273.4(a)(5)(ii)(H) and 7 CFR 273.4(a)(5)(ii)(J) would have amended the current language for those sections by removing the words "on August 22, 1996, was lawfully residing in the U.S. and is now" and adding in their place the word "is". Therefore, there is no conflict for the Department to correct in the final rule. Under the final rule, to be eligible under 7 CFR 273.4(a)(6)(ii)(H), a qualified alien must be receiving benefits or assistance for blindness or disability. Under revised 7 CFR 273.4(a)(6)(ii)(J), a qualified alien must be under 18.

As a result of the change in program rules qualifying individuals under the age of 18, the Department received several comments on the issue of sponsor liability regarding this group of newly qualified immigrants. Under the current rules, sponsors who sign a binding affidavit of support are responsible for food stamp benefits received by the immigrants they sponsor if those benefits were received during the period of time the affidavit of support is in effect. The affidavit of support remains in effect until the sponsored immigrant becomes a naturalized citizen, can be credited with 40 qualifying quarters of work, is no longer a lawful permanent resident and leaves the U.S. permanently, or until the sponsor or the sponsored immigrant dies.

The NCEP Rule clarified that a State agency cannot request reimbursement from the sponsor during any period of time that the sponsor receives food stamps. The Department decided not to regulate the issue of sponsor liability any further until the Department has completed a thorough policy development process in coordination with other Federal agencies. Several commenters suggested that the Department amend the regulations to clarify that sponsors are not required to reimburse agencies for benefits provided to immigrant children. They believed that this would ensure that immigrant children have access to food stamps, as intended by the recent legislation.

Sponsors are normally shielded from liability in the first 5 years of residence because, under prior law, sponsored aliens were not eligible (with limited exceptions) for 5 years. In amending the Act to make legal immigrant children immediately eligible for benefits, Congress made sponsors of these children potentially immediately liable for benefits issued to them. The commenters believed that this was the result of a Congressional oversight. Therefore, they suggested that the Department consider the option of excluding benefits received by sponsored alien children from sponsor liability for the first 5 years that they are in residence.

The Department has considered these comments and will maintain the current rule as proposed. This was not an issue that Congress felt was necessary to raise in the statutory language and the Department does not want to regulate the issue of sponsor liability any further until the Department has completed a thorough policy development process in coordination with other Federal agencies. Since Congress did not raise this issue in the statutory language, the Department is following the statutory language and does not believe that it is necessary or proper to regulate beyond these statutory provisions.

Several commenters suggested that the Department amend the current regulations to clarify that human trafficking victims and certain family members are eligible for food stamps to ensure that victims and their families are not denied benefits. This was not addressed in the proposed rule. The Department included this issue among several it addressed in the "Eligibility Determination Guidance: Noncitizen Requirements for the Food Stamp Program" issued in January 2003 (and in further guidance issued in August 2004).

The guidance reflects the requirements under the "Trafficking Victims Protection Act of 2000" (Pub. L. 106–386), as reauthorized by the

Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108–193) that adult victims of trafficking who are certified by the U.S. Department of Health and Human Services (DHHS) are eligible for food stamp benefits to the same extent as refugees. Additionally, children who are under 18 years of age and have been subject to trafficking are also eligible on the same basis as refugees, but they do not need to be certified. The Department is making a technical amendment to reflect the eligibility status of victims of trafficking as required by statute, by adding these provisions to the final regulations. Therefore, the final rule includes a new 7 CFR 273.4(a)(5). This new paragraph will clarify that trafficking victims and certain family members are eligible for food stamp benefits.

2. Elimination of the Deeming Requirement for Noncitizen Children

In addition to expanding Food Stamp Program eligibility to certain noncitizens, Section 4401 of FSRIA also removed deeming requirements for immigrant children. Deeming is the process by which the State agency counts a portion of the income and resources of an alien's sponsor as income and resources belonging to the alien when determining the latter's eligibility for the Food Stamp Program and amount of benefits. Both Section 421(a) of PRWORA and Section 5(i) of the Act impose deeming requirements on the Food Stamp Program. As stated in the proposed rule, the requirements of the two laws are not fully consistent. However, the Department addressed and resolved the inconsistencies in the NCEP Rule.

Current deeming requirements appear in food stamp regulations at 7 CFR 273.4(c). A complete discussion of the current deeming rules is provided in the proposed rule. Section 4401 of FSRIA amends Section 421 of PRWORA and Section 5(i) of the Act (7 U.S.C. 2014(i)) to add aliens under the age of 18 to the list of sponsored aliens excluded from deeming requirements. Therefore, as of October 1, 2003, the effective date of the provision, the State agency may not count the income and resources of the sponsor of an alien under the age of 18 when determining the eligibility or benefit level of the sponsored alien's household. The Department proposed to amend current regulations at 7 CFR 273.4(c)(3) to add sponsored aliens under the age of 18 to the list of aliens exempt from deeming requirements.

Under current rules at 7 CFR 273.4(c)(2)(v) if an alien's sponsor sponsors more than one alien, the State agency will divide the sponsor's deemable income and resources by the number of sponsored aliens and deem to each alien his or her portion. However, because sponsored aliens under the age of 18 will now be exempt from deeming requirements, following current rules, the State agency must deem only a portion of the sponsor's income to the household. Even though the sponsored child is exempt from deeming requirements, the sponsor is still sponsoring that child. Thus, if an individual sponsors two aliens, an adult and a child who reside in the same food stamp household, the State agency must divide the sponsor's deemable income and resources by two and deem one-half of such income and resources to the sponsored adult alien. The State agency would deem nothing to the child. The Department proposed to amend current regulations at 7 CFR 273.4(c)(2)(v) to clarify this point.

While most commenters supported this provision, several had issues with what they regarded inequitable treatment of households with U.S. citizen children versus those with immigrant children. In a case involving a sponsored immigrant adult and citizen child, the eligibility worker would deem all of the sponsor's income to the household. In a household with sponsored immigrant parents and immigrant children, the eligibility worker would deem only that portion of the sponsor's income attributable to the adult and disregard the portion attributed to the immigrant child. According to the commenters, this could result in the reduction or even the elimination of food stamp benefits for the citizen child with sponsored immigrant parents because all of the sponsor's countable income is added when determining a household's eligibility for the Food Stamp Program. Commenters noted that according to the Urban Institute, 85 percent of immigrant-headed households include at least one U.S. citizen, typically a child. They felt that Congress could not have intended to provide less assistance to households with U.S. citizen children.

The commenters asked the Department to place all sponsored households on equal footing by applying deemed income to households with citizen children in the same manner as it is applied to households with immigrant children. The deemed income would be divided equally among any sponsored immigrants and children in the household with the child's amount excluded. They felt that this would prevent the inequitable distribution of benefits among sponsored households and decrease program complexity.

One commenter suggested that the household be divided into different units. In a household with a sponsored parent and two children (either immigrant or citizen children), for example, the two children would be considered separately with only their parent's income counted in determining their eligibility. Then the sponsored parent's eligibility would be determined separately, with the sponsor's income considered. This same commenter suggested an alternative approach which would allow the sponsored immigrant to "opt out" of the household and be treated under the State's formula for "PRWORA ineligible" immigrants.

The Department believes it was not the intent of Congress to create an inequity between citizen children and sponsored alien children that is fundamentally at odds with the overall goal of the program. Therefore, the final rule places all households on equal footing providing the same income deeming procedures to households with citizen children as those applied to households with immigrant children.

3. Attorney General Notification of Indigency

Current rules require that the State agency notify the Attorney General any time a sponsored alien has been determined indigent, and include in the notification the names of the sponsor and sponsored aliens. Moreover, under Section 423(b) of PRWORA, upon notification that a sponsored alien has received any benefit under any means-tested public benefits program, the appropriate Federal or State agency (or an agency of a political subdivision of a State) must request reimbursement by the sponsor in the amount of such assistance. Commenters raised concerns that some eligible aliens may be deterred from applying for food stamps because of the Attorney General notification requirement and sponsor liability, which could lead to reprisals from their sponsors. The groups suggested that the Department allow alien applicants to opt out of the indigence determination and have their eligibility and benefit levels determined under regular deeming rules. The Department agreed with this concern over the mandatory notification requirement as a deterrent to participation and so proposed to amend current regulations at 7 CFR 273.4(c)(3)(iv) to allow a household to opt out of the indigence determination and be subject to regular sponsor deeming rules at 7 CFR 273.4(c)(2). Under the sponsor deeming rules,

failure to verify the sponsor's income and assets would result in the disqualification of the sponsored alien.

The Department received one comment from a State agency that saw little benefit in this provision. The commenter stated that most sponsored alien applicants who are determined to be indigent have either little or no contact with their sponsor, or are receiving no monetary assistance from their sponsor. Therefore, it makes little sense for the alien applicant to try to request information from the sponsor for purposes of regular sponsor deeming. Additionally, the commenter noted that allowing the applicants to opt out will not necessarily increase participation because the aliens typically opt out completely or become ineligible if the sponsor's income is deemed to them. However, the Department believes that opting out may increase participation by other household members, particularly children. Accordingly, the Department will adopt the revisions as proposed.

The Department also received a comment asking that the final rule contain a provision that will ensure that the sponsored alien is provided notice of the consequences of refusing an indigence determination. Namely, that if the household refuses the determination, the State agency will not complete the determination and will deem the sponsor's income and resources to the alien's household. The final rule contains language to ensure that participants are notified of these consequences.

Prior to the publication of the proposed rule, the Department was asked to permit State agencies to develop an administrative process which requires an eligible sponsored alien to provide consent before release of information to the Attorney General or the sponsor. Commenters suggested that many sponsored aliens would learn of the Attorney General notification and sponsor liability requirements only after they have disclosed their immigration status and social security number. Fearing adverse consequences as a result of the notification requirements, the sponsored alien may withdraw the entire application, resulting in other household members, in many cases U.S. citizen children, losing the opportunity to receive benefits. The Department stated in the proposed rule that it is within the discretion of the State agency to utilize a process under which information about the sponsored alien is not shared with the Attorney General or the sponsor without consent so long as the sponsored alien is aware of the consequences of failure to grant consent or failure to provide any other information necessary for the purposes of deeming the sponsor's income to the alien. As stated previously, the consequence of failure to verify the sponsor's income and assets is the disqualification of the sponsored alien. The Department sees the new option as an administrative simplification, rather than a basic change in policy. The new provision allows the sponsored alien to opt out at the beginning of the application process. This results in an outcome that would have ensued under the existing regulations, but with much more time consuming administrative process. The Department received comments in favor of this provision. Therefore, we are incorporating this provision in this final rule.

4. Comments Related to Department Guidance on Immigration

In addition to the comments that addressed provisions of the proposed rule that are discussed above, the Department received comments that address additional immigration issues. Most of these comments reflect primarily on the guidance issued by the Department in January 2003. Since these issues were not addressed in the proposed rule, the comments are beyond the scope of this rulemaking and should be addressed in a future rulemaking in order to have the force and effect of law.

Simplified Definition of Resources—7 CFR 273.8

For the purposes of this final rule, the Department is defining cash assistance under a program funded under part A of title IV of the SSA as "assistance" as defined in the TANF regulations at 45 CFR 260.31(a)(1) and (a)(2), except for programs grand-fathered under Section 404(a)(2) of the SSA. Under TANF, assistance includes cash and other forms of benefits designed to meet a family's ongoing basic needs including benefits conditioned on participation in work experience or community service. Programs grand-fathered under Section 404(a)(2) of the SSA include emergency foster care, the Job Opportunities and Basic Skills program and juvenile justice. We do not believe that these grand-fathered programs are what the Congress meant when it used the term "cash assistance" in the statute, even though they may involve a cash payment to a family.

In the final rule, the Department is defining medical assistance under Section 1931 of the SSA as Medicaid for low-income families with children. This section, which was added by PRWORA, allows low-income families with children to qualify for Medicaid. It requires that States use the income and resource standards that were in effect in July 1996 for the Aid to Families with Dependent Children (AFDC) program, but also provides options for States to use less restrictive income and resources tests for these families.

This final rule adds a new paragraph at 7 CFR 273.8(e)(19) which provides State agencies the option to exclude from resource consideration for food stamp purposes any resources they exclude when determining eligibility for TANF cash assistance or medical assistance under Section 1931 of the SSA. However, the final rule prohibits State agencies from adopting resource exclusions, for food stamp purposes, of TANF cash assistance and Medicaid programs that do not evaluate the financial circumstances of adults in the household while determining eligibility and benefits.

The requirement at 7 CFR 273.8(c)(3) to deem the resources of sponsors of aliens as resources of the alien applicants continues to be in effect. However, if a State agency has chosen in accordance with the provisions of 7 CFR 273.8(e)(19) in this final rule to exclude a type of resource excluded for TANF or Medicaid, and the alien's sponsor owns that resource, the State agency would not include that resource when determining which resources to deem to the sponsored alien's household.

The final rule amends 7 CFR 273.8(b) to extend the $3,000 resource limit to households which contain a disabled member or members. (The food stamp definition of an elderly or disabled member is reflected at 7 CFR 271.2).

A State agency that selects the option to use its TANF cash assistance or Medicaid resource rules in lieu of food stamp resource rules may not exclude the following:

1. Licensed vehicles not excluded under Section 5(g)(2)(C) or (D) of the Act (7 U.S.C. 2014(g)(2)(C) and (D)). (Section 5(g)(2)(D)) allows State agencies to substitute the vehicle rules they use in their TANF programs for the food stamp vehicle rules when doing so results in a lower attribution of resources to the household); and

2. Cash on hand and amounts in any account in a financial institution that are readily available to the household, including money in checking or savings accounts, stocks, bonds, or savings certificates.

The proposed rule would have required that the term "readily available" apply to resources, in financial institutions, that can be converted to cash in a single transaction without going to court to obtain access

or incurring a financial penalty other than loss of interest. While commenters found the proposed definition of "readily available" to be easy to understand and specific, they also found that it added complexity to program administration. Some suggested that making the term "readily available" apply to all financial instruments would be simpler than the proposed definition, which would be more restrictive than current policy. Others argued that we should allow State agencies to exclude stocks, bonds, and savings certificates if their TANF cash assistance or Section 1931 Medical assistance programs exclude them. We disagree. These financial instruments are generally easily converted to cash. In the rare instances where they are not easily cashed, current regulations would exclude them as inaccessible resources. As examples, a stock certificate without value, one whose value is not easily determined, or an inherited stock that has not yet cleared probate is considered inaccessible under current rules and would not be counted against a household's resource limit. For these reasons the final rule defines "readily available resources" as resources the owner can simply withdraw from a financial institution. For example, one can withdraw funds from a money market account, or convert foreign currency stored in a safety deposit box to U.S. dollars, by simply going to the financial institution and going through the required procedures.

Under the proposed rule, State agencies would have been able to exclude deposits in individual development accounts (IDAs) made under written agreements that restrict the use of such deposits to home purchase, higher education, or starting a business. This provision drew over 100 comments reminding FNS that the intent of the legislation is to simplify food stamp resource rules and to conform them to other Federal assistance programs. Commenters argued that IDAs are intended to help break the poverty cycle and to encourage work. We agree. The final rule allows States to exclude any and all IDAs from resources, provided their TANF cash assistance or Section 1931 medical assistance programs exclude them.

The proposed rule would have offered States the option to exclude deposits in individual retirement accountants (IRAs) the terms of which enforce a penalty, other than forfeiture of interest, for early withdrawal. The intent of this language was to limit the exclusion to situations where converting the IRA to cash would entail significant loss of resources. Title IV of the Food, Conservation and Energy Act of 2008 (Pub. L. 110–246)(FCEA) provided for the exclusion of all IRAs. Accordingly, any discussion of IRAs is dropped from this rule and will be discussed in a future rulemaking.

Simplified Definition of Income—7 CFR 273.9(c)

Current regulations at 7 CFR 273.9(c) specify the types of income that State agencies must exclude from a household's income when determining the household's eligibility for the Program and benefit levels. Provisions at 7 CFR 273.9(c)(1) through (c)(16) provide a long list of income exclusions that State and local agencies must apply when calculating a household's income.

Section 4102 of FSRIA amends Section 5(d) of the Act (7 U.S.C. 2014(d)) to add three new categories of income that, at the option of the State agency, may also be excluded from household income. Under the amendment, State agencies may, at their option, exclude the following types of income:

1. Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran's educational benefits and the like that are required to be excluded under a State's Medicaid rules;

2. State complementary assistance program payments excluded for the purpose of determining eligibility for medical assistance under section 1931 of the SSA; and

3. Any type of income that the State agency does not consider when determining eligibility or benefits for TANF cash assistance or eligibility for medical assistance under section 1931. However, a State agency may not exclude the following:

- Wages or salaries;
- Benefits under Titles I (Grants to States for Old-Age Assistance for the Aged), II (Federal Old Age, Survivors, and Disability Insurance Benefits), IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services), X (Grants to States for Aid to the Blind), XIV (Grants to States for Aid to the Permanently and Totally Disabled) or XVI (Grants To States For Aid To The Aged, Blind, Or Disabled and Supplemental Security Income) of the SSA;
- Regular payments from a government source (such as unemployment benefits and general assistance);
- Worker's compensation;
- Legally obligated child support payments made to the household; or
- Other types of income that are determined by the Secretary through regulations to be essential to equitable determinations of eligibility and benefit levels.

Current regulations at 7 CFR 273.9(c)(3) provide an exclusion for educational assistance including grants, scholarships, fellowships, work-study, educational loans which defer payment, veterans' educational benefits and the like. These exclusions (based on an exclusion provided at Section 5(d) of the Act) are limited to educational assistance provided to a household member who is enrolled at a recognized institution of post-secondary education and that are used or earmarked for tuition or other allowable expenses. State agencies have the option of excluding this assistance from income for food stamp purposes to the extent that their Medicaid rules require exclusion of additional educational assistance, *i.e.,* educational assistance that would not be excludable under the current rules at 7 CFR 273.9(c)(3).

To implement section 4102 of FSRIA, the Department proposed to amend 7 CFR 273.9(c)(3) by adding a new 7 CFR 273.9(c)(3)(v) which grants State agencies the option to exclude any educational assistance required to be excluded under its State Medicaid rules that would not already be excluded under food stamp rules. State agencies that implement this option must include a statement in their State plan to that effect, including a statement of the types of educational assistance that are being excluded under the provision.

One commenter recommended the Department take the opportunity in this final rule to clarify the interaction of the federal Higher Education Act (Pub. L. 99–498) with the Food Stamp Program. The Higher Education Act, as amended, provides that certain types of student financial assistance shall not be taken into account in determining the need, eligibility or benefit level of any person for benefits or assistance under any Federal, State or local program financed in whole or in part with Federal funds (20 U.S.C. 1087uu). Food stamp regulations at 7 CFR 273.9(c)(3) differ from 20 U.S.C. 1087uu by counting student aid as income when such aid is used for normal living expenses, as opposed to tuition and books. The commenter recommended that the Department amend food stamp regulations to conform to 20 U.S.C. 1087uu.

The Department reviewed the applicable language in the Higher Education Act and confirmed that current regulations at 7 CFR 273.9(c)(3) are inconsistent with this law. The Food

Stamp Program is a federally funded program, thereby meeting the criteria of 20 U.S.C. 1087uu. Therefore, in addition to adopting 7 CFR 273.9(c)(3)(v) as proposed, the Department is adding a new 7 CFR 273.9(c)(3)(ii)(A) to exclude student financial assistance received under 20 U.S.C. 1087uu of the Higher Education Act. The Department notes that this section of the Higher Education Act funds work study programs. Therefore, any income received by an individual participating in a work study program funded under this section of the Higher Education Act shall not be counted when determining the individual's eligibility for food stamps. The final rule amends 7 CFR 273.9(b)(1)(vi) to conform to this mandate.

The Department proposed a new 7 CFR 273.9(c)(18) to provide for the exclusion, at State agency option, of any State complementary assistance program payments excluded for the purpose of determining eligibility for medical assistance under section 1931 of the SSA. Complementary assistance relates to certain types of assistance provided under the old AFDC program. In the proposed rule, we specifically asked State agencies to include, in their comments, examples of the types of payments that fall under the category of State complementary assistance program payments. We received only one example of such a program, the Supplemental Living Program in New Jersey. Due to the low response rate, the final rule does not include specific examples of these payments. This rule adopts as final the proposed 7 CFR 273.9(c)(18).

To incorporate the changes mandated by section 4102 of FSRIA, the Department proposed to add a new 7 CFR 273.9(c)(19), that would allow the State agency at its option to exclude from Food Stamp Program income the types of income that the State agency does not consider when determining eligibility or benefits for TANF cash assistance or eligibility for medical assistance under section 1931 of the SSA. However, this provision would not include programs that do not evaluate the financial circumstances of adults in the household and programs grand-fathered under Section 404(a)(2) of the SSA. Additionally, a State would not be able to exclude wages or salaries, benefits under Titles I, II, IV, XIV or XVI of the SSA, regular payments from a government source, worker's compensation, or legally obligated child support payments made to the household.

The Department received several comments regarding proposed 7 CFR 273.9(c)(19). Most of these comments focused on the specific incomes or payments listed in the paragraph. We will address comments concerning specific incomes and payments in the order they appear in proposed 7 CFR 273.9(c)(19). Before we begin this detailed discussion, we wish to address two miscellaneous items. First, the Department is changing the format of the language in the proposed rule. The final rule lists each income or payment that section 4102 of FSRIA does not exclude as income in a list format, starting with 7 CFR 273.9(c)(19)(i) and ending with (c)(19)(x). We believe this revised format will make it easier for readers to understand what income or payments cannot be excluded.

Second, the Department received a comment regarding child support arrearages and whether such sums should be included or excluded as income. The commenter pointed out that, in some cases, a large arrearage of child support may accrue while the non-custodial parent is unemployed or working off the books to evade a wage attachment. State Child Support Enforcement offices ("State IV–D agencies") sometimes are able to attach a bank account, tax refund, lottery winnings or other property of the non-custodial parent and may remit several months of support at once to the custodial parent. These non-recurring lump sums of child support must be excluded from the custodial parent's household income in accordance with 7 CFR 273.9(c)(8). However, the commenter thought that this may confuse some eligibility workers accustomed to querying their State IV–D agencies for information on child support received. The commenter asked the Department to include lump sums of child support arrearages to the examples of lump sums in 7 CFR 273.9(c)(8).

The Department disagrees with the comment. Current 7 CFR 273.9(c)(8) contains some, but not all, examples of non-recurring lump sum payments. The paragraph clearly indicates that the examples included in the text are not exclusive. The Department sees no need to add more specific examples of non-recurring lump sum payments to this paragraph.

1. Income Excluded by State Agencies When Determining TANF or Medical Assistance

The Department proposed to amend the current regulations at 7 CFR 273.9(c) to permit exclusion of new types of income at State agency option. In addition to permitting the exclusion, one commenter expressed the desire to see this regulation apply to the "treatment" of income as well. If the TANF or medical assistance program treats a certain income as earned income, the commenter would have the State agency also apply the same treatment for food stamps. For example, the regulations governing the TANF program treat workers' compensation as earned income if it is employer funded and if the recipient is still considered an employee of the company. However, current food stamp policy requires worker's compensation be counted as unearned income.

The definition of earned and unearned income, as well as how much of a particular type of income to count is set by regulation, not statute (although Section 5(d) of the Food Stamp Act does say household income includes all income from whatever source except that which is specifically excluded). Thus, even though FSRIA speaks only to types of income to count or exclude for food stamp purposes, the Department agrees with the commenter that having consistency among TANF, medical assistance, and food stamps in how they "treat" income would simplify budgeting for State or local staff who administer multiple programs and would be another step toward simplifying the Program. Therefore, the Department is amending 7 CFR 273.9 to expand the list of allowable earned income to include certain income as earned income if the household is receiving TANF and/or State medical assistance and this income is treated as earned income by a State's TANF or medical assistance program.

Even though a State may exclude income in its TANF or medical assistance program, section 4102 mandated that certain types of income cannot be excluded. Many commenters said these specific income exclusions disregarded the clearly expressed Congressional intent that the Department only supplements the list in the case of unforeseen gamesmanship by some States. Others claimed the additional mandatory income exclusions would increase the administrative burdens on caseworkers and paperwork burdens on households. For example, State agencies would be required to ask about these types of incomes on the application forms and certification interviews even if a State does not find them worth counting for TANF and Medicaid. Moreover, commenters noted that each type of income affects very few households and the Department does not collect data on them through its quality control database. Commenters stated that by supplementing the Congressional list of exclusions, the language in the

proposed rule largely eliminates the simplifying purpose of the provision.

The Department gave serious consideration to these comments. While Congress supported simplifying program administration, it did give the Department the authority to add types of income to the list of mandatory inclusions viewed essential to the equitable determination of eligibility and benefit levels. The Department has determined that the additional types of income included in the proposed rule can be significant sources of income to households and should be counted in determining food stamp eligibility and benefits.

2. Exemption of Gross Income From a Self-employment Enterprise

Three commenters argued that States are unlikely to want to bear the expenses of a blanket disregard of self-employment income in their TANF and medical assistance programs. They believe the Department should leave it to the States to determine which particular types of self-employment income are rare and erratic forms of income and not worth the trouble to ask about through application questions and/or verification requirements. Commenters also stated that if the Department is determined to regulate in the area of self-employment income, it should only require the counting of self-employment income that is the household's primary source of support. The amount of income received from some self-employment sources, such as garage sales and sale of blood plasma, is sometimes minimal and is not a regular source of net income to the household.

The Department does not see a need to clarify this point in the final rule. In determining a household's income for the certification period, State agencies are instructed by current regulations at 7 CFR 273.10(c)(1) to consider income already received by the household during the certification period and anticipate income that the household and State agency are reasonably certain will be received during the certification period. Thus, the Department contends that State agencies should only count self-employment income that at certification can be anticipated with reasonable certainty. Income from rare or erratic sources, like garage sales and the sale of blood plasma, does not meet the standard of reasonable anticipation.

Another commenter stated that there is no need for a single uniform definition of self-employment income for food stamp purposes. Most States count self-employment income in their TANF programs but take a range of approaches in their TANF definitions. The commenter felt that there are very legitimate reasons why a State may wish to develop or test an alternative approach. The commenter stated that imposing the uniform definition has the effect of forcing States to either adopt that definition for TANF purposes or have inconsistent TANF and food stamp definitions. This could greatly increase the complexity of eligibility and benefit determinations for self-employed households. This commenter suggested that the final rule specify that while States must count self-employment income, a State may elect to use the methodology it uses in its TANF or medical assistance program for counting such income.

The Department disagrees with this comment. The methodology a State uses to count self-employment income in its TANF or medical assistance program may not conform to the rules and regulations of the Food Stamp Program. Moreover, these methodologies, if applied to the Food Stamp Program, could allow a greater number of individuals to qualify for benefits than would be the case if States had used a specific food stamp methodology. Self-employed individuals must be found eligible for food stamp benefits through the use of a food stamp methodology. State agencies that believe there is an administrative and cost advantage for applying TANF or medical assistance program methodologies for counting self-employed income to the Food Stamp Program may present their case to FNS through the certification waiver process.

A commenter asked if it was the Department's intent to say that no self-employment income can be excluded under this provision. Currently, 7 CFR 273.9(b)(1) indicates that gross self-employment income is counted and 7 CFR 273.11(a)(2) allows for excluding some self-employed income due to allowable costs. The commenter stated that the Department's proposal implies that gross self-employment income is countable without regard for allowable costs. The commenter noted that if this is the Department's intent, it is a major change and will exclude many from receiving food stamps. They also noted that the Department did not propose to revise the regulations at 7 CFR 273.11(a)(2) and this regulation continues to provide that the costs for making the self-employment income are excluded.

In developing the language for the proposed rule, the Department intended that States would count self-employment income just as they do currently, with the exclusions permitted under 7 CFR 273.11(a)(2). The Department appreciates the commenter pointing out this contradiction between 7 CFR 273.9(b)(1) and 7 CFR 273.11(a)(2). To address this conflict, the final rule includes a reference in 7 CFR 273.9(c)(19) to 7 CFR 273.11(a)(2) and requires States to calculate self-employment income in accordance with this part.

3. Foster Care and Adoption Payments

A commenter presented reasons why the Department should exempt adoption assistance for special needs children. Adoption assistance for special needs children are negotiated payments made to families who adopt a child with special needs. Such payments are meant to reimburse the adoptive parents for the additional costs incurred due to the child's needs, such as modifying a home, respite care, and medical and counseling needs.

The commenter discussed a situation where a foster care family is receiving food stamps for its household, which includes a foster child with special needs. If the family decides to adopt the special needs child, once they adopt him/her, the child will become part of their household and the family will be eligible for the federal title IV adoption assistance program. The commenter noted that under the proposed rule, the adoption assistance payments will count, which may result in the household facing a reduction or, more likely, termination of their food stamp benefits. The commenter urged the Department to examine the issue and facilitate a change that will serve as an incentive for foster care families to adopt special needs children and proposed a remedy. The commenter suggested the Department exempt part of the adoption assistance that reimburses the family for special needs of the child.

In the preamble for the proposed rule, the Department answered a specific question regarding whether adoption or foster care payments made to a household must be counted as income if they are excluded for TANF or Medicaid purposes. The Department said that section 4102 of FSRIA specifically requires that the State include benefits paid under title IV of the SSA as income for food stamp purposes. Title IV–E of the SSA authorizes federal payments for foster care and adoption assistance. Any benefits received by a food stamp household pursuant to a program operated under title IV–E must be counted as income to the household. The Department has no discretion to exempt adoption subsidies for families received under a title IV–E program.

Therefore, the Department cannot exempt part of these subsidies as requested by the commenter.

Another commenter stated that the proposed rule is unnecessarily restrictive by limiting States' discretion. For example, by specifying that foster care and adoption payments must be counted as income, the proposed rule did not accommodate the broad range of different purposes and funding streams for these payments. As noted by the commenter, portions or all of these payments may be funded by State or local programs, and not just under title IV–E, and may be based on a child's special needs beyond normal living expenses. Thus, the commenter believed that it should be within a State's discretion to exclude foster care or adoption subsidies paid by State or local programs as income for the purposes of determining food stamp eligibility and benefit amounts.

The final rule does not give States discretion to exclude foster care or adoption subsidies paid by a State or local agency. The Congressional intent in the 2002 FSRIA was to ensure that payments from a government source, such as foster care or adoption subsidies from a State or local agency, would not be excluded. Although it may be possible that funding for adoption or foster care payments may come from several funding sources, the legislation specifically refers to payments from a government source. This would include payments from a State or local government. Neither Title IV–E of the SSA nor the Act addresses adoption or foster care payments from a non-governmental source. Therefore, States have discretion in determining the exclusion of such payments. The final rule at 7 CFR 273.9(c)(19) does not grant State agencies the option to exempt any portion of adoption and foster care payments that are paid through federal, State or local government funds.

4. Regular Payments From a Government Source

Section 4102 of FSRIA does not exclude regular payments from a government source. To fulfill this mandate, the Department proposed to add a new 7 CFR 273.9(c)(19). The proposed rule would require counting direct payments from a government source as income to a household. In addition, the proposed rule would also require counting of indirect payments or allowances from a government source that are paid to a household through an intermediary. For example, as stated in the proposed rule, if a household is participating in an on-the-job training program and is being paid by an employer with funds provided by a Federal, State or local government, the State agency must count those payments as income for food stamp purposes. This rule would apply even if such payments would be excluded under the State TANF or medical assistance program. This requirement would not apply to payments which are excluded from income for the purposes of determining food stamp eligibility under another provision of law.

Several commenters objected to this section of the proposed rule. The commenters contend that requiring States to count governmental payments, even if the household receives these funds from a non-government source, can be extremely complex and goes against the idea of program simplification. For example, fuel funds and similar utility assistance programs may be available to assist low-income households to buy low-cost heating and cooking fuel or to pay utility bills. The commenters noted that these programs may be funded by a combination of money from State and local governments, utility companies, and voluntary contributions from individual ratepayers.

The Department gave careful consideration to these comments. State agencies, the entities directly responsible for implementing food stamp rules, did not comment on this subject. The silence of State agencies leads us to believe that this may not be as serious a problem for State agencies as the commenters believe. Nevertheless, to ensure the regulation is understood, the final rule clarifies in 7 CFR 273.9(c)(19) that States should count money paid through a private intermediary when it is clear that all the funding money comes from a government source.

In the preamble to the proposed rule, the Department provided another example of a regular payment from a government source—Volunteers in Service to America (VISTA) payments made under Title I of the Domestic Volunteer Service Act of 1973. (42 U.S.C. 4950, *et. seq.*) A commenter stated that States should be able to decide whether or not they want to exclude VISTA payments for VISTA volunteers who apply for food stamps after joining VISTA. The commenter noted that the proposed policy is inequitable because VISTA volunteers who are already receiving food stamps have these payments excluded but volunteers who apply for benefits after they become part of VISTA must have their subsidy counted as income. The commenter believed that this policy is inconsistent with the goals of State flexibility and program simplification.

Current regulations at 7 CFR 273.9(c)(10)(iii) require that VISTA payments be counted as income only if the households applies for benefits after joining the VISTA program. There is nothing in the FSRIA that indicates current food stamp policy should be changed to exempt VISTA subsidies from income for these applicants. Therefore, the Department adopts in the final rule the portion of proposed 7 CFR 273.9(c)(19) pertaining to regular payments from a government source.

5. Child Support Payments Made by a Non-Household Member

Section 4102 explicitly requires that legally obligated child support payments made to households be counted as income. This requirement includes any portion of a household's child support payments that are passed-through to the household under the State's TANF program. Therefore, the Department proposed that all child support payments made to a household be counted as income for food stamp purposes.

We received several comments about voluntary child support payments. A couple of commenters agreed that voluntary child support should not be treated differently from court-ordered child support. However, they stated that the Department should explicitly reassure States that they should not count voluntary child support payments received by a household as income unless they are reasonably certain a voluntary child support payment will be received in a month. The commenters believed that no quality control error or claim should result when an irregular voluntary child support payment is received that the State did not budget when determining the household's income. Moreover, they stated that States need some guidance on the treatment of these payments but the Department failed to provide such guidance in the proposed rule. The Department disagrees with these comments. We discussed the issue of legally obligated or voluntary child support payments in the preamble to the proposed rule. The Department explained that voluntary child support payments should not be treated more favorably than legally obligated payments. Moreover, the Department noted that there may be circumstances in which voluntary child support payments to a household are paid infrequently or irregularly. The Department reminded State agencies that infrequent and irregular income can be excludable under current regulations

at 7 CFR 273.9(c)(2) if not in excess of $30 per quarter. State agencies are expected to apply appropriate food stamp policy and use their judgment in cases where a household receives voluntary child support payment. Therefore, the Department is adopting this provision in our final rule.

6. Monies Withdrawn or Dividends Received by a Household From Trust Funds

The Department proposed that State agencies count monies withdrawn or dividends received by a household from trust funds considered to be excludable resources under 7 CFR 273.8(e)(8). The Department believes that trust fund disbursements may be of a significant amount and may be made on a regular basis to a household.

A commenter expressed the view that trust fund disbursements are typically made for specific purposes, such as medical or educational expenses. The commenter noted that if such disbursements are made for normal living expenses, they are not excludable under 7 CFR 273.8(e)(8). In most cases, the household should be able to show that trust fund money is not accessible, is a non-recurring lump sum payment, or is an excluded reimbursement. The commenter stated that the final rule should allow any State to exclude these funds for food stamps, if it is willing to do so for TANF and medical assistance eligibility. This would avoid the burdensome and confusing process that the proposed rule imposes on States.

The Department disagrees. As we stated in the proposed rule, trust fund disbursements may be of a significant amount and may be made on a regular basis to a household. While the trust account itself may not be accessible to a household, the household may still receive a trust fund disbursement that is accessible and available to them. The household must report this information. It is prudent for State agencies to ask about trust income at certification and recertification, and note the household's answer. Even if the household receives irregular trust disbursements, they must be reminded of their obligation to report any trust disbursements in conformance with the household's reporting requirement. This portion of proposed 7 CFR 273.9(c)(19) is adopted in the final rule.

Child Support Payments—7 CFR 273.9(c) and (d)

1. State Option To Treat Child Support Payments as an Income Exclusion or Deduction

Current rules at 7 CFR 273.9(d)(5) provide households with a deduction from income for legally obligated child support payments paid by a household member to or for a non-household member, including vendor payments made on behalf of the non-household member. Section 4101 of FSRIA amended Section 5(d) of the Act (7 U.S.C. 2014(d)) to add legally obligated child support payments made by a household member to a non-household member to the list of income exclusions. It also amended Section 5(e) by removing existing paragraph (4), which established the child support deduction, and inserting a new paragraph (4) giving State agencies the option of treating child support payments as an income deduction rather than as an exclusion.

In order to implement Section 4101, the Department proposed to amend 7 CFR 273.9 to add a new paragraph (c)(17) which would provide that legally obligated child support payments be excluded from household income. The proposed paragraph (c)(17) would give State agencies the option to treat child support payments as an income deduction rather than an income exclusion, and included a reference to 7 CFR 273.9(d)(5) which contains existing requirements for the child support deduction. In the proposed rule, 7 CFR 273.9(d)(5) would be amended to reference a new 7 CFR 273.9(c)(17), and would provide that if the State agency chooses not to exclude legally obligated child support payments from household income, then it must provide eligible households with an income deduction for those payments. Commenters generally supported this new option while noting that it may benefit only a small number of households. However, commenters had several concerns regarding the implementation of this option and its effect on other eligibility calculations which will be discussed in further detail below. The proposed rule would further amend 7 CFR 273.9(d)(5) to require State agencies that choose to provide a deduction rather than an exclusion to include a statement to that effect in their State plan of operation. The Department did not receive any comments regarding this requirement so we are adopting it as proposed.

Under the proposed rule, child support payments that qualify under the existing regulations for the income deduction would also qualify for the income exclusion. Under current regulations at 7 CFR 273.9(d)(5), a household can receive a deduction only for legally obligated child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member (vendor payments). No deduction is allowed for any amount that the household member is not legally obligated to pay. State agencies, in consultation with the State IV–D agency, may determine what constitutes a legal obligation to pay child support under State law.

The preamble for the proposed rule also stated that if State agencies provide a household an exclusion for legally obligated child support payments rather than a deduction, households may reap the benefit of both. The proposed exclusion would cause the household to have a lower gross income, making it more likely that the household would meet the program's monthly gross income limit and be eligible for benefits. In addition, the excluded payments would not be counted as part of the household's net income, in effect deducting the payments from income. A detailed discussion of this provision follows.

2. Order of Determining Deductions

Current rules at 7 CFR 273.10(e)(1) specify the order in which State agencies must subtract deductions from income when calculating a household's net income. Under the rules, the order of subtraction is as follows: First, the 20 percent earned income deduction; second, the standard deduction; third, the excess medical deduction; fourth, dependent care deductions; fifth, the child support deduction; and finally the excess shelter deduction (or homeless shelter deduction for homeless households). The excess shelter deduction is subtracted last because, pursuant to Section 5(e)(6) of the Act (7 U.S.C. 2014(e)(6)), households are entitled to a deduction for monthly shelter costs that exceed 50 percent of their monthly income after all other program deductions have been allowed.

Section 4101 of FSRIA requires that if the State agency opts to provide households a deduction for legally obligated child support payments rather than an exclusion, the deduction must be determined before computation of the excess shelter deduction. The Department proposed to make a minor change to current rules at 7 CFR 273.10(e)(1)(i)(F) to indicate that treating legally obligated child support payments as a deduction is a State option. The Department did not receive

any specific comments about this provision so adopts it as proposed.

Prior to the publication of the proposed rule, several State agencies asked the Department how a household's earned income deduction should be computed if the State agency grants an income exclusion for child support payments rather than a deduction. Under current rules at 7 CFR 273.9(d)(2), the earned income deduction is equal to 20 percent of the household's gross earned income. Child support payments that are excluded from income are subtracted from the household's gross income. Thus, under the current rules, if the State agency provides the household an income exclusion for child support payments, the earned income used to make child support payments will not be part of the household's gross income when the State agency calculates the earned income deduction.

The Department proposed to address this problem by amending current rules at 7 CFR 273.9(d)(2) and 7 CFR 273.10(e)(1)(i)(B) to specify that in determining the earned income deduction, the State agency must count any earnings used to pay child support that were excluded from the household's income in accordance with the child support exclusion at 7 CFR 273.9(c)(17). The Department asked interested parties for suggestions on other methods for ensuring that households receive the full earned income deduction when they receive an exclusion for child support payments.

While the Department received comments supporting the proposed amendment, several commenters expressed concern with the time consuming calculations involved. Some thought it was going to be difficult to train workers and administer a system where the State agency needs to exclude payments from gross income to come up with an adjusted gross income and then add it back in to determine the earned income deduction. They felt this two tier approach was complex and error prone. Some also addressed concern regarding time and cost factors associated with system implementation.

One commenter proposed an example of a household with a monthly gross income of $1,000 who has $400 in child support payments excluded. The commenter asked if the rule intends to take 20 percent of the total gross income prior to the exclusion ($1,000) or 20 percent of the countable gross income ($600) in calculating the earned income deduction. The answer to this question is that when a State agency utilizes the child support exclusion, the State agency shall take 20 percent of the total gross income ($1,000) prior to the exclusion to calculate the earned income deduction.

According to the State Options Report, published by FNS in June 2009, thirteen (13) States are complying with the rule and have effectively added legally obligated child support to their list of exclusions. The remaining States have opted to treat child support payments as an income deduction rather than an exclusion. Most of the State agencies that apply child support as an exclusion have programmed their computer system to handle this calculation. The caseworker simply types in the data for the amount of child support paid by the applicant and the system performs the computation for the caseworker. Most State agencies have not had to provide any extensive training to eligibility workers about this calculation because it is performed by their computer system. Although State agencies and other commenters have expressed concern over the complexity of this formula, the Department adopts the amendment as proposed. Most State agencies are computerized so they can program their systems to handle the calculation.

One commenter noted that the purpose of choosing the exclusion over the deduction is to help a family become eligible for food stamps by reducing their countable income. They felt that it was inequitable to allow an earned income deduction on one type of excluded income but not on other types. The Department has considered this comment but adopts the change as proposed because it is consistent with Congress's intent in the implementation of this option in the FSRIA.

3. State Option To Simplify the Determination of Child Support Payments

Current rules at 7 CFR 273.2(f)(1)(xii) require the State agency to verify, prior to a household's initial certification, the household's legal obligation to pay child support, the amount of the obligation, and the monthly amount of child support the household actually pays. The rules strongly encourage the State agency to obtain information regarding a household member's child support obligation and payments from Child Support Enforcement (CSE) agency automated data files.

Section 4101 of FSRIA amended Section 5 of the Act (7 U.S.C. 2014) to add a new paragraph (n) that directs the Department to establish simplified procedures that State agencies, at their option, can use to determine the amount of child support paid by a household, including procedures to allow the State agency to rely on information collected by the State's CSE agency concerning payments made in prior months in lieu of obtaining current information from the household.

To implement Section 4101, the Department proposed to amend current rules at 7 CFR 273.2(f)(1)(xii) to permit State agencies, in determining a household's legal obligation to pay child support, the amount of its obligation, and amounts the household has actually paid, to rely solely on information provided through its State's CSE agency and not require further reporting or verification by the household. This proposed option would only be available in the cases of households that pay their child support through their State CSE agency.

The Department received a number of comments expressing concern with this proposed amendment. Most of the comments involved the reliance by State agencies on information received from the State CSE agency and the method for obtaining this information. Some commenters did not completely understand the fact that the provision only applied to households who pay their child support through their State CSE agency. They were concerned that the Department's use of the word "solely" would disadvantage individuals with legal obligations who make payments outside of the CSE system. However, the Department notes that the rule clearly states that this provision only applies to those households who make payments through the State CSE agency.

Other commenters noted that the use of the word "solely" could be limiting for individuals who make payments through the State CSE agency but who either contest the information provided by the CSE agency or need time to accommodate for the lapse between the date of the order and the time it is recorded into the State CSE system. Commenters requested that the final rule allow for a corroboration of sources. One commenter also asked for clarification regarding procedures for an obligor who has multiple child support cases and for child support cases that cross State boundaries.

The Department has considered these comments and the final rule modifies the proposed language so that State agencies will not rely on this information as their sole source of verification. The final rule gives State agencies the opportunity to rely on this information but it will not have to be the sole source of verification for households who participate in the State CSE system. Additionally, the final rule contains language that will provide

households with the opportunity to challenge information provided by the State CSE agency.

If an obligor has multiple child support cases, the payments from these cases should be combined to determine the total obligation of the household. The removal of the requirement for State agencies to rely solely on information received from the State CSE agency should eliminate any complication that could arise from cases that cross State boundaries. However, under the regulations governing the Office of Child Support Enforcement (OCSE) at 45 CFR 303.7(a), State CSE agencies must establish an interstate central registry responsible for receiving, distributing and responding to inquiries on all incoming interstate CSE cases. Therefore, any problems arising from interstate cases should be minimal and do not need to be addressed in regulatory form for Food Stamp Program participants.

Several commenters stated that the FSRIA suggests that the Department develop a number of approaches to simplified reporting of a household's child support obligation. They felt that the single proposed approach, the use of CSE, was insufficient to satisfy the mandate of Congress. In the proposed rule, the Department asked for suggestions as to other simplified methods State agencies could employ to determine the amount of legally obligated child support payments made by households. A detailed discussion of the proposals made by commenters is provided below.

In order to allow the State's CSE agency to share information with the Food Stamp Program, the proposed rule would have required State agencies following this procedure to have households eligible for the exclusion or deduction sign a statement authorizing the release of the household's child support payment records to the State agency. Several commenters opposed this proposed procedure saying that it was unnecessary and burdensome. Some State agencies already have a system in place allowing local offices access to CSE records without any authorization. They asked the Department to omit this requirement and leave the accessibility of this information to be worked out between the local food stamp office and CSE. One commenter suggested that getting a signature might not be enough if there is no agreement between the food stamp office and CSE.

The Department proposed the provision in this manner because under the Child Support Enforcement Act and the regulations governing the OCSE, the State's computerized child support enforcement system must provide security to prevent unauthorized access to, or use of, the data in the system. Both the Child Support Enforcement Act (42 U.S.C. 654a(f)(3)) and the regulations governing the OCSE (45 CFR 307.13(a)) limit the accessibility of the Child Support Enforcement data to agencies that are necessary to perform the duties under the Child Support Enforcement Act, the TANF program and the Medicaid program. Therefore, legally, the State agencies administering the Food Stamp Program will have to obtain authorization for the use of the data in the State CSE system. The Department adopts this requirement as proposed. For those State agencies who are having difficulties in working with their counterparts in the State CSE agency, the Department is willing to work with DHHS or OCSE to assist any State that wants to take up this option and requests such assistance.

Commenters asked the Department to address what procedures a State agency should follow when a non-custodial parent declines to authorize the release of CSE information to the local food stamp office. As stated above, the removal of the requirement for States to rely solely on information provided by the State CSE agency should clarify any issues that may arise for individuals who make payments through the CSE agency but wish to provide alternative verification. The information provided by the individual must satisfy program verification requirements. The language in the proposed rule would have required State agencies that chose this option to include a statement indicating that they have implemented the option in their State plan of operation. The Department adopts this change as proposed since no comments regarding this requirement were received. The Department also proposed to make conforming amendments to 7 CFR 273.2(f)(8)(i)(A), and 7 CFR 273.12(a)(1)(vi) and (a)(4). The Department did not propose any changes to the monthly reporting and retrospective budgeting rules at 7 CFR 273.21 because under 7 CFR 273.21(h) and (i) the State agency may determine what information must be reported on the monthly report and what information must be verified.

In the proposed rule, the Department asked State agencies interested in implementing this proposed provision whether there are any additional issues that the Department needs to address by regulation in order to make this an effective option for States. Commenters pointed out that issues may arise in instances of reunification or change in custody. They asked for clarification from the Department about how to handle these situations. They felt that it would be egregious to disregard a deduction or exclusion because the payment is being made to a household member and also require the household to report the payment as income.

The proposed rule refers parties to the final rule implementing the child support deduction, published on October 17, 1996, at 61 FR 54282 to find information on what qualifies as a child support payment for purposes of the income deduction and exclusion. That rule amended 7 CFR 273.9(d)(5) to allow a deduction for child support payments to or for a non-household member. The rule does not permit a deduction if a child support payment is made to a household member. However, if the child and the payor move into the same household but the payor is still obligated to make payments to a non-household member due to an arrearage or other circumstance, the payor is still allowed a deduction or exclusion. The proposed rule reflected this in the language that allowed a deduction, and now exclusion, "to or for a non-household member" and for "amounts paid toward child support arrearages." The proposed language addressed the concerns of the commenters so there is no need for further clarification. The Department adopts this amendment as proposed.

The Department also asked for suggestions from interested parties as to other simplified methods State agencies could employ to determine the amount of legally obligated child support payments made by households. In addition to the suggestions discussed above, commenters suggested taking the opportunity to conform the treatment of outgoing child support payments to that of deductible dependent care or medical costs. This would make them an optional change reporting item. They proposed the deletion, rather than the amendment, of 7 CFR 273.12(a)(1)(vi). Some commenters proposed the codification of a provision of a question and answer policy memorandum that the Department issued following the passage of the FSRIA. That memorandum addressed the issue of a household's responsibility to report a change in their child support obligation. The memorandum clarifies that the requirement to report a change depends on the household's reporting requirements. It provides general guidance for procedures a State agency can utilize in setting forth these requirements. The guidance gives an example of a procedure that a State agency could use to address this issue.

The alternative approach listed in the memorandum states that an eligibility worker would provide each household with a reporting threshold. This threshold would include the sum of the monthly gross income limit for the household and its child support exclusion amount and then direct the household to report when its income exceeds this limit. The memorandum also highlights that there are other alternatives for reporting a change but does not go into details about these alternatives. Commenters felt that any other approach subjects child support to less favorable treatment than other deductible expenses, contrary to the intent of the FSRIA.

While the FSRIA permits the Department to develop simplified procedures for State agencies to determine the amount of a household's child support obligation, it does not speak to reporting changes in this obligation. In general, child support obligations change due to an unanticipated change in circumstances that may occur during the certification period. Given the small number of households claiming this deduction, and the fact that changes in the amount of the obligation do not have to be reported under simplified reporting, there should be little or no cost attributable to making this an optional change reporting item. Therefore, the Department will make reporting changes in a household's child support obligation an optional change reporting item. The final rule amends the language in newly redesignated 7 CFR 273.12(a)(6) and other sections of the rule to reflect this change.

Finally, commenters noted a numbering problem in the proposed rule. The rule proposed to insert new material on child support in 7 CFR 273.12(a)(4). The proposed rule did not take into consideration the redesignation of 7 CFR 273.12(a)(4) as 7 CFR 273.12(a)(5) in the final change reporting regulation. The Department appreciates the commenters calling this error to our attention. The final rule adopts the changes proposed for 7 CFR 273.12(a)(4) but inserts them into 7 CFR 273.12(a)(5) instead. Other provisions of the final rule are renumbered accordingly.

Standard Deduction—7 CFR 273.9(d)(1)

As noted above, a household's net income for food stamp purposes is its nonexcluded gross income minus any deductions for which the household is eligible. Section 5(e) of the Act (7 U.S.C. 2014(e)) lists the six allowable deductions. Section 5(e)(1) requires that the Department provide all households with a standard deduction. Section 4103 of FSRIA amended section 5(e)(1) of the Act to replace the fixed standard deduction with one that is adjusted annually and that also varies by household size.

Under the new provision, each household applying for or receiving food stamps in the 48 contiguous States, the District of Columbia, Hawaii, Alaska, and the U.S. Virgin Islands will receive a standard deduction that is equal to 8.31 percent of the Food Stamp Program's monthly net income for its household size, except for household sizes greater than six, which will receive the same standard deduction as a 6-person household. Section 4103 also requires that the standard deduction for any household not fall below the standard deduction in effect for FY 2002.

To implement Section 4103, the Department adjusts the standard deduction every October 1 by multiplying the Food Stamp Program's monthly net income limits for household sizes one through six for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, and the U.S. Virgin Islands by .0831, and rounding the result to the nearest whole dollar. If 0.5 or higher, the amount is rounded up to the next highest dollar; if 0.49 or lower, the amount is rounded down. If the result is less than the FY 2002 standard deduction for any household size, that household size will receive the standard deduction in effect in FY 2002 for its geographic area. The proposed rule contains a chart illustrating how the standard deduction for FY 2003 was calculated for the 48 contiguous States and the District of Columbia.

Section 4103 requires that for Guam, the standard deduction for household sizes one to six be equal to two times the monthly net income standard times 8.31 percent. The same rules for households over six and the minimum deduction amount indicated above apply to applicants and current recipients in Guam.

Although some commenters felt that final rule should maintain the proposed rounding rules for the standard deduction, others pointed out that the rounding rules could lead to a calculation that is fractionally less than 8.31 percent of the net income limit. They noted that FSRIA requires that households receive a standard deduction equal to 8.31 percent of the program's net income limit. The provision in the proposed rule that called for the Department to round down where the number of odd cents in the exact figure is less than 0.50, would lead to a standard that is fractionally less than 8.31 percent. Therefore, commenters are requesting that the Department round up all fractional results to ensure that no household is denied a standard deduction "equal to" 8.31 percent of the net income limits.

The Department finds the comment has merit and simplifies program administration. Therefore, the final rule automatically rounds up the 8.31 percent calculation to the nearest whole dollar. This ensures that households are not denied a standard deduction "equal to" 8.31 percent. For example, if 8.31 percent of the monthly net income limit equals $146.34, the figure would be rounded up to a standard deduction of $147.

The Department also proposed that ineligible and disqualified members would not be included when determining the household's size for the purpose of assigning a standard deduction to the household. This would be consistent with other regulatory provisions that do not include ineligible and disqualified members in their calculations, including assigning a benefit amount.

While some commenters agreed that keeping this provision consistent with other eligibility provisions that look at household composition would help in achieving the goal of program simplification, others felt that treating some households as smaller than they actually are is inconsistent with the FSRIA's recognition that larger households have larger, inescapable costs. Additionally, commenters noted that Section 3(i) of the Food Stamp Act (7 U.S.C. 2012(i)) defines a household in terms of food purchasing and preparation patterns, family relationships, and living arrangements. Under that definition, an individual could be considered a member of the household whether or not they are eligible to receive food stamps. These commenters felt that the Department had no reason to deny households with ineligible members the full standard deduction, especially when it would unfairly reduce a household's food stamp allotment.

The Department has considered these comments but we continue to believe that only eligible household members should be included in the calculation for the standard deduction. Only eligible household members should be receiving the benefit; for that reason they are the only ones considered in determining the standard deduction amount. Therefore, the Department adopts the language from the proposed rule.

Simplified Determination of Housing Costs—7 CFR 273.9(d)(6)(i)

Current rules at 7 CFR 273.9(d)(6)(i) provide that State agencies may develop a homeless household shelter deduction to be used in place of the excess shelter deduction in determining the net income of homeless households. Under the rules, State agencies may set the homeless household shelter deduction at any amount up to a maximum of $143 per month. State agencies may make households with extremely low shelter costs ineligible for the deduction. Homeless households with actual shelter expenses that exceed their State's homeless household shelter deduction can opt to receive the excess shelter deduction instead of the homeless household shelter deduction if their actual shelter costs are verified.

Section 4105 of FSRIA amended Section 5(e) of the Act (7 U.S.C. 2014(e)) to grant State agencies the option of providing homeless households with a monthly shelter deduction of $143 in lieu of providing them an excess shelter deduction. Current regulations at 7 CFR 273.9(d)(6)(i) already reflect most of the requirements of Section 4105 of FSRIA. The only difference between the current rules and the requirements of Section 4105 is that the current rules permit State agencies to develop their own homeless household shelter deduction up to a maximum of $143 per month, whereas Section 4105 mandates that the homeless household shelter deduction be $143 per month.

Commenters suggested that 7 CFR 273.2(f)(2)(iii) could be read to require homeless households to verify some shelter costs in order to receive the old and the new shelter deduction. They noted that the provision does not limit itself to cases where the homeless family's statements are questionable and the verification requirement largely undercuts the goal of simplification. Commenters suggested deleting 7 CFR 273.2(f)(2)(iii). The removal of verification requirements and proposed deletion of 7 CFR 273.2(f)(2)(iii) originates from a concern that eligibility workers may take it upon themselves to require verification from homeless households when it is not necessary. This may lead to fewer households receiving the homeless shelter deduction.

The Department has considered these comments. The final rule relocates 7 CFR 273.2(f)(2)(iii) from the provision about verification of questionable information to 7 CFR 273.2(f)(4) which addresses sources of verification. The final rule contains language to reflect that these sources of verification are for households who seek to claim actual expenses or if the State agency determines that households with extremely low shelter costs are ineligible for the deduction. It is necessary for the final rule to retain the provision about verification because households can still claim actual costs and amended Section 5(e) of the Act still makes it permissible for State agencies to make households with extremely low shelter costs ineligible for this deduction. However, current regulations clearly allow the State worker to give the deduction solely on the basis of the applicant's statement.

Commenters suggested that the Department has the latitude to allow States to assume that all homeless households have shelter expenses and wants the Department to provide the homeless shelter deduction simply based on a household's meeting the program definition of being homeless. One commenter noted that some States do not require verification of expenses for households to qualify for the standard homeless shelter deduction. They felt that this provides simple administration for the State and substantial benefit to households. Although this is a good point, other households are required to provide some evidence of shelter costs so the Department believes that State agencies should be provided with the latitude to ensure that households have some shelter costs before making a deduction. However, as stated above, the final rule relocates and amends the language of the provision to discourage State agencies from requiring verification from homeless households when it is not necessary.

Although Section 4105 only addresses the homeless household shelter deduction, the Conference Report (H.R. Conf. Rep. No. 107–424, at 537–538 (2002)) in its discussion of Section 4105, directs the Department to review current rules regarding allowable shelter costs and determine if, within existing statutory authority, the Department could make the rules less complicated and error prone for food stamp participants and eligibility workers. In response to this directive, the Department asked commenters to identify ways to further simplify existing procedures for determining eligible shelter expenses. The reason that the Department asked for recommendations and suggestions for simplification was to help identify program complexities so they could be addressed in future rulemaking. However, very few commenters provided suggestions that would be feasible under the current law.

One commenter suggested that States should be given the option to allow shelter expenses based on a standard such as project area or household size instead of the current dollar for dollar deduction. This option would be similar to the Standard Utility Allowance (SUA) that is revised annually based on current costs for residents.

The Department cannot establish a standard shelter deduction because the Food Stamp Act does not authorize the Department to develop such a deduction. Under Section 5(e)(6) of the Food Stamp Act, a household can only obtain a shelter deduction if their monthly shelter costs exceed 50 percent of their monthly income. In order for a caseworker to determine if the household's shelter costs meet this requirement those costs need to be assessed. Therefore, a standard deduction cannot be used in determining whether or not a household qualifies for a shelter deduction.

Another commenter suggested that the Department should have taken this opportunity to review the desk guide for eligibility workers and its underlying regulations to identify other complexities in the deduction that do not serve important purposes and can be eliminated without violating Congressional prohibitions. Commenters also urged the Department to further simplify the process to support low-wage workers' ability to obtain assistance but failed to identify ways to simplify existing procedures other than the proposed development of a standard shelter deduction. As stated above, the purpose of this request was to address issues that had rulemaking authority and ask for specific suggestions, not issue overall directives for the Department. Since commenters did not provide this information to the Department, the final rule adopts this section as proposed.

Simplified Standard Utility Allowance—7 CFR 273.9(d)(6)(iii)

Current rules at 7 CFR 273.9(d)(6)(iii) provide State agencies the option of developing a SUA to be used in place of a household's actual utility costs when determining the household's excess shelter expenses deduction. State agencies may develop an SUA for any allowable utility expense listed in the regulations at 7 CFR 273.9(d)(6)(ii)(C). Allowable utility expenses listed in 7 CFR 273.9(d)(6)(ii)(C) include the costs of heating and cooling; electricity or fuel used for purposes other than heating and cooling; water; sewerage; well and septic tank installation and maintenance; garbage collection; and telephone. State agencies may establish

separate SUAs for each utility, an SUA that includes expenses for all allowable utilities including heating or cooling costs, and a limited utility allowance (LUA) which includes expenses for at least two allowable utility costs. The LUA may not include heating or cooling costs, except that if the State agency is offering the LUA to public housing residents it may include excess heating or cooling costs incurred by such residents.

The current rules at 7 CFR 273.9(d)(6)(iii) implement Section 5(e)(7)(C) of the Act (7 U.S.C. 2014(e)(7)(C)), which generally leaves it to the Department to develop regulations relating to SUAs. Section 5(e)(7)(C), however, does impose certain requirements on the use of SUAs. Section 4104 of FSRIA amends Section 5(e)(7)(C) of the Act to simplify current rules relating to the SUA when the State agency elects to make the SUA mandatory. First, Section 4104 allows State agencies that elect to make the SUA mandatory to provide a SUA that includes heating and cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. Second, it eliminates the current requirement to prorate the SUA when a household shares the living quarters with others. Therefore, if the State agency mandates the use of SUAs, a household eligible for an SUA that includes heating or cooling costs and lives and shares heating or cooling expenses with others must receive the full SUA.

The Department proposed to amend current regulations at 7 CFR 273.9(d)(6)(iii) to incorporate the new requirements. Several State agencies commented that they have implemented this option and it has simplified policy significantly. No one opposed the implementation of this provision. However, one commenter noted that current regulations require States to update their SUAs annually to reflect changes in energy costs. That commenter wanted the final rule to clarify that this requirement applies to mandatory as well as non-mandatory SUAs.

The requirement for States to update their SUAs is based upon changes in energy costs, not on whether the SUA is mandatory. The regulations already clarify that State agencies must review their standards annually and make adjustments to reflect changes in energy costs. Therefore, the Department does not need to amend the current regulation regarding updating the SUA and adopts this section of the proposed rule as written.

The proposed rule also addressed two SUA-related issues. First, the Department proposed a technical correction to the title of 7 CFR 273.9(d)(6). The title to the section was inadvertently changed in the NCEP final rule from "shelter costs" to "standard utility allowance." The Department proposed to amend 7 CFR 273.9(d)(6) to restore the proper title. We did not receive any comments on this change; therefore, the final rule restores the proper title to 7 CFR 273.9(d)(6).

Under the current rule, State agencies follow different procedures for prorating the SUA when the household includes an ineligible member. Some follow the rule at 7 CFR 273.11(c)(2)(iii) which requires the proration of shelter expenses if the ineligible member is billed for or pays the expense; others follow the rule at 7 CFR 273.9(d)(6)(iii)(F) which prohibits the proration of the SUA when the household shares the expense with an ineligible household member. Because the SUA is a component of shelter costs, State agencies have interpreted both sets of regulations as applying to the SUA. However, on their face, the regulations appear to conflict.

To resolve any confusion related to prorating the SUA when ineligible members are present in the household, the Department proposed two alternative procedures and asked for comments on which procedure commenters prefer. The Department said it would incorporate the procedure that gets the most support into the final rule.

The first option allows State agencies to implement the Department's original intention and not prorate the SUA when a household contains an ineligible member. The second option requires State agencies to prorate the SUA when the ineligible member pays either part or all of the expenses included in the SUA. Under the latter option, the household would be entitled to the full SUA if the expenses were paid in their entirety by eligible household members, even if they were billed to the ineligible member.

A significant majority of the commenters believed that the SUA should not be prorated for households with ineligible members for program simplification and benefit maximization. Field workers have a much better understanding of the SUA procedures when the full SUA is always allowed. Therefore, allowing the full SUA decreases the error rate for State agencies. One commenter stated that the regulations and Department policy made it clear that States must not prorate the SUA so there was no need for this clarification and if the Department decided to change this policy that it would be burdensome for the States, detrimental to recipients, and decrease participation rates. Based on the support for the first option, which does not allow States to prorate the SUA for households with ineligible members, the Department incorporates this option into this final rule.

One commenter noted that the proposed rule does not mention ineligible students. That commenter asserted that it is confusing to allow the entire utility allowance for all ineligible members except students. Ineligible members should include all individuals who reside in the household and purchase and prepare meals together but are excluded from participation based on regulations governing the Food Stamp Program. Under the current regulations, students are not included as household members; therefore the Department did not have to specifically mention them in the proposed rule.

One commenter proposed a third option, to allow the full SUA when the ineligible person pays only a portion of the utility bill and to prorate the SUA when the ineligible person pays the entire bill or is responsible for all expenses even if they are not paid. This same commenter suggested that the Department incorporate all three options into the final rule and allow States to select the option that they want to implement, giving States maximum flexibility. Due to the overwhelming support of the first option and the fact that this provision is meant to simplify the program, the final rule does not incorporate this third option.

Although the proposed rule did not address the issue of the LUA or propose any changes to the provision in the current regulations governing this allowance, the Department received a significant number of comments asking the Department to allow States to use the SUA for households that pay for only one utility. They noted that the proposed rule would continue to prohibit States from using a LUA for households that do not pay for heating or cooling and pay only one other utility bill. States have to collect information on actual expenses instead. Therefore, States have to keep questions about actual expenses on the application which undermines the purpose of the new law in simplifying the SUA. These commenters asked the Department to eliminate this complexity and allow States to use the SUA for households that pay for only one utility.

One commenter noted that the legislative history for the FSRIA suggests that it was the intent of

Congress to give States the option of providing a utility allowance to households with only one utility bill so more eligible families would find it easier to get the help they need. That commenter suggested that to deny the LUA to households who pay only one utility bill would be contrary to the intent of Congress and should be corrected.

The Department notes that the current regulations allow States to develop an individual standard for each type of utility expense. About fifteen States currently have single utility standards in place for certain utilities including non-heat electric, cooking fuel, water/sewer and garbage. Since there is already a provision in the current regulations that allow States to develop single standards, there is no need to amend the current rule.

State Option To Reduce Reporting Requirements—7 CFR 273.12(a)(1)(vii)

Current regulations at 7 CFR 273.12(a)(1)(vii) allow State agencies to simplify reporting requirements for households with earned income who are assigned certification periods of 6 months or longer. State agencies may require such households to report only changes in income that result in their gross monthly income exceeding 130 percent of the monthly poverty income guideline (*i.e.,* the program's monthly gross income limit) for their household size. Households with earned income certified for longer than 6 months must submit an interim report at 6 months that includes all of the items subject to reporting under 7 CFR 273.12(a)(1)(i) through (a)(1)(vi). Section 4109 of FSRIA amends Section 6(c)(1) of the Act (7 U.S.C. 2015(c)(1)) to provide State agencies the option to extend simplified reporting procedures from just households with earnings to all food stamp households. In addition, Section 4109 amends Section 6(c)(1) to provide that State agencies may require households that submit periodic reports, in lieu of change reporting, to submit such reports at least once every 6 months, but not more often than once a month.

1. In General

The Department proposed to move current regulations on simplified reporting from 7 CFR 273.12(a)(1)(vii) to 7 CFR 273.12(a)(5). The Department also proposed to amend the current rules to include several requirements that will be discussed in detail below. In general, commenters expressed overall support for the concept of simplified reporting; indicating that by reducing the reporting burden it would benefit both the State agency and the participating households. One State agency even noted that reforms like simplified reporting, which alleviate the workload for caseworkers, are critical for an overstressed and understaffed State agency. However, this commenter was concerned about additional requirements imposed by the proposed rule, as were many commenters.

The Department has decided to make very few major changes to the language contained in the proposed rule. This decision is due in part to the success of 50 State agencies who have implemented expanded simplified reporting systems with terms similar to those in the proposed rule. These State agencies are operating these expanded systems under the authority of waiver requests approved by the Department. These systems have addressed most of the potential adverse consequences proposed by commenters.

One commentator expressed the belief that eliminating the requirement to report circumstances that impact a client's eligibility and/or benefit levels is not in the best interests of the client or the taxpaying public. The same commenter, a State fraud investigator, also expressed the belief that the rules as proposed all but eliminate the ability to pursue an intentional program violation and/or sanction a client with the exception of an instance of the client's failure to report having exceeded certain income thresholds. Although we understand the commenter's concerns, simplified reporting is based on a statutory mandate. Therefore, we do not have the discretion to withhold implementation of expanded simplified reporting or to rescind the current regulations that provide State agencies with the simplified reporting option. Additionally, the program allows State agencies to ensure that participants are not committing intentional program violations.

Participants in a simplified reporting system are required to report changes at least twice a year, once during their periodic report and then again at recertification. At that time, the State agency has the opportunity to scrutinize any changes in the household circumstances that may go unreported, pursue any intentional program violations and sanction clients, if necessary. The goal of simplified reporting is to provide stable benefits to households with minor fluctuations in the benefit amount. Additionally, the simplified reporting option provides overall improvements in program administration and reduces error rates. The Department is satisfied that the simplified reporting system is efficient and maintains program integrity.

Commenters also suggested that FNS use this opportunity to correct a technical error in 7 CFR 273.12(a)(1)(v). This section requires households to report when the value of its resources equals or exceeds $2,000. The commenters noted that the provision fails to mention the $3,000 resource limit for households with an elderly or disabled member. Contrary to the belief of the commenters, this was not a technical error. The provision was designed to give all households one threshold to adhere to for reporting the value of their resources. Therefore, the Department will not amend this provision.

Under the proposed rule, a State agency that opts to utilize simplified reporting procedures would be required to include in its State plan of operation a statement that it has implemented the option and a description of the types of households to whom the option applies. The Department did not receive any comments specifically addressing this provision so adopts the requirement as proposed.

2. Households To Include Under a Simplified Reporting System

Under the proposed rule, a State agency could include any household certified for at least 4 months within a simplified reporting system, except households subject to monthly reporting under 7 CFR 273.21 or quarterly reporting under 7 CFR 273.12(a)(4). The statute does not provide the Department authority to apply simplified reporting to households certified for less than 4 months. The Department did not receive any comments regarding this specific provision. Therefore, we are adopting this requirement as proposed.

3. Application of Simplified Reporting to Households Exempt From Periodic Reporting Requirements

Under the proposed rule, households exempt from periodic reporting under Section 6(c)(1)(A) of the Act, which includes homeless households and migrant and seasonal farm workers, would be subject to simplified reporting but would not be required to submit periodic reports. The certification periods of such households would be at least 4 months but not more than 6 months. Those that offered comments on this provision offered support. However, the FCEA provided that simplified reporting could be extended to all households. Therefore, in the final regulatory provisions on simplified reporting, we are dropping all references to the exclusion of elderly, disabled,

homeless, and migrant and seasonal farm worker households in simplified reporting systems in a subsequent proposed rulemaking to implement provisions of the FCEA. Although not included in this preamble discussion, we note that commenters addressed reporting issues involving these households, particularly the elderly and disabled households. Commenters asked that the final rule include an option for the States to extend the simplified reporting option to any participant in their respective food stamp program, regardless of the household's gross income. They felt this would allow for a more consistent approach for clients and workers alike. One commenter expressed the mistaken belief that simplified reporting was limited to households with at least some countable income. Under the proposed rule, all households would have been included in a simplified reporting system. However, as discussed above, it is not to the advantage of the State agency or the participants to include certain households in a simplified reporting system due to the rules governing their participation in the Food Stamp Program. Therefore, this final rule adopts the proposed language.

4. Periodic Reports

Under the proposed rule, the State agency could have required most households subject to simplified reporting to submit periodic reports on their circumstances from once every 4 months up to once every 6 months. The Department did not receive any comments that specifically addressed this provision.

Under the proposed rule, the State agency would not have to require periodic reporting by any household certified for 6 months or less. However, households certified for more than 6 months would be required to submit a periodic report at least every 6 months. The periodic report form would request from the household information on any of the changes in circumstances listed at 7 CFR 273.12(a)(1)(i) through (a)(1)(vii). The periodic report form would be the sole reporting requirement for any information that is required to be reported on the form, except that households would be required to report when their monthly gross income exceeds the monthly gross income limit for its household size and able-bodied adults subject to the time limit of 7 CFR 273.24 would be required to report whenever their work hours fall below 20 hours per week, averaged monthly.

Commenters felt that the proposed language (regarding who must submit a periodic report and how frequently) was somewhat confusing and suggests that a State may impose both a periodic report and a recertification requirement on a household for the same month. They asked that final rule clarify that States may not require a periodic report at recertification.

The final rule does not make this clarification because it is highly unlikely that State agencies would engage in such a practice. Requiring households to submit a periodic report at recertification would burden a State agency as much as a household, create confusion at recertification, and completely undermine the purpose of simplified reporting.

Several commenters suggested that because monthly, quarterly and simplified reporting are forms of periodic reporting, the procedures for quarterly and simplified reporting should be moved from 7 CFR 273.12 to 7 CFR 273.21. These commenters also expressed the opinion that the move would provide for consistent client protection for all forms of periodic reporting.

Although the commenters raise a valid point, we still feel that it would be more appropriate to include the procedures for simplified reporting in 7 CFR 273.12. First, not all households subject to simplified reporting would be submitting periodic reports since State agencies would have the option of utilizing four to six-month certification periods rather than periodic reports. Second, certain households, such as homeless and migrant farmworker households, would be included in a simplified reporting system if they are assigned a 4- to 6-month certification period. Finally, 7 CFR 273.21 provides an alternative to the prospective budgeting system provided in the preceding sections with a system that provides for the use of retrospective information in calculating household benefits.

Under the language in the proposed rule, if a household fails to submit a complete periodic report or if it submits a complete report that results in a reduction or termination of benefits, the State agency should follow the same procedure used for quarterly reporting at 7 CFR 273.12(a)(4)(iii). Under the quarterly reporting requirements, if a household fails to file a complete report by the specified filing date, the State agency sends a notice to the household advising it of the missing or incomplete report no later than 10 days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation is terminated. If the household files a complete report resulting in the reduction or termination of benefits, the State agency shall send an adequate notice, as defined in 7 CFR 271.2. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

The Department also proposed to subject periodic reports to the requirements of 7 CFR 273.12(b)(2), which currently apply only to quarterly reports. This provision requires that quarterly reports be written in clear, simple language, and meet the program's bilingual requirements described in 7 CFR 272.4(b). It also requires that the quarterly report form specify the date by which the State agency must receive the form and the consequences of submitting a late or incomplete form; the verification the household must submit with the form; where the household can call for help in completing the form; and that it include a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits.

Several commenters felt that the proposed notice and form requirements for periodic reports would provide inadequate protections for households that participate in simplified reporting. Commenters noted that in the 1980s, during the Reagan Administration, FNS recognized that periodic reporting systems carry the risk that some eligible households may lose benefits for purely procedural reasons. As a result, the agency built into its monthly reporting regulations provisions to ensure that the potentially burdensome requirements of monthly reporting are implemented as fairly as possible. The commenters felt that the Congress clearly intended to extend monthly reporting protections to simplified reporting. They believed that Representative Stenholm specifically insisted that the monthly reporting protections would apply to simplified reporting in his floor statement on the final bill. In his statement, which can be found in the Congressional Record at 148 Cong. Rec. H2044, Representative Stenholm stated that Congress assumed that the Department's rules for monthly reporting would apply to the simplified reporting option. This would include providing households with the opportunity to supply missing

information when submitting a late or incomplete semiannual report.

The commenters believed that the proposed rule failed to follow Congressional intent because it does not extend these protections to all forms of periodic reporting. They felt that it is critical that FNS extend the most important monthly reporting procedures to all other forms of periodic reporting. They noted that this could be accomplished by a reference to the appropriate sections of the monthly reporting regulations at 7 CFR 273.21(c), 273.21(h), 273.21(j), and 273.21(k). The commenters felt that the most important monthly reporting procedures include using: (1) Forms and processes that participants can understand; (2) procedures for missing or incomplete reports that do not penalize households that may be attempting to comply; and (3) procedures for issuing benefits that allow for timely issuance. The commenters provided a detailed list of the citations and provisions that they felt should be referenced.

The Department agrees with the basic premise of these comments. The final rule modifies the proposed language to incorporate the procedural protections the Department feels are necessary to provide protections for households participating in simplified reporting. Several of the procedures applicable to a monthly reporting system are not applicable to simplified reporting. Additionally, several of the procedures that are listed in these sections are either provided under this rule or are contained within the current regulations in a manner that is applicable to the provisions of 7 CFR 273.12. For example, 7 CFR 273.12 contains provisions regarding processing reports, issuing notices, the timely issuance of benefits and consequences for incomplete filing as they relate to various changes. Since the rules governing periodic, quarterly, change and monthly reporting vary, the regulations need to contain provisions consistent with each type of reporting system. Therefore, the Department has applied those procedures that it feels are necessary to provide protection to participants while maintaining the overall principles of simplification.

Commenters also asked that the regulations clarify that if a household files a report on time, its benefits may not be terminated simply because the State agency fails to process the report. They pointed out that some computer systems may automatically terminate benefits if an eligibility worker does not process a periodic report, even if the household filed the report on time and it contained all of the necessary information. They felt that since quality control counts improper issuances but not improper denials, States will set their systems to err on the side of caution and implement systems that operate in favor of automatic suspensions. The commenters felt that the final rule should prohibit the reduction or termination of benefits to a household unless an affirmative decision is made that the household is either ineligible or in default of its procedural obligations.

The Department will not amend the regulations to accommodate this comment because a State agency will not avoid quality control or fiscal sanctions by suspending or terminating benefits due to the untimely processing of a periodic report. In assessing a case for quality control purposes, the reviewer conducts an analysis of all variances in elements of eligibility and basis of issuance. If the benefits of a household are suspended, the case may still be selected for quality control review. State agencies are expected to process reports in a timely manner and when they fail to accomplish this goal, they may be sanctioned accordingly. Benefits shall not be terminated due to an untimely processing of a periodic report but a suspension will help avoid making an overpayment or an underpayment to the household.

One commenter noted that under the proposed rule, a State agency would be allowed to elect to combine a notice of a missing or incomplete report with a notice of termination. Should a State agency make this election, it is not clear how long a household has to respond to the notice and be reinstated. The Department proposed that if a household fails to complete a report by a specified filing date, the State agency would then send a notice to the household advising it of the missing or incomplete report no later than 10 days from the date the report should have been submitted. If the household does not respond to that notice, then the household's participation would be terminated. The language in the proposed rule would have allowed State agencies to combine the notice of a missing or incomplete report with the adequate notice termination. As stated above, the final rule amends the language in the proposed rule to include some procedural protections for households participating in simplified reporting.

One commenter disagreed with the requirement that all able-bodied adults without dependants (ABAWDs) report as soon as their work hours go below 20 hours per week if they are in a simplified reporting system. The commenter felt that this rule needlessly complicates simplified reporting and is inconsistent with the current regulatory provision that requires an ABAWD to report changes in work hours in accordance with the reporting system to which he is subject. The commenter interpreted this provision to permit an ABAWD subject to simplified reporting to only report a loss of job on their interim report or at recertification. The commenter asked that the Department clarify the ABAWD reporting requirement to ensure that these participants only report a change in their hours as a part of the reporting system to which they are subjected, and no more. This same commenter also asked that the Department eliminate the additional ABAWD reporting requirement for those on quarterly reporting at 7 CFR 273.12(a)(4)(iv). We disagree with the commenter and adopt the language as proposed. First, we believe that compliance with the ABAWD work requirement is a condition of eligibility, and, as such, must be reported as soon as the household member's hours of work change. Second, we wish to note that the language in 7 CFR 273.12(a)(5)(iii)(E) of the final rule (the phrase "as part of the reporting system to which they are subject") was intended to harmonize reporting requirements for all households containing ABAWDs. The Department initially added the phrase to the regulations at a time when households were either subject to change reporting under 7 CFR 273.12(a) or monthly reporting under 7 CFR 273.21. We determined that a consistent reporting standard should apply to these participants because the ABAWD work requirement is an explicit condition of eligibility and up to 6 months may elapse before a household may be required to report a change in income.

5. Reporting When Income Exceeds Gross Income Limit for Household Size

Under the language in the proposed rule, households subject to simplified reporting would be required to report when their monthly gross income exceeds the monthly gross income limit for their household size. Households would be required to report only if their income exceeds the monthly gross income limit for the household size that existed at the time of the household's most recent certification or recertification. The Department did receive support for this provision. Commenters noted that under the current rules, State agencies take different approaches to these reporting requirements. Some agencies use the income limit for the household size at

the time of the initial certification while others use the household size at the time of the report. These commenters believe that the proposed language would resolve this confusion by requiring State agencies to use the income limit for the household size at the time of their initial certification. The commenters noted that this change is easier for households to understand. It allows local offices to give households one figure, and explain that if the household income goes over this set figure then the household needs to report to the local office.

Although commenters provided overall support, they did have some issues with the proposed regulatory language. Some felt that the proposed regulatory language was incomplete because virtually all States have some participating households with a gross income in excess of the 130 percent threshold, including elderly and disabled households with earned income or households who are categorically eligible. The commenters asked the Department to clarify that States may use simplified reporting for these households and articulate that States may set their reporting threshold to equal the Program's gross income limit that triggers categorical eligibility. They felt that this requirement could prohibit States from extending simplified reporting to these households.

The Department does not see the need to amend the proposed regulatory language to accommodate the few households who may fall under this scenario. The Department has already issued guidance that leaves the treatment of these households up to the States. Because these households are not subject to the gross income guidelines, they would not be subject to this income threshold. Therefore, the guidance issued by the Department suggests that once households report going over the 130 percent threshold, their reporting requirement is met and States need not require further reporting. This practice will be easier to administer than throwing off an entire system for a few households for whom this reporting threshold would apply.

Commenters also stated that the proposed language for this requirement was confusing because the language did not specify what action the State agency should take. The commenters noted that by contrast, the proposed rule at 7 CFR 273.12(a)(5)(v)(A) would instruct State agencies to act in accordance with 7 CFR 273.12(c) when they receive information that the household was not required to report. Commenters felt that the final regulation should amend the proposed language at 7 CFR 273.12(a)(5)(v) to require State agencies to act in accordance with 7 CFR 273.12(c) when acting on a household report that its gross monthly income exceeds the gross monthly income limit for its household size.

These commenters were concerned that State agencies may issue a Notice of Adverse Action (NOAA) to households experiencing a temporary increase in their income which would normally not result in ineligibility. This could result in a decrease or termination of benefits if the household fails to clarify that the increase was only temporary. Therefore, they asked the Department to remind States that it is inappropriate to routinely issue a NOAA in response to a report that the household's income has exceeded the gross income limit. In many cases, further information is needed to determine the appropriate course of action.

While we agree that, in certain cases, the State agency should follow-up on reported changes to ensure that the household's eligibility would actually be affected, we fail to see why there is a need to elaborate on this in the regulatory language. A similar situation currently exists with respect to change reporting and, for the most part, States have not experienced problems in determining when a change is temporary or when it would actually affect the household's eligibility.

One commenter, a State agency, expressed the opinion that requiring households to report when income exceeds 130 percent of the federal poverty level does not work well for households with an ineligible noncitizen. In this instance, the State agency prorates income according to the rules at 7 CFR 273.11(c)(3). Because determining the countable gross income for households with ineligible members can be complex, the commenter implied that it may be difficult to implement this reporting requirement for households with ineligible members.

Since this income limit is applicable to most households, except elderly or disabled households, the final rule also includes this reporting requirement. Under the current rules at 7 CFR 273.11(c)(3), State agencies who prorate income must elect one State-wide option for determining the eligibility and benefit level of households with ineligible aliens. The State agency should continue to follow the same formula for determining whether the income of the household has exceeded the 130 percent threshold. For example, if the State agency excludes the ineligible members for determining household size at the initial eligibility determination, they will continue to do so for this reporting requirement.

6. Acting on Changes Outside of the Periodic Report

The Department proposed to give the State agency two options for acting on changes in household circumstances reported outside the periodic report (other than changes in monthly gross income that exceed the monthly gross income limit for the household's size). First, the State agency would be allowed to follow current procedures at 7 CFR 273.12(a)(1)(vii)(A). Those rules generally require that the State agency only act on changes that a household reports outside its periodic report if the changes would increase the household's benefits. Other than increases in income that result in income exceeding the monthly gross income limit, the State agency may only act on changes that would decrease benefits if the change, reported by the household or by another source, is verified upon receipt or is a change in the household's public assistance or general assistance grant.

Second, the State agency would be allowed to act on all reported client changes, regardless of whether such changes increase or decrease the household's benefits. Following implementation of simplified reporting in the NCEP Rule, the Department approved a number of waivers requesting this latter procedure. To eliminate the need to approve future waivers, the Department proposed to incorporate the procedure as an option in the regulations.

While the proposed provision providing State agencies the option to act on all changes did receive support, several commenters felt that this option could adversely impact millions of food stamp households. Most of the concerns lay with the possibility that State agencies would act on changes reported to other benefit programs. This will be discussed in detail below. However, some commenters also had concerns because this proposed option would allow States to reduce benefits and limit food stamp participation which is contrary to the intent of simplified reporting. As stated above, the Department incorporated this provision into the proposed rule to further simplify reporting requirements. Several State agencies are currently implementing this option successfully under waivers with it having a minimal impact on limiting participation.

Several commenters expressed the opinion that allowing State agencies to act on all changes will reduce the advantage of using simplified reporting

because it will not reduce the workload. While the Department encourages State agencies to limit the action it takes on changes reported in a simplified reporting system, the Department also understands that the Food Stamp Program is not operated in a vacuum. Therefore, State agencies need a common automated system to effectively operate all of their benefit programs. To simplify these automated systems, it is easier for an eligibility worker to enter a change into the system and allow the system to process the necessary calculations and issue the proper notices as a result of those calculations for all benefit programs rather than determine the impact of the change on each individual benefit program. The Department encourages State agencies to harmonize their systems to allow this option to reach its full potential. However, we cannot require State agencies to perform such an act and, as stated above, the success of this option for State agencies currently initiating it under a waiver demonstrates that it should be maintained in this final rule.

7. Acting on Changes That a Household Reports to Another Public Assistance Program

Under the proposed rule, State agencies that choose to act on all reported changes would not be required to act on changes that a household reports for another public assistance program when the change does not trigger action in that other program but would decrease the household's food stamp benefit. For example, if a household receiving Medicaid as well as food stamps reports an increase in income to its Medicaid office that it is not required to report for food stamp purposes (*i.e.,* the income does not push the household over the monthly gross income limit for its household size), the State agency would not have to reduce the household's food stamp benefit if the income change would not trigger a change in the household's Medicaid eligibility or benefits. This provision was proposed to relieve State agencies that choose to act on all reported changes from the burden of acting on reports required by another public assistance program that do not trigger action in that other program and would not increase the household's food stamp benefit.

The Department received several comments on this provision. First, commenters suggested that the Department prohibit State agencies from acting on changes reported to other programs that would result in a decrease in benefits if the changes are not otherwise subject to the simplified reporting requirements. The Department does not include this prohibition in the final rule because the primary purpose of the simplified reporting option under Section 4109 of FSRIA is to increase State flexibility and decrease administrative burden.

Commenters also felt that the Department went beyond the Congressional intent by including an option for making adjustments based on reports made to other assistance programs. The commenters point out that the statutory language governing simplified reporting expressly limits reporting to circumstances in which the household's benefit exceeds the gross income limit. Congress did not include a provision for benefits to be adjusted based on information provided to another program.

The reason why the Department includes this provision as an option is to assist State agencies that have multi-program computer systems. This option provides simplification to those agencies because they do not have to adjust their computer systems to account for changes reported to the Food Stamp Program and those reported to other benefit programs. It also assists households because they do not have to remember the various reporting requirements for each assistance program and can make one report that will impact all of their benefits.

Additionally, commenters expressed concern with the State option to act on changes reported to other programs, based on the belief that the option would add administrative complexity to the simplified reporting system. One commenter pointed out that, in their State, eligibility workers manage several programs for the same client. In a situation like that, the caseworker has to first determine what program the client is reporting the change for, then make adjustments based on the impact that the change has on the other program's benefits and the potential change it may have on the client's food stamp benefits.

The commenters felt that this would be very complex and time consuming for eligibility workers in addition to being error prone. They asked that the Department allow them to act on changes reported to another program if it is verified by the other program. Commenters also asked that the final rule include exemptions for follow-up requirements for simplified reporters who have joint benefits with another program that has more stringent reporting requirements.

We wish to emphasize that allowing a State agency to utilize information reported to other programs is an option and we anticipate that only States with automated systems designed to implement changes in multiple programs simultaneously would utilize the option. Therefore, the time consuming, complex formula will be handled by a computer system, not the eligibility worker. Additionally, if a State agency needs to verify information and the other program has more stringent reporting requirements, the information provided for that program will satisfy the reporting requirements for the Food Stamp Program.

As stated above, in the last several years, the Department has approved a number of waivers allowing States to act on all changes reported to other assistance programs, primarily because these States utilize multi-program automated systems that simultaneously implement changes in all of the State-administered assistance programs, including the Food Stamp Program. Although participating households may benefit from the delayed implementation of changes that would reduce their benefits, this benefit to a few participating households is outweighed by the overall increase in administrative efficiency for the State agencies. Additionally, households have protection because before making a reduction in benefits, State agencies must follow the advance notice procedures of 7 CFR 273.12(c)(2). These procedures enable households to contest their benefit reduction and continue receiving benefits.

Commenters also asked the Department to define what it means to "trigger an action in another program." Apparently they were concerned that most changes reported to other programs would trigger an action in the other program. Therefore, the State agency would have to take action in the food stamp case for almost all of the changes reported to other programs.

The intent of this provision is to give States the ability to develop a simplified reporting system that would meet the needs of their multi-program eligibility system. The Department is allowing the State agencies, in their policies, to define what it means to "trigger an action in another program." State agencies are required to have clear, uniform rules on what changes they should act on and what changes they should not act on. The State agency cannot leave it up to the eligibility worker to determine how to define the "triggers"; the policy needs to be implemented in their Statewide policies and procedures.

8. Using the Request for Contact for Verification of Changes That Are Not Subject to Mandatory Reporting

In cases involving changes reported to another program, issues of verification arise because the requirements for the various benefit programs differ. Although it would be ideal for all benefit programs to develop similar verification requirements, State agencies do not have the authority to develop their own, uniform verification requirements. Under the current and proposed regulations, States are permitted to pursue clarification and verification of reported changes that may be unclear to the caseworker. Commenters expressed concern over the use of the Request for Contact (RFC), specifically it's used to obtain clarification of information not subject to mandatory reporting in a State's simplified reporting system. Under simplified reporting, most changes do not need to be reported between reviews or reports. As discussed above, if a household reports information pursuant to the reporting requirements in another program, such as Medicaid or TANF, current rules often require (and the proposed rule would require) the caseworker to evaluate the report for its impact on the household's food stamp benefits.

Commenters felt that the most client-friendly approach would be to follow the existing procedures at 7 CFR 273.12(c)(1) and (c)(2). Using these rules, the State would send a food stamp request for verification if the household reports a change that would lead to an increase in benefits. If the household fails to respond to the request for verification, it would forfeit the benefit increase but would not lose eligibility. If the change suggests a decrease in benefits, but not ineligibility, the State would send a Notice of Adverse Action (NOAA) informing the household that benefits would be reduced unless the household disagrees. If the household fails to respond to this notice, the caseworker would reduce the benefits without terminating the household.

Commenters also noted that one of the reasons for the use of the RFC process set out in 7 CFR 273.12(c)(3) is that it provides States with better quality control protection because there is no risk that a quality control reviewer will question the caseworker's decision to freeze or adjust benefits without verification. Unfortunately, if the household fails to respond to the RFC, it will be terminated from the Food Stamp Program. This is true even when the household is eligible for a benefit increase based on the reported change.

Commenters felt that this outcome clearly contravenes the intent of simplified reporting. The system was intended to reduce paperwork and decrease the number of households who fall out of the Food Stamp Program because they do not respond to a RFC. Commenters expressed the belief that as the result of quality control pressure and the need to respond to unverified reports for other programs, simplified reporting has been reduced to a version of change reporting.

Although the Department does not agree with the overall principle of utilizing the RFC process to obtain additional verification in a simplified reporting system, we need to provide the State agencies with the flexibility to request verification of reported information that they may deem questionable. Under the current regulations, State agencies should only resort to the RFC process to obtain information about changes where they cannot readily determine the effect of the change on the household's benefit amount. Therefore, the Department encourages State agencies to only resort to this process when they deem information to be questionable. However, as stated above, we need to allow States to utilize this process for information that they deem unclear. Therefore, we will not amend the language from the proposed rule to accommodate this comment and adopt this language as proposed.

Commenters noted that the Congressional intent in crafting simplified reporting was to establish a 6-month benefit freeze. The only exception was to require households to report if their income exceeds 130 percent of the federal poverty limit. The commenters felt that by requiring States to seek additional verification from households that report to other programs, the Department is suggesting that Congress intended to single out these households who comply with other program requirements and subject them to additional verification requirements. This results in putting their case at risk. As stated above, the Department discourages State agencies from utilizing this process unless they feel that the information provided is too unclear for the State agency to determine the effect of the change on the household's benefit level.

Simplified Determination of Deductions—7 CFR 273.12(c)

Current rules at 7 CFR 273.9(d) provide households with six income deductions. The deductions are subtracted from a household's non-excluded monthly gross income to determine its monthly net income. A household's eligibility for and the amount of a deduction are established at the household's certification. Current rules require a participating household to report certain changes in circumstances that occur during the certification period. These rules vary depending on the reporting system utilized for the household. Some of the changes that must be reported may affect a household's deductions.

Section 4106 of FSRIA amends Section 5(f)(1) of the Act (7 U.S.C. 2014(f)(1)) to provide State agencies the option of disregarding, until a household's next recertification, any changes that affect the amount of deductions for which a household is eligible. In other words, if a household reports a change in circumstances that would change a deduction amount or the household's eligibility for the deduction, the State agency may disregard the change and continue to provide the deduction amount that was established at certification until the household's next recertification, when it would have to amend the deduction to reflect the household's then current circumstances. However, section 4106 requires the State agency to act on two types of reported changes that affect deductions. First, the State agency must act on any change in a household's excess shelter cost stemming from a change in residence. Second, the State agency must act on changes in earned income in accordance with regulations established by the Department.

The Department proposed to amend current regulations at 7 CFR 273.12(c) to comply with the provisions of Section 4106 of FSRIA discussed above. To provide State agencies with maximum flexibility, the Department proposed that State agencies be permitted to ignore changes that affect deductions that are reported by the household and changes that the State agency learns from a third party. However, the State agency would continue to be required to act on changes in earned income and changes in shelter costs arising from a change in residence.

Commenters requested that the Department clarify that whenever the State recomputed the household's earned income for any reason, it should adjust the household's earned income deduction to be 20 percent of the new amount. The Department addressed this in the proposed rule by stating that it is retaining the current rules in the area of making appropriate changes to the household's deductions when there is a reported change in earned income. This would include adjusting the household's earned income deduction

to be 20 percent of the new amount. The Department does not believe that there is a need for further clarification in the final rule so adopts this change as proposed.

Several commenters supported the provision in the proposed rule that would permit States to ignore changes that affect deductions because it would ease administrative burden. However, commenters asked the Department to clarify what procedures States should follow when a household reports a change in address but does not report or verify the shelter costs associated with the new residence. The commenters believed that if a State opts to ignore changes that affect deductions and a household just reports a new address, the household has no obligation to report a change in shelter costs.

Under current program guidelines, if a household reports a change in residence but fails to report the associated shelter costs those costs may be removed from the household budget. Regardless of any verification requirements, if a household fails to report a change in shelter costs and these costs have changed due to a reported change in residence, it is inappropriate to continue to allow a deduction for the former amount. With regard to any potential verification necessary for clarification, if a State agency has elected to verify these costs, it is also inappropriate to continue to allow a deduction for the former amount. However, if a State agency opts to verify this deductible expense, they need to advise the household of additional verification requirements and state that failure to provide verification shall result in a recalculation of their benefits without the deduction. This final rule amends the appropriate regulatory language to clarify this procedure.

Additionally, commenters noted that sending a household a RFC requiring the household to submit shelter expense information when it reports a change in residence is inappropriate because the consequence of the household's failure to respond would be closing the case. It was suggested that a better approach would be for the food stamp office to send the household a notice stating that its allotment will be recalculated without the shelter deduction unless the household provides verification of its new shelter expenses within a specified period. The notice would make it clear that the household does not need to wait until it makes its first regular utility or rental payments to contact the food stamp office with verification, as alternative forms of verification can be accepted.

As stated above, the Department believes that although shelter costs are not listed among the traditional mandatory verification requirements, a State agency may elect to verify this information if it is questionable. However, they should not close a case for failure to verify. Instead, they should recalculate the benefit amount without the deductible expense.

Another commenter asked that the final rule make it explicit that State agencies are not required to change the shelter deduction of households with unreported changes in address to avoid inappropriate attribution of claims and quality control errors. The Department adopts the change as proposed and does not amend current regulatory language for two reasons. First, the regulations already require State agencies to change the shelter deduction for change reporting households but not for simplified reporting households. Second, the regulations specifically state that required change in shelter expenses would result from a reported change in residence.

Under the proposed rule, a State agency would have the option of ignoring changes (other than changes in earned income and changes in shelter costs related to a change in residence) for all deductions or for any particular deduction. Commenters noted that allowing State agencies to disregard reported changes in deductions would avoid client errors, reduce paperwork and be beneficial to the local offices since customers would feel better served when they do not have to constantly report changes to the local office. However, commenters also noted that if a State takes the option to freeze deductions, denying households the deductions for which they are newly eligible could involve a much more radical benefit reduction than anything Congress intended. As a result of these comments, the final rule requires States who choose to freeze deductions to allow households to claim deductions for which they become newly eligible during their certification period.

The State agency may also ignore changes in deductions for certain categories of households while acting on changes in those same deductions for other types of households. The Department proposed that a State agency cannot act on changes in only one direction. If the State agency chooses to act on changes that affect a deduction, then it must act on both changes that increase the deduction and changes that decrease the deduction. Acting only on changes that would decrease a deduction would unfairly harm households, while acting only on changes that would increase a deduction would increase program costs beyond what was anticipated when the provision was enacted.

Commenters supported this provision because it will simplify program administration. However, one commenter stated that the rigidity of the proposed rule in this area is not consistent with the rule's other provisions and the intent of FSRIA to provide State flexibility. The commenter asked the Department to provide State agencies the flexibility to act only on changes that would increase a household's benefit. As stated above, the Department believes such a course of action is untenable. The impact of this provision is so minimal and so few commenters opposed the provision that the Department adopts this proposed amendment as final based on the rationale set forth in the proposed rule.

Another commenter suggested that the Department make this provision consistent with simplified reporting rules by requiring States to act on changes only if they are verified upon receipt. Under simplified reporting, the verified upon receipt rule applies to changes that decrease benefits. Since this provision differs in that we are discussing changes that would increase or decrease benefits, the rules will differ. Therefore, the Department rejects the commenter's suggestion and adopts the language as proposed.

The Department also proposed to include in the final regulation one of two potential limitations on the provisions that would protect households: (1) Requiring State agencies that take this option to act on reported changes in expenses that exceed a certain dollar threshold; or (2) requiring State agencies that take this option to act on changes that affect deductions after the 6th month for households that are certified for 12 months. The Department asked for opinions on these restrictions in addition to suggestions for reducing their potentially harmful effect.

One commenter supported the limitation of requiring State agencies to act on changes that affect deductions after the 6th month for households who are certified for 12 months. They noted that this would be relatively easy for a State agency to administer given the requirement that certain households need to file a periodic report after 6 months. Another commenter supported the requirement that States act on changes that exceed a certain dollar threshold while noting that they were unsure that either limitation would adequately prevent the potential hardship caused by freezing all

deductions. Other commenters were opposed to both limitations stating that each one would unnecessarily complicate program administration and defeat the purpose of simplification. It was suggested that States be permitted to act only on reported and verified changes that result in an increase in deductions. None of the commenters provided viable alternatives to the options listed by the Department. The Department has considered these comments and the final rule incorporates a provision that requires State agencies to act on changes that affect deductions after the 6th month for households who are certified for 12 months. The Department also proposed a limitation on the State agency option to disregard reported changes that affect deductions for households assigned 24-month certification periods. Under current regulations at 7 CFR 273.10(f)(1), State agencies may assign certification periods of up to 24 months for households in which all adult members are elderly or disabled. Section 3(c) of the Act (7 U.S.C. 2012(c)) and the regulations at 7 CFR 273.10(f)(1) require the State agency to have at least one contact every 12 months with elderly and disabled households certified for 24 months.

The Department proposed that the State agency act on changes affecting deductions that are reported by these households during the first 12 months of their certification period at the required 12-month contact. Changes reported during the second 12 months could be disregarded until the household's next recertification. Most commenters supported this provision because it provides a good compromise between protecting these households from the adverse effects of an increase in household expenses and simplifying program administration. One commenter supported the provision but asked that the Department allow State agencies to have the option to act immediately on changes that would result in an increase in deductions or benefits. Another commenter disagreed with the proposed rule and suggested that an alternative approach be identified but did not offer any suggestions for this alternative approach. The Department has considered these comments and adopts the language as proposed.

In addition to amending current rules at 7 CFR 273.12(c), the Department proposed to amend current regulations at 7 CFR 273.21 to allow the State agency to disregard changes that affect deductions for households subject to monthly reporting and retrospective budgeting. As with prospectively budgeted households, the State agency may not disregard the effect of reported changes in earned income and changes in shelter costs related to a change in residence. The Department did not receive any comments specific to this provision so we are adopting the language as proposed.

The Department also proposed to modify current rules at 7 CFR 273.12(b)(1) and (b)(2) and 7 CFR 273.21(h)(2) to require the State agency to give notice in all change, periodic, and monthly report forms if it intends to postpone changing deductions until the household's next recertification. The Department did not receive any comments specific to this provision, so we are adopting the change as proposed.

Transitional Food Stamps for Families Moving From Welfare—7 CFR 273.12(f)(4)

1. Transitional Benefit Program Summary

Current regulations at 7 CFR 273.12(f)(4) provide State agencies the option to offer transitional food stamp benefits to households leaving the TANF program. Transitional benefits ensure that such households can continue to meet their nutritional needs as they adjust to the loss of cash assistance. The Department adopted the transitional benefit option in the NCEP final rule at 65 FR 70134. The option was not specifically authorized by statute, but was developed in response to comments received on the NCEP proposed rule. Interested parties may refer to the preamble of the NCEP final rule and 7 CFR 273.12(f)(4) for a complete description of the regulatory scheme. Section 4115 of FSRIA amends Section 11 of the Act to add a transitional benefits provision (7 U.S.C. 2020(5)). This new statutory provision incorporates the current regulatory option but expands its scope in significant ways. To accommodate changes to this option and clarify the current regulations, the final rule divides Part 273 into subparts. Except for the addition of Subpart H, this restructuring is for clarification purposes only and does not result in any substantive change to the current regulations. The final rule implements the statutory changes by removing 7 CFR 273.12(f)(4) and restructuring the regulations to add a new Subpart H that contains the revised policy in 7 CFR 273.26 through 7 CFR 273.32. A distribution table is published at the end of the preamble of this final rule for reference purposes and adjustments have been made to any references made to this provision in other sections of the regulations.

A. Households Who Are Eligible

The Department proposed to amend the current regulations at 7 CFR 273.12(f)(4) by eliminating the requirement that transitional benefits be provided, at a minimum, to all households with earnings who leave TANF. In addition to households disqualified by statute, the Department proposed to give State agencies unqualified authority to designate the categories of households eligible for transitional benefits.

The proposed rule would have given State agencies the option to provide transitional benefits to formerly mixed TANF households as well as households where all members received TANF. A mixed TANF household is one in which only some members were receiving TANF. Commenters supported this provision because it provides States with needed flexibility. The Department adopts this amendment as proposed.

B. Households Who Are Ineligible

Section 4115 modified the types of households who are ineligible for transitional benefits. The Department proposed to amend 7 CFR 273.12(f)(4) to update the list of households that are ineligible for transitional benefits to reflect the requirements of Section 4115. Because Section 4115 refers to ineligible households rather than ineligible household members, the Department interpreted this provision as applying only when the entire household is ineligible under Section 6 of the Act. A household with an ineligible member would be still eligible for transitional benefits if the remaining members of the household are eligible for food stamps.

Commenters supported the Department's judgment and agreed that it was Congress's intent to give States the option to provide transitional benefits to a household that contains members who are not in the TANF unit as well as those that contain ineligible members or members who are under a TANF sanction. Commenters asked that the Department clarify that when a household is under partial sanction but is still receiving TANF, if the assistance ends for another reason, the household may receive transitional benefits.

There has been confusion among State agencies about whether households under a partial TANF sanction can receive transitional benefits if the case closes during the sanction period for another reason. The language in the proposed rule clearly states that the State agency may not provide transitional benefits when a household

is leaving TANF due to a TANF sanction. Therefore, a household will not be penalized because they were under a partial sanction; the sanction has to be the cause of the case closure in order for the household to be deemed ineligible for transitional benefits. Therefore, the Department adopts this amendment as proposed.

2. Administrative and Procedural Changes

A. The State Plan

The Department proposed to require State agencies to include in their State plan of operation that they are providing transitional benefits and specify the categories of households eligible for such benefits and the maximum number of months for which the transitional benefits will be provided. The Department also proposed to add a provision to remind State agencies that they must follow the procedures at 7 CFR 273.12(f)(3) to determine the continued eligibility and benefit levels of households leaving TANF who are denied transitional benefits. Current rules at 7 CFR 273.12(f)(3) prohibit the State agency from terminating a household's food stamp benefit when the household loses TANF eligibility without a separate determination that the household fails to meet the Food Stamp Program's eligibility requirements. The Department adopts the amendment as proposed since we did not receive comments directly opposed to this provision.

B. The Transition Notice

The Department proposed to maintain the existing requirement that the State agency issue a transition notice. However, the Department proposed to modify the contents of the notice. The notice would have to inform the household of its eligibility for transitional benefits, the length of the transitional period, and that it has a right to apply for recertification at any time during the transitional period. The language in the proposed rule also would have required the notice to explain any changes in the household's benefit amount, and that the household is not required to report or verify changes in household circumstances until the deadline established in a written RFC or at their recertification interview.

The Department also proposed to remove the requirement that the State agency notify the household through the transition notice that it may report during the transition period if its income decreases or its expenses or household size increases. The Department proposed to remove this requirement to simplify program administration. However, the language in the proposed rule would have required that the notice clearly advise households to apply for recertification if they experience a decrease in income, an increase in expenses or an increase in household size during the transition period.

Commenters asked that the Department include in the list of notice requirements a statement that households that apply for TANF cash assistance will be asked to reapply for food stamps at the same time. Proposed 7 CFR 273.12(f)(4)(vi)(C) states that the transition notice must contain a statement that if the household returns to TANF during its transitional benefit period, the State agency will either reevaluate the household's food stamp case or require the household to undergo a recertification. The Department believes that this provides parties the needed flexibility and notifies participants of the procedures they will undergo if they apply for TANF cash assistance. Therefore, the Department will not incorporate the commenter's recommendation into the final rule and adopts this amendment as proposed.

Commenters also requested that the Department include a requirement that States inform households that they do not need to receive TANF to be eligible for food stamps at the end of the transitional period and that they are likely to remain eligible at the end of the transitional period if their income remains low. Additionally, commenters requested that the notice encourage people to reapply for food stamps. The Department has considered these comments and while we encourage State agencies to include this sort of information in their notice, it is not something that the Department will prescribe in regulations.

3. Increase in Transitional Period

Section 4115 lengthens the transitional period from up to 3 months to up to 5 months. In view of this requirement, we proposed language that would permit State agencies to extend the household's certification period beyond the limits established in 7 CFR 273.10(f) to provide the household with up to a full 5 months of transitional benefits. The Department proposed to amend 7 CFR 273.12(f)(4) to change the length of the transitional period from up to 3 months to up to 5 months.

The Department did receive one comment stating that the proposed extension from 3 months up to 5 months is not warranted as the current transitional period is ample time for households to make the transition from TANF, bounce back from their hardship and apply for other benefits. This provision was mandated by the FSRIA and not something that the Department has the authority to modify. Therefore, we are adopting this amendment as proposed.

4. Adjusting Benefit Amount

Currently, 7 CFR 273.12(f)(4)(ii) requires the State agency to notify the household through the transition notice that it may report during the transition period if its income decreases or its expenses or household size increases. The provision at 7 CFR 273.12(f)(4)(iii) addresses the State agency's requirement to act on changes in circumstances that the household reports during its transitional period. In addition, this provision requires that if a household reports a change during the transitional period that would increase its benefit, the State agency must act on the change during the transitional period. However, if the household reports a change that would decrease its benefit, the State agency must not act on the change until after the transitional period has ended.

Section 4115 requires that the household's benefit during the transitional period be equal to the benefit it was receiving in the month preceding termination of TANF, adjusted for the loss of TANF income and, at the State agency's option, changes in household circumstances that the State agency learned of from another program in which the household participates. The Department proposed to amend the regulations at 7 CFR 273.12(f)(4) to note that in addition to adjusting the household's food stamp benefit amount before initiating the transition period to account for decrease in income due to the loss of TANF, the State agency may also adjust the benefit to account for changes in household circumstances that it learns from another program in which the household participates.

Commenters wanted the Department to clarify that the correct transitional food stamp benefit amount for all purposes, including quality control, is the amount of food stamps received in the month prior to TANF case closure, adjusted for the loss of cash assistance. The Department's quality control guidance has followed and will continue to follow certification policy. Therefore, there is no need to place an additional provision about quality control under this section. Additionally, the proposed rule already contains language about how to calculate the

correct transitional benefit level. Therefore, the Department adopts this amendment as proposed.

The Department believes that requiring the State agency to act on any reported changes in circumstances during a household's transitional period defeats the intent of the transitional benefit, which is to provide the household with the same benefit it received prior to termination of TANF for a fixed number of months, with the benefit adjusted only for the loss of TANF income and, at State agency option, other changes that the State agency learns of from the household's participation in another program. The household is protected from being denied an increase in benefits by having the option of applying for recertification at any time during the transitional period. Therefore, the Department proposed to remove the requirements at 7 CFR 273.12(f)(4)(ii) and (f)(4)(iii) regarding the State agency's obligation to notify the household that it may report changes during the transitional period and the requirement that the State agency act on changes reported by the household that would increase the household benefits. The Department did not receive any specific comments opposed to the deletion of these requirements so adopts the amendment as proposed.

Although the Department deleted these provisions as requirements, the proposed rule still would have provided State agencies with the option to adjust the household's benefit amount in accordance with 7 CFR 273.12(c) or make the change effective in the month following the last month of the transitional period. Commenters pointed out that this option runs contrary to subsequent program guidance that provides that a State cannot act on other reported changes aside from changes made due to information received from other programs. The Department considered these comments and removed this option from the final rule.

The Department proposed that the State agency be required to act if a member of the household receiving transitional benefits moves out during the transitional period and either reapplies as a new household or is reported as a new member of another household. The Department proposed that the State agency be required to remove that member from the original household and adjust the household's benefit to reflect the new household size. This action is necessary to prevent duplicate participation by the member that has left the household receiving transitional benefits, and is the same procedure that State agencies follow in the regular program when a household member moves from one participating household to another.

One commenter said that households should not be required to report any changes and staff should not have to act on these changes. Other commenters asked that the Department clarify that States must make this adjustment without requiring any additional information or verification from the household. They felt that requiring a household to report or verify information defeats the purpose of the benefit. Some commenters also noted that this provision increases the administrative burden on State agencies.

While we agree with commenters that the transitional benefit is meant to be a frozen benefit amount for the duration of the benefit period, the Food Stamp Act strictly prohibits duplicate participation. When a household member leaves and either reapplies or becomes a member of a new household, that household member takes their income and resources with them. Consequently, the State must adjust both households' allotments in accordance with 7 CFR 273.12(c) to ensure that the individual's income and resources are accounted for accordingly. However, there is no need to get any additional information from the household to adjust the benefit amount for the household receiving transitional benefits. Therefore, the Department retains this requirement in the final rule.

To provide maximum flexibility to State agencies, the Department proposed to permit State agencies to adjust the household's transitional benefit at any time during the transitional period to account for changes in household circumstances that it learns from another program. Commenters requested that the Department clarify the proposed rule in numerous places to appropriately reflect the Congressional intent regarding the benefit freeze. Commenters suggested that the Department change the language in the proposed rule to mandate a benefit freeze and then note exceptions to the freeze. The Department has considered this comment and we adopt the language as proposed as this is an optional provision and the exceptions to the freeze are noted in the final rule. Commenters also asked that the Department clarify that States may act on income information from another program either before setting the transitional benefit amount, during the transitional period or both. They want to ensure that States are given the option to adjust the amount based on information from other programs before freezing the benefit amount and have the option to make this the only time that they act on information from another program. They point out that there is nothing in the law to suggest that acting on information from other programs is an all-or-nothing option. The Department has considered these comments. This final rule modifies the proposed language to give State agencies the ultimate flexibility in accordance with the intent of the FSRIA.

Several commenters had concerns regarding verification requirements for changes resulting from information reported to other programs. They asked that the final rule clarify that if States opt to act on information that they receive from other programs, they may not require any additional verification from the household. If the information reported to the other program is insufficient to meet food stamp guidelines, the State should continue the transitional benefit at its original level.

The Department has considered these comments and although we discourage States from requiring additional verification or making changes at all, we cannot forbid States from requiring additional verification when they receive unclear information. If the verification provided is insufficient to meet program guidelines, we encourage States to maintain the benefit level throughout the transitional period. The State agency should inform the participant of the verification that is necessary to make changes in their benefit level. Additionally, action on changes reported to other programs is an option. Most States that are currently providing transitional benefits are not acting on these changes and prefer to provide a frozen benefit.

Commenters asked that the final rule clarify that the transitional benefit level be adjusted for the automatic annual changes in the food stamp benefit rules. These statutory adjustments are programmed into most States' computers once each year and do not depend on the household providing any information. These commenters noted that USDA has required States that have implemented the transitional food stamp provision to make these adjustments. Therefore, they are asking the Department to incorporate this requirement into the final rule.

The primary automatic annual changes are the Cost of Living Adjustment for the Thrifty Food Plan and the cap on the excess shelter cost deduction. State agencies who are currently participating in the transitional benefit program are dealing

with this adjustment in a variety of ways. While some States make the adjustment because it is automatically programmed into their system, others are providing a frozen benefit that does not account for any changes in circumstances. Because of the variety of methods utilized by State agencies in the implementation of this benefit, the final rule includes this as an option but not a requirement. The number of participants affected by a potential cost of living adjustment is so small that the burden of this proposed requirement would most likely outweigh its benefit.

5. Impact on the Household's Certification Period

The Department proposed to remove the prohibition on extending the household's certification period beyond the maximum period specified in 7 CFR 273.10(f)(1) and (f)(2) so that the State agency may extend the household's certification period up to 5 months in order to provide the household with up to a full 5 months of transitional benefits. If the household does not apply for recertification during the transitional period, Section 4115 provides the State agency the option in the final month of the transitional period to shorten the household's certification period and require the household to undergo recertification.

The Department proposed to amend the current regulations to allow State agencies the option of shortening the household's certification period and assign the household a new certification period that conforms with the transitional period. All recertification requirements that would normally apply when the household's certification period has ended would be postponed to the end of the new certification period. The State agency would not have to issue a NOAA when the household's certification period is shortened, but would have to specify in the transitional notice that the household must be recertified at the end of the transitional benefit period or if it returns to TANF during the transitional period. Commenters suggested revising 7 CFR 273.10(f)(4) to reflect the policy in the proposed 7 CFR 273.12(f)(4)(iv). The Department has considered this comment and made the necessary amendments to provide consistency in the final rule.

6. Applying for Recertification During the Transitional Period

Section 4115 provides the household with the option of applying for recertification at anytime during the transitional period. Thus, if a household applies for recertification during the first month of its transitional period and is determined eligible, the State agency must terminate the transitional benefits, assign the household a new certification period and begin issuing new benefits to the household. The Department, in its proposed revision of 7 CFR 273.12(f)(4), proposed to add a new 7 CFR 273.12(f)(4)(v) to include the provision that a household may apply for recertification at any time during the transitional period.

The Department proposed therein a procedural scheme for the State agency to observe when a household submits a request for recertification prior to the last month of its transitional benefit period. The procedural scheme would have required the State agency to schedule an interview, provide the household with a notice of required verification, and give them 10 days to provide verification. Should the household fail to comply with these requirements or be ineligible for participation, the State agency would deny the application and continue the household's transitional benefits until the end of the period. Should the household be eligible, the new certification period would begin the first day of the month following the month in which the household submitted the application. Should the new benefit amount be lower than the transitional benefit amount, the State agency would be required to encourage the household to withdraw the application.

While some commenters supported the proposed procedures, especially since its provision were favorable to households whose benefits would be reduced or terminated after the end of the transitional period, several offered criticism and proposed changes.

Commenters noted that proposed 7 CFR 273.12(f)(4)(v) mentions a few parts of the general application processing regulation at 7 CFR 273.2, but not all of it. The commenters believe that some State agencies may infer that the other parts of 7 CFR 273.2 do not apply. Therefore, they asked that the final rule state that except as otherwise specified, the provisions of 7 CFR 273.2 should apply to reapplication during the transitional benefit period. The final rule provides references to the paragraphs of 7 CFR 273.2 that are applicable to the general recertification process. It would be too cumbersome to include either a reference to all of 7 CFR 273.2 or a list of those paragraphs that do or do not specifically apply. Therefore, the Department adopts this amendment as proposed.

The proposed rule stated that if the household chooses not to withdraw an application filed during the transitional benefit period that results in a lower benefit amount, the State agency must complete the recertification process and issue the lower benefit effective the first month of the new certification period. Commenters asked that the final rule provide that if the household chooses to not to withdraw their application but instead to receive the lower benefit amount, the transitional benefit amount is the correct amount for the first month of the new certification period, there shall be no over-issuance, and the new benefit amount will be effective the following month.

The Department has considered these comments. The modification recommended by the commenters is inconsistent with the procedures followed for an application that results in an increase in benefits. An application that results in an increase in benefits is effective the first month of the new certification period, and if the State agency has already issued the transitional benefit they need to issue a supplement. The procedure proposed by the Department provides participants and administrators with a clean break, and is a consistent policy for applicants whose benefit amount either increases or decreases. The Department is seeking to simplify the administration of the program. Providing two different standards for applications filed during the transitional benefit period is too complex and does not adhere to the goal of simplification. Therefore, the final rule does not include this suggested modification.

Instead, the final rule provides State agencies with an alternative to issuing a lower benefit amount. This alternative, which was proposed by a commenter, provides State agencies with the option to deny an application and allow the transitional benefit period to run its course if the benefit amount decreases when a household recertifies. If a State agency incorporates this option into their State plan, they would avoid having to collect overpayments made to households who were already issued their transitional benefit for the first month of their new certification period. Just as a State agency needs to issue a household a supplement, if the benefit amount decreases the household may be subject to an overpayment. This is why the Department is encouraging State agencies to implement an alternative such as denying these applications. If a State agency elects to adopt this option, they must state this in their State plan of operation.

One commenter pointed out that if an application for recertification is made toward the end of the month, this would require a decrease in benefits without

advanced notice. They asked that either States be allowed to follow current notice requirements or the Department should establish quality control protections for State agencies. The Department agrees with the commenter that, depending on the timing of the recertification application, the State agency may or may not be able to provide the household with advance notice of their decrease in benefits. However, under the current rules, a NOAA is required for changes made during the certification period. Because this change will initiate a new certification period, there is no requirement for the State to issue a NOAA. The Department will not amend the current regulations to accommodate this comment and adopts the applicable language as proposed.

The proposed rule would have required that applications for recertification submitted in the final month of the transitional period to be processed in accordance with current regulations at 7 CFR 273.14. Comments related to this provision are discussed below.

7. Households Who Return to TANF During the Transitional Period

The Department proposed that when a household returns to TANF during the transitional benefit period, the State agency would apply the same procedures it would apply if the household had reached the final month of its transitional period. Thus, when the State agency learns that a household receiving transitional benefits has returned to TANF, the State agency would either issue an RFC and adjust the household's benefits based on information it has about the household's new circumstances and extend the household's certification period if it chooses, or it would shorten the household's certification period and require the household to undergo a recertification.

Because the law does not authorize State agencies to shorten a household's certification period under these circumstances, the State agency would be required to issue a NOAA rather than a notice of expiration, which the State agency may issue when the household reaches the end of its transitional period. To eliminate the delay associated with issuing a NOAA and to keep the procedure for when a household returns to TANF during the transitional benefit period consistent with the procedure for when a household reaches the end of its transitional period, the Department proposed that the State agency be required to include in the transition notice a statement to the effect that if the household reaches the end of its transitional period, the State agency would either reevaluate the household's food stamp case or shorten the household's certification period and require it to undergo a recertification.

Commenters asked the Department to establish a process to allow for joint TANF-Food Stamp applications for families who reapply for both programs. They recommended a 30-day processing standard to ensure that these applications are processed together, noting that allowing a 30-day standard provides simplicity. The Department has considered this recommendation. We agree. Therefore, the final rule includes a provision for implementing a 30-day processing standard for households re-applying for TANF before the end of their transition period.

Commenters believed that the proposed rule did not provide adequate guidance to States on what procedures to use when a household reapplies for TANF during its transitional benefit period. They pointed out that many of the States that had implemented the transitional benefit program by late 2003 reported that a substantial number of the households that receive transitional benefits reapply for TANF before the expiration of their transitional benefit period. Proposed 7 CFR 273.12(f)(4)(ix) informs State agencies about the procedures they would need to follow if a household receiving transitional benefits returns to TANF during the transitional period. Therefore, the Department does not agree with this comment and adopts the language as proposed.

Commenters suggested that the final regulation delete the requirement that States must first approve a TANF application and then seek more information from the family to redetermine food stamp eligibility and benefit levels. Instead, they want the Department to establish a process that allows food stamp households to shift from the transitional period back to the regular program based on a joint TANF-Food Stamp application. One way to do this would be to treat the TANF application as a joint TANF-Food Stamp application and apply the new protections related to food stamp reapplication during a transitional benefit period. As suggested above, the processing time for these applications would be 30 days. The commenters pointed out that households who are reapplying for TANF are likely to have very limited resources so the final regulation should aim to deliver the appropriate benefit amount as quickly and seamlessly as possible.

The Department has considered these comments. However, because the TANF program and the Food Stamp Program are administered by different federal agencies, the Department does not have the authority to regulate the TANF program. However, State agencies may choose to conform their application process so long as they work within the guidelines of each program.

One commenter said that their State continues the transitional benefits even if the household returns to TANF, for payment accuracy. State agencies that proceed in this manner are not implementing transitional benefits properly. The transitional benefit program was intended to be implemented as a benefit that assists families who are making the transition from the TANF program. Households who return to TANF no longer need a transitional benefit because they are no longer in transition from TANF to the workforce, and the State agency now has information about current family circumstances. These households will likely qualify for the regular program. Therefore, the State agency should terminate the transitional case and enroll the household in the traditional Food Stamp Program.

One commenter noted that in their State, the eligibility and payment cycle for TANF is different from the Food Stamp Program. Additionally, the TANF program is operated by private agencies and the Food Stamp Program by public agencies. Therefore, requiring recertification for the food stamp program when a TANF case reopens increases hardship on households because they have to satisfy requirements for both programs and make multiple applications. The commenter believes that the proposed language will create a barrier to continued nutritional assistance.

The transitional program is just that, transitional. It suspends gathering household information when the household has separated from the TANF program. Once the household rejoins the TANF program and new information is gathered, it is appropriate to act on this new information. Therefore, at some point, households will have to recertify for the Food Stamp Program. The final rule allows State agencies the flexibility to develop a transitional benefit program that will work with their State TANF program. The transitional benefit program is an option provided by the Department that may not work in all States due to administrative circumstances such as those noted by this commenter. The Department cannot create a rule that will accommodate all circumstances.

Therefore, States need to work with TANF administrators in their State to develop ways to accommodate Food Stamp Program participants.

One commenter suggested that if a household returns to TANF before the end of the transitional period, the final rule should: (1) Allow the household to continue to receive transitional benefits during the TANF application process; (2) require the household to attend only one interview for the TANF and food stamp application; (3) require the State agency to determine TANF and Food Stamp Program eligibility at the same time; and (4) if the TANF application is accepted, give notice to the household that the transitional benefit period is ended and that the household is eligible for ongoing food stamp benefits. For the reasons stated in the preceding paragraph, the Department cannot impose these requirements on the TANF application process. However, a household is still eligible for the transitional benefit program until they are accepted into the TANF program. Therefore, it is not necessary to amend the proposed language to impose these requirements.

8. Moving Out of the Transitional Period

The Department proposed two options for moving the household out of the transitional period. First, in accordance with current rules at 7 CFR 273.12(f)(4)(iv), the State agency would be able to issue the household an RFC and act on any information it has about the household's new circumstances in accordance with 7 CFR 273.12(c)(3). Alternatively, in accordance with Section 4115, the State agency would be able to recertify the household in accordance with 7 CFR 273.14. Under the second option, the State agency would be able to shorten the household's prior certification period in order to recertify the household. In shortening the certification period, the State agency would be required to send the household a notice of expiration in accordance with 7 CFR 273.14(b). The Department does not believe that a NOAA is necessary to shorten the certification period because Section 4115 authorizes State agencies to shorten a household's certification period in the final month of the transitional benefit period.

Commenters noted that for the transitional benefit program to fully realize its purpose as a transitional benefit, the households that remain eligible for food stamps after the transitional period will have to stay connected to the regular Food Stamp Program. They believed that the proposed rule would have treated the end of the transitional period the same as the end of any other certification period. They encouraged the Department to adopt final rule language that would require States to provide more complete information that will encourage families to reapply for food stamps and stay connected to the program.

Commenters asked that the final rule require State agencies to issue notices that explicitly state that most people leaving cash assistance programs with low earnings remain eligible for food stamps and that there is a high likelihood that complying with recertification requirements will result in a substantial food stamp allotment. The commenters felt that individuals who received transitional Medicaid benefits may become confused and just disregard the notice about the termination of their transitional food stamps because the transitional period is over.

While the Department agrees that this is a valid point, and the Department encourages State agencies to include this information in their notices, it is not appropriate to regulate under this section. The Department believes that the best way to encourage the successful utilization of this option is to afford States broad latitude on how to implement the option. Moreover, this final rule details six items that must be included in the notice and the Department is not receptive to adding further detail. The Department adopts this amendment as proposed.

In a recent review of notices utilized by current State agencies who offer transitional benefits, the Department discovered that most State agencies provide information that goes beyond the regulatory requirements. For example, most States include information in the initial notice about the need to reapply toward the end of the transitional period in order to continue receiving food stamp benefits. Arizona, Oregon and Pennsylvania provided the Department with copies of fact sheets that they have created for the program. These facts sheets are in plain language and provide participants with a general understanding of the program and the requirements for participation. Finally, New York and Massachusetts provided the Department with copies of transitional benefit notices that include information about other programs, including transitional child care. The Department has provided copies of these notices to State agencies to utilize if they decide to implement this option.

Implementation

All of the provisions of FSRIA addressed in this rule, except Section 4401, were effective on October 1, 2002. Section 4401 has 3 different implementation dates. The amendments to 7 CFR 273.4(a)(6)(ii)(H), 7 CFR 273.8(b), and 7 CFR 273.9(d)(1) were to be implemented October 1, 2002. These provisions restored food stamp eligibility to qualified aliens who are otherwise eligible and who are receiving disability benefits regardless of date of entry, extended the higher resource limit to households with a disabled member, and replaced the current, fixed standard deduction with a deduction that varies according to household size. The amendments to 7 CFR 273.4(a)(6)(ii)(B) through (a)(6)(ii)(F) and 273.4(a)(6)(iii) were to be implemented on April 1, 2003. These provisions restored food stamp eligibility to qualified aliens who are otherwise eligible and who have lived in the U.S. for 5 years as a qualified alien beginning on date of entry. The amendments to, 7 CFR 273.4(a)(6)(ii)(J), and 7 CFR 273.4(c)(3)(vi) were to be implemented on October 1, 2003. These provisions restored food stamp eligibility to qualified aliens who are otherwise eligible and who are under 18 regardless of date of entry and the provisions eliminating the sponsor deeming requirements for immigrant children. State agencies must implement the provisions of 7 CFR 273.4(c)(2)(v), 7 CFR 273.4(c)(3)(iv), 7 CFR 273.4(c)(3)(vii), 7 CFR 273.9(b)(1)(vii), and 7 CFR 273.9(c)(3)(ii)(A) no later than August 1, 2010: State agencies may implement all other amendments on or after the effective date of this rule. States that implemented discretionary provisions, either under existing regulations or policy guidance issued by the Department, prior to the publication of this final rule have until August 1, 2010 to amend their policies to conform to the final rule requirements.

DISTRIBUTION TABLE—THE TRANSITIONAL BENEFITS ALTERNATIVE

CFR	Proposed rule	Final rule
		General eligibility guidelines.
273.12(f)(4)	273.12(f)(4)(i)	273.26.
	273.12(f)(4)(i)(A)	273.26(a).
	273.12(f)(4)(i)(B)	273.26(b).
	273.12(f)(4)(i)(C)	273.26(c).
	273.12(f)(4)(i)(C)(*1*)	273.26(c)(1).
	273.12(f)(4)(i)(C)(*2*)	273.26(c)(2).
	273.12(f)(4)(i)(C)(*3*)	273.26(c)(3).
	273.12(f)(4)(i)(C)(*4*)	273.26(c)(4).
	273.12(f)(4)(i)(C)(*5*)	273.26(c)(5).
	273.12(f)(4)(i)(C)(*6*)	273.26(c)(6).
	273.12(f)(4)(i)(C)(*7*)	273.26(c)(7).
	273.12(f)(4)(i)(C)(*8*)	273.26(d)(1).
	273.12(f)(4)(i)(C)(*9*)	273.26(c)(8).
	273.12(f)(4)(i)(C)(*10*)	273.26(c)(9).
	273.12(f)(4)(i)(C)(*11*)	273.26(d)(2).
	273.12(f)(4)(i)(C)(*12*)	273.26(d)(3).
	273.12(f)(4)(i)(C)(*13*)	273.26(c)(10).
273.12(f)(4)	273.12(f)(4)(ii)	Need to be added as 273.26(e).
		General administrative guidelines.
273.12(f)(4)(i)	273.12(f)(4)(iii)	273.27(a).
	273.12(f)(4)(iii)	273.27(a)(1).
	273.12(f)(4)(iii)	273.27(a)(2).
	273.12(f)(4)(iv)	273.27(c).
		Application for Food Stamp Program recertification.
273.12(f)(4)(ii)	273.12(f)(4)(v)	273.28.
	273.12(f)(4)(v)(A)	273.28(a).
	273.12(f)(4)(v)(B)	273.28(b).
	273.12(f)(4)(v)(C)	273.28(c).
	273.12(f)(4)(v)(C)	273.28(c)(1).
	273.12(f)(4)(v)(C)	273.28(c)(2).
273.12(f)(4)(iii)	273.12(f)(4)(v)(C)	273.28(d).
	273.12(f)(4)(v)(D)	273.28(e).
	273.12(f)(4)(v)(E)	273.28(f).
	273.12(f)(4)(v)(F)	273.28(g).
	273.12(f)(4)(v)(G)	273.28(h).
		Transitional notice requirements.
273.12(f)(4)(iv)	273.12(f)(4)(vi)	273.29.
	273.12(f)(4)(vi)(A)	273.29(a).
	273.12(f)(4)(vi)(B)	273.29(b).
	273.12(f)(4)(vi)(C)	273.29(c).
	273.12(f)(4)(vi)(D)	273.29(d).
	273.12(f)(4)(vi)(E)	273.29(e).
	273.12(f)(4)(vi)(F)	273.29(f).
		Transitional benefits alternative change reporting requirements.
	273.12(f)(4)(vii)	273.30.
		Closing the transitional period.
	273.12(f)(4)(viii)	273.31.
	273.12(f)(4)(viii)(A)	273.31(a).
	273.12(f)(4)(viii)(B)	273.31(b).
		Households who return to TANF during the transitional period.
	273.12(f)(4)(ix)	273.32.

Executive Order 12866

This final rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as Significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this final rule. It follows this rule as an Appendix. The following summarizes the conclusions of the regulatory impact analysis: This action is required to implement provisions of FSRIA (Pub. L. 107–171), which was enacted on May 13, 2002. This rulemaking amends FSP regulations to implement 11 provisions of FSRIA that establish new eligibility and certification requirements for the receipt of food stamps. The Department has estimated the total FSP costs to the Government of the FSRIA provisions implemented in the final rule as $2.669 billion in FY 2010 and $13.541 billion over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the

Regulatory Flexibility Act (5 U.S.C. 601–612). The Under Secretary for the Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local human services agencies will be the most affected to the extent that they administer the Food Stamp Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 13132, Federalism

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Before drafting this rule, we received input from State agencies at various times. Because the Program is a State-administered, federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State agencies to provide feedback that forms the basis for many discretionary decisions in this and other Program rules. In addition, FNS held three conferences with representatives of the State agencies specifically to discuss the provisions of FSRIA being implemented through this rule. Dates and locations of the meetings were as follows: June 11, 2002, in Alexandria, Virginia; June 13–14, 2002 in Kennebunkport, Maine; and June 17–19, 2002 in Dallas, Texas. We have also received written requests for policy guidance on the implications of FSRIA from State agencies that deliver food stamp services. These questions have helped us make the rule responsive to concerns presented by State agencies. Finally, we solicited comments on these amendments through the rulemaking process. The comment period for the Proposed Rule opened on April 16, 2004 and closed on June 15, 2004. The comments on the Proposed Rule from State officials were carefully considered in drafting this final rule. This preamble discusses in detail the nature of the concerns of the State and local officials who commented on the Proposed Rule, our position supporting the need to issue this final rule, and the extent to which the concerns expressed by the State and local officials have been met.

Nature of Concerns and the Need To Issue This Rule

Results of the consultations that were held prior to the publication of the Proposed Rule were discussed in the preamble of that rule and therefore will not be discussed here. The comments that FNS received in response to the Proposed Rule are discussed at length later in this preamble.

Extent to Which We Met Those Concerns

FNS considered comments on the Proposed Rule prior to publishing this final rulemaking. Our responses to these comments are discussed at length later in this preamble.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) of the Food Stamp Act and regulations at 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 of the Food Stamp Act and regulations at 7 CFR 276.7 (for rules related to non-quality control liabilities) or 7 CFR Part 283 (for rules related to quality control liabilities); (3) for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the Food Stamp Act (7 U.S.C. 2023) and 7 CFR 279.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individual participants, FNS has determined that there is no way to soften their effect on any of the protected classes. FNS has no discretion in implementing many of these changes. The changes that are required to be implemented by law have been implemented. All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, sex, religion, age, disability, marital or family status (FSP nondiscrimination policy can be found at 7 CFR 272.6(a)). Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part

1320) requires that each Federal agency establish a process to evaluate proposed collections of information and to reduce information collection burdens on the public. The Office of Management and Budget (OMB) must approve all collections of information by a Federal agency from the public before they can be implemented, and respondents are not required to respond to any information collection unless it displays a current valid OMB control number.

This final rule changes the information collection burden associated with currently-approved collections OMB No. 0584–0064, No. 0584–0496, and No. 0584–0083. Implementation of the data collection requirements resulting from this final rule is contingent upon OMB approval under the Paperwork Reduction Act of 1995.

FNS sought public comments specific to the estimated information collection burden of the proposed rule and received one comment. The commenter suggested that FNS should consider using a checklist for revisions to the State Plan as means of reducing the State agency paperwork burden related to revision of State plans. Because the comment did not impact the burden on the respondents or concern the substantive provisions of this rule, we are deferring a decision of the suggestion and will consider it when we revise State plan requirements. Thus, the provisions contained in this final rule do not differ with regard to information collection burden requirements from those set forth in the proposed rule.

The calculation of the information collection burden under the specific OMB numbers, as revised to reflect adjustments for SNAP participation increases and changes contained in this final rule, are described below. These calculations have been revised to reflect changes in the reporting and recordkeeping burdens resulting from new provisions added to the SNAP regulations by this final rule. As a result of this rulemaking, the overall information collection burden hours associated with OMB No. 0584–0064, No. 0584–0496, and No. 0584–0083 are estimated to have decreased by about 1,150,423 hours annually (920,338 hours due to program changes and 230,085 hours due to adjustments). Of the total impact, the annual burden hours are estimated to have decreased by 653,958 hours for food stamp households (523,166 hours due to program changes and 130,792 due to adjustments) and by 496,465 hours for States (397,172 hours due to program changes and 99,293 for adjustments). The breakdown of the changes for each separate information collection burden is described separately below.

OMB Number: 0584–0064

Title: Application and Certification of Food Stamp Households.

Expiration Date: December 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: Title 7, Part 273 of the CFR sets forth the Food Stamp Program requirements for the application, certification and continued eligibility for food stamp benefits. This rulemaking revises the collection burden to account for changes required by FSRIA.

Simplified Reporting (7 CFR 273.12(a)(5)):

The expanded use of simplified reporting allowed under FSRIA will greatly reduce reporting burdens for households and State agencies. To the extent that State agencies adopt simplified reporting, households will have fewer reports to file and the agency will have fewer reports to process.

Household burden: The expanded use of simplified reporting allowed under FSRIA reduces the household reporting burden by reducing the number of reports certain households must file with the food stamp agency as a condition of their ongoing eligibility for benefits.

Based on a 2008 survey of State choices and program data from the National Data Bank, out of 53 State agencies, 50 State agencies have implemented simplified reporting. From this, we estimate that 3,940,307 households are newly subject to the expanded simplified reporting option. Of these households, we assume that without simplified reporting 265,577 would otherwise have been subject to quarterly reporting, and 3,674,730 would have been subject to change reporting requirements. We estimate that it takes a household 8 minutes or .1336 burden hours to complete a semi-annual report under simplified reporting or a quarterly report and 5 minutes or .0835 burden hours to complete a change report. We expect households to submit one report annually under simplified semi-annual reporting; 3 reports annually under quarterly reporting; and an average of 3.5 reports annually under change reporting. Based on these estimates, households subject to the simplified semi-annual report have a burden of 526,425 hours (3,940,307 semi-annual reporting households × 1 report × .1336 hours = 526,425 hours). Under quarterly or change reporting, we estimate that these households would have had a burden of 1,180,383 hours [(265,577 quarterly reporting households × 3 reports × .1336 hours = 106,443 hours) + (3,674,730 change reporting households × 3.5 reports × .0835 hours = 1,073,940 hours) = 1,180,383 hours]. The difference indicates a net decrease in expected household burden hours of 653,958 hours (526,425 − 1,180,383 = −653,958 hours).

State agency burden: The expanded use of simplified reporting also reduces the State burden for processing reports. With the exception of households consisting entirely of elderly or disabled persons, which may be subject to a reporting requirement at an interval of up to 12 months, simplified reporting typically requires a household to file a report once every 6 months, and also at any time that the household's gross income exceeds 130 percent of the poverty level. This means that States choosing the simplified reporting option will have fewer household reports to process. Consistent with the analysis of household burden, we estimate that 3,940,307 households are newly subject to the expanded simplified reporting option; 265,577 of which would otherwise have been subject to quarterly reporting, and 3,674,730 of which would have been subject to change reporting requirements. Under semi-annual reporting, all of these households will submit one report annually. We estimate that a State agency spends 11 minutes or .1837 hours processing each report for a total of 723,834 burden hours (3,940,307 reports × .1837 hours = 723,834 hours). Quarterly reporting households submit 3 reports annually and change reporting households submit an estimated average of 3.5 reports annually. We estimate that the State agency spends 11 minutes or .1837 hours processing each quarterly report and 5 minutes or .0835 hours processing each change report. If simplified reporting households continued instead to submit change or quarterly reports, the State agency would have a burden of 1,220,299 hours [(265,577 quarterly reporting households × 3 reports × .1837 hours = 146,359 hours) + (3,674,730 change reporting households × 3.5 reports × .0835 hours = 1,073,940 hours) = 1,220,299 hours]. As a result, the simplified reporting option results in an estimated net reduction of 496,465 burden hours (723,834 hours − 1,220,299 hours = −496,465 hours) for State agencies implementing the option contained in the final rule.

Transition Notices, Application Revisions Reflecting the Deduction Freeze During the Certification Period, and Simplifying Child Support Payments (7 CFR 273.29):

There are small increases in the information collection burden expected to result from the final rule's requirements to develop transition notices, to notify households about freezing deductions during the certification period, and to simplify the determination of child support payments. These provisions are estimated to have resulted in a one-time increase in the burden for State agencies of 300 hours. There is also a small one-time increase in the burden associated with including information in the State plans related to which of the rule's optional provisions States adopt. This provision is expected to increase the overall burden by 50 hours as States amend their Plans of Operation after the final rule becomes effective. In addition, a small one-time increase in the burden already occurred in 2003 from the FSRIA's requirement that States post food stamp applications on State Web sites. We anticipate no further burden from this requirement.

Determination of child support payments. (7 CFR 273.12(a)(1)(vi)):

Households that pay legally owed child support are eligible for either an exclusion or deduction of those payments. FSRIA allows State agencies to rely solely on information from the State's Child Support Enforcement (CSE) agency in determining a household's obligation and actual child support payments. As a result of this change, the household would not have further reporting and verification requirements.

State agency burden: This provision was intended to simplify the process by allowing State agencies to rely solely on information from the Child Support Enforcement (CSE) agency in determining the amount of child support payments made. If a State agency uses CSE data, it will not have to perform other verification of payments reported by the household. Most States already have a link to the CSE agency, and would experience no additional burden to set up an interface with the CSE agency. However, we estimate that modifying instructions to workers regarding the new process to determine child support payments will result in a burden of 20 hours per State agency. We anticipate 5 State agencies in each of the next 3 years will choose this option, resulting in a total of 100 burden hours annually (5 States × 20 hours = 100 hours).

Household burden: This provision will also reduce the reporting burden for some households because the State agency will rely on the information from the CSE agency instead of requiring additional verification from the household. We estimate that households spend an average of 19 minutes or .3173 hours in total completing an application for initial certification or recertification. Since only 1.5 percent of all SNAP households received the child support deduction in FY 2008 and only some of those households will be subject to the new requirement since it is a State option, the average time to complete an application will not be measurably affected by this change. Therefore, we do not estimate a change in household burden from this provision.

Notification on reporting forms if State chooses to disregard changes in deductions (7 CFR 273.12(b)(1), 273.12 (b)(2), and 273.12(h)(2)): States are given the option in FSRIA to postpone acting on changes that would affect the amount of deductions, except for changes in shelter expenses due to a change in residence and changes in earned income. If the State adopts this option, it must include a notice on all report forms that any reported changes that affect deductions will not be acted on until the household's next recertification.

State agency burden: The notification would be added to a State's existing reporting forms, so this option would not impose an additional burden for creating or sending a new notice. However, States that choose this option would have to revise their reporting forms to include notification about postponing changes in deductions. We estimate that modifying existing report forms will result in a burden of 20 hours per State agency. We assume that 5 States in each of the next 3 years will choose this option, resulting in a burden of 100 hours annually (5 States × 20 hours = 100 hours).

Household burden: This provision does not affect the burden for households.

Transition notice (7 CFR 273.29):

FSRIA amended the Act to provide for an option for States to provide transitional benefits to families leaving the TANF program. The Act amended and expanded the transitional benefit alternative provided pursuant to the regulatory authority. Current regulations require that States opting to provide transitional benefits provide a Transition Notice (TN) to households. The final rule also provides for a TN but has substantially different requirements for the notice. State agencies that opt to provide transitional benefits must provide families eligible for transitional benefits a TN that includes detailed and specific information about the household's transitional benefits and rights.

State agency burden: The Notice of Expiration (NOE) and the TN are comparable notices, and the TN will replace the NOE in some cases. Therefore, we assume that the burden for the TN will be minimal and will be incorporated into the NOE burden calculations. Because of the substantial changes to the current TN that are required by this provision, we anticipate a burden of 20 hours per State agency for developing the TN for both States that currently provide transitional benefits pursuant to the regulatory authority and those States that have not yet provided transitional benefits. As of August 2008, 18 States have chosen to implement the transitional benefit option. FNS calculated an average annual burden of 120 hours each year (6 × 20 hours = 120 hours) based on 6 States adopting this option each year over a 3 year period.

Household burden: FNS believes there is no burden to the household for this provision.

Food Stamp applications on State Web sites (7 CFR 273.2(c)):

FSRIA requires every State agency that maintains a Web site to make its food stamp application available on the Web site in every language for which a printed copy is available. State agencies are not required to accept applications on-line.

State agency burden: Because States already develop applications, and all States already maintain Web sites, FNS does not project any additional ongoing reporting burden resulting from this requirement.

Household burden: This requirement simply makes the application available in another manner and does not impose an additional burden for households.

Start-up burden: The startup burden resulting from this requirement has already been incurred by State agencies. FNS estimates that each State agency has previously incurred a one-time burden of 1.5 hours to post its application(s) on the Web resulting in a total burden of 80 hours (53 State agencies × 1.5 hours = 80 hours). There is no ongoing burden from this requirement.

This rule does not affect the current recordkeeping burden involved with OMB# 0584–0064.

OMB Number: 0584–0496

Title: State Agency Options.

Expiration Date: October 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: Title 7, Part 273 of the CFR sets forth the Food Stamp Program requirements for the application, certification and continued eligibility

for food stamp benefits. This rulemaking revises the collection burden to account for changes required by FSRIA.

Establishing and reviewing standard utility allowances (7 CFR 273.9(d)(6)(iii)(B)):

Section 273.9(d)(6)(iii)(B) of the food stamp regulations allows State agencies to establish standard utility allowances (SUAs) and requires State agencies to review and adjust established SUAs annually to reflect changes in the cost of utilities. Many State agencies already have one or more approved standards, which they update annually. State agencies may use information already available from case files, quality control reviews, utility companies or other sources. State agencies may make adjustments based on cost-of-living increases. The information is used to establish standards to be used in place of actual utility costs in the computation of the excess shelter deduction. State agencies are required to submit the standard amounts and methodologies to FNS when they are developed or changed.

Estimates of burden: Currently 52 State agencies out of 53 have a standard that includes heating or cooling costs and 31 have a standard for utility costs other than heating or cooling. In addition, 44 State agencies have a telephone allowance standard. State agencies are required to review the standards each year to determine if cost of living increases are needed. We estimate a minimum of 2.5 hours annually to review and adjust the standards (2.5 hours × 52 State agencies = 130 hours). Total burden for this provision is estimated to be 130 hours per year.

Mandatory utility standards:

Section 273.9(d)(6)(iii) of the regulations, as proposed to be amended, allows State agencies to mandate the use of an SUA when the excess shelter cost deduction is computed instead of allowing households to claim actual utility costs, provided the standards will not increase program costs. State agencies may establish additional standards to implement this provision. They must show that mandatory utility standards will not increase program costs. Request for FNS approval to use a standard for a single utility must include the cost figures upon which the standard is based. If the State wants to mandate use of utility standards but does not want individual standards for each utility, the State needs to submit information showing the approximate number of food stamp households that would be entitled to the nonheating and noncooling standard and the average cost of their actual utility costs now plus the standards that State proposes to use and an explanation of how they were computed. If the State does not have actual data, it must draw a sample of cases to obtain it.

Estimates of burden: Currently, 40 State agencies have elected to mandate the use of SUAs. We expect that additional States will decide to implement a mandatory SUA. There is not an additional burden in developing the standards since these agencies already establish the SUA. Therefore, since there is no additional burden, the total annual burden associated with mandatory utility standards is zero.

Self-employment costs (7 CFR 273.11(b)):

Section 273.11(b) of the regulations allows self-employment gross income to be reduced by the cost of producing such income. The regulations allow the State agencies, with approval from FNS, to establish the methodology for offsetting the costs of producing self-employment income, as long as the procedure does not increase program costs. State agencies may submit a request to FNS to use a method of producing a reasonable estimate of the costs of producing self-employment income in lieu of calculating the actual costs for each household with such income. Different methods may be proposed for different types of self-employment. The proposal shall include a description of the proposed method, the number and type of households and percent of the caseload affected, and documentation indicating that the proposed procedure will not increase program costs. State agencies may collect this data from household case records or other sources that may be available.

Estimates of burden: We estimate that 10 State agencies will submit a request of this type each year for the next three years. It is estimated that these States will incur a one-time burden of at least 10 working hours gathering and analyzing data, developing the methodology, determining the cost implication, and submitting a request to FNS for a total burden of 100 hours annually.

Record keeping burden only: Each State agency would be required to keep a record of the information gathered and submitted to FNS. We estimate this to be 7 minutes or .1169 hours per year for the 53 State agencies to equal a total of 6 burden hours annually (53 × .1169 hours = 6 hours annual burden).

OMB Number: 0584–0083

Title: Operating Guidelines, Forms and Waivers.

Expiration Date: October 31, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: The regulations at 7 CFR 272.2 require that State agencies plan and budget program operations and establish objectives for each year. State agencies submit these plans to the regional offices for review and approval. This rulemaking amends Part 7 CFR 272.2(d) of the Food Stamp Program Regulations to require State agencies that opt to implement certain provisions of FSRIA to include these options in the State Plan of Operation. The optional provisions that must be included in the State Plan of Operation are: simplified definition of resources, simplified definition of income, optional child support deduction, homeless household shelter deduction, simplified reporting, simplified determination of deductions, and transitional benefits. The regulations at 7 CFR 272.2(f) require that State agencies only have to provide FNS with changes to these plans as they occur.

Estimates of Burden: Out of 53 State agencies, 50 States have adopted simplified reporting; 18 states have adopted transitional benefits; 43 States have adopted simplified definition of income; 36 States have adopted simplified definition of resources; 27 States have adopted the homeless household deduction; 8 States have adopted the option to simplify determination of deductions; and 14 states have chosen to treat legally obligated child support payments made to non-household members as an income exclusion while 39 States will continue to count the payments as a deduction. In view of the number of States that have already selected the above options, we estimate that very few additional States will elect to adopt them in the future and that the additional reporting burden resulting from revising State plans will be minimal. The additional public reporting burden for this proposed collection of information is estimated to average an additional .25 hours per response. The total burden for this collection is 40 hours (53 respondents (State agencies) X 3 responses per year per respondent X .25 hours per response). There is no impact on the recordkeeping burden involved with OMB# 0584–0083.

An Information Collection Request (ICR) package will be submitted to OMB based on the provisions of this final rule to reflect the changes to OMB No. 0584–0064, No. 0584–0496, No. 0584–0083. These amended information collection requirements will not become effective until approved by OMB. When these information collection requirements

have been approved, FNS will publish separate action in the **Federal Register** announcing OMB's approval.

E-Government Act Compliance

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

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Employment, Food stamps, Fraud, Government employees. Grant programs—social programs, Income taxes, Reporting and recordkeeping requirements, Students, Supplemental Security income, Wages.

■ Accordingly, 7 CFR parts 272 and 273 are amended as follows:

■ 1. The authority citation for parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 2. Section 272.1 is amended by adding a new paragraph (g)(173) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) * * *

(173) *Amendment No. 401.* The provisions of Amendment No. 401 are implemented as follows:

(i) The following amendments were to be implemented October 1, 2002: 7 CFR 273.4(a)(6)(ii)(H), 7 CFR 273.8(b), and 7 CFR 273.9(d)(1).

(ii) The following amendments were to be implemented April 1, 2003: 7 CFR 273.4(a)(6)(ii)(B) through 7 CFR 273.4(a)(6)(ii)(F) and 273.4(a)(6)(iii).

(iii) The following amendments were to be implemented October 1, 2003: 7 CFR 273.4 (a)(6)(ii)(J); 7 CFR 273.4(c)(3)(vi).

(iv) State agencies must implement the following amendments no later than August 1, 2010: 7 CFR 273.4(c)(2)(v), 7 CFR 273.4(c)(3)(iv), 7 CFR 273.4(c)(3)(vii), 7 CFR 273.9(b)(1)(vi), and 7 CFR 273.9(c)(3)(ii)(A).

(v) State agencies may implement all other amendments on or after the effective date.

(vi) State agencies that implemented discretionary provisions, either under existing regulations or policy guidance issued by the Department, prior to the publication of this final rule have until August 1, 2010 to amend their policies to conform to the final rule requirements.

■ 3. Section 272.2 is amended by adding a new paragraph (d)(1)(xvi) to read as follows:

§ 272.2 Plan of operation.

* * * * *

(d) * * *

(1) * * *

(xvi) If the State agency chooses to implement the optional provisions specified in:

(A) Sections 273.2(f)(1)(xii), 273.2(f)(8)(i)(A), 273.9(d)(5), 273.9(d)(6)(i), and 273.12(a)(4) of this chapter, it must include in the Plan's attachment the options it has selected;

(B) Section 273.8(e)(19) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the resources being excluded under the provision;

(C) Section 273.9(c)(3) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of educational assistance being excluded under the provision;

(D) Section 273.9(c)(18) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of payments being excluded under the provision;

(E) Section 273.9(c)(19) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of income being excluded under the provision;

(F) Section 273.12(a)(5) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the types of households to whom the option applies;

(G) Section 273.12(c) of this chapter, it must include in the Plan's attachment a statement that the option has been selected and a description of the deductions affected; and

(H) Section 273.26 of this chapter, it must include in the Plan's attachment a statement that the option has been selected and specify the categories of households eligible for transitional benefits and the maximum number of months for which such benefits will be provided.

* * * * *

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 4. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 5. Designate §§ 273.1 and 273.2 as Subpart A of part 273 and add a subpart heading to read as follows:

Subpart A—General Rules

■ 6. In § 273.2:

■ a. Paragraph (c)(3) is amended by adding three new sentences after the second sentence.

■ b. Paragraph (f)(1)(xii) is amended by adding four new sentences after the third sentence.

■ c. Paragraph (f)(2)(iii) is removed.

■ d. A new paragraph (f)(4)(v) is added.

■ e. Paragraph (f)(8)(i)(A) is revised.

The additions and revision read as follows:

§ 273.2 Office operations and application processing.

* * * * *

(c) * * *

(3) * * * If the State agency maintains a Web page, it must make the application available on the Web page in each language in which the State agency makes a printed application available. The State agency must provide on the Web page the addresses and phone numbers of all State food stamp offices and a statement that the household should return the application form to its nearest local office. The applications must be accessible to persons with disabilities in accordance with Section 504 of the Rehabilitation Act of 1973, Public Law 93–112, as amended by the Rehabilitation Act Amendments of 1974, Public Law 93–516, 29 U.S.C. 794. * * *

* * * * *

(f) * * *

(1) * * *

(xii) * * * For households that pay their child support exclusively through their State CSE agency, the State agency may use information provided by that agency in determining a household's legal obligation to pay child support, the amount of its obligation and amount the household has actually paid. A household would not have to provide additional verification unless it disagrees with the data presented by the State CSE agency. Before the State agency may use the CSE agency's information, the household must sign a statement authorizing release of the household's child support payment records to the State agency. State agencies that choose to rely on information provided by their State CSE

agency in accordance with this paragraph (f)(1)(xii) must specify in their State plan of operation that they have selected this option. * * *

* * * * *

(4) * * *

(v) *Homeless households.* Homeless households claiming actual shelter expenses or those with extremely low shelter costs may provide verification of their shelter expenses to qualify for the homeless shelter deduction if the State agency has such a deduction. If a homeless household has difficulty in obtaining traditional types of verification of shelter costs, the caseworker shall use prudent judgment in determining if the verification obtained is adequate. For example, if a homeless individual claims to have incurred shelter costs for several nights and the costs are comparable to costs typically incurred by homeless people for shelter, the caseworker may decide to accept this information as adequate information and not require further verification.

* * * * *

(8) * * *

(i) * * *

(A) At recertification the State agency shall verify a change in income if the source has changed or the amount has changed by more than $50. Previously unreported medical expenses, actual utility expenses and total recurring medical expenses which have changed by more than $25 shall also be verified at recertification. The State agency shall not verify income if the source has not changed and if the amount is unchanged or has changed by $50 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. For households eligible for the child support deduction or exclusion, the State agency may use information provided by the State CSE agency in determining the household's legal obligation to pay child support, the amount of its obligation and amounts the household has actually paid if the household pays its child support exclusively through its State CSE agency and has signed a statement authorizing release of its child support payment records to the State agency. A household would not have to provide any additional verification unless they disagreed with the information provided by the State CSE agency. State agencies that choose to use information provided by their State CSE agency in accordance with this paragraph (f)(8)(i)(A) must specify in their State plan of operation that they have selected this option. For all other households eligible for the child support deduction or exclusion, the State agency shall require the household to verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of legally obligated child support a household member pays to a nonhousehold member. The State agency shall verify reportedly unchanged child support information only if the information is incomplete, inaccurate, inconsistent or outdated.

* * * * *

■ 7. Designate §§ 273.3 and 273.4 as Subpart B of part 273 and add a subpart heading to read as follows:

Subpart B—Residency and Citizenship

■ 8. In § 273.4:

■ a. Paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(6) and (a)(7) respectively.

■ b. A new paragraph (a)(5) is added.

■ c. Newly redesignated paragraph (a)(6) is revised.

■ d. Newly redesignated paragraph (a)(7) is amended by removing the words "and (a)(5)(ii)(H) through (a)(5)(ii)(J)" and adding in their place "and (a)(6)(ii)(I)."

■ e. Paragraph (c)(2) introductory text is amended by removing the words "paragraph (a)(5)(ii)(A)" and adding in their place "paragraph (a)(6)(ii)(A)".

■ f. Paragraph (c)(2)(v) is amended by adding a new sentence to the end of the paragraph.

■ g. Paragraph (c)(3)(iv) is amended by adding three new sentences after the first sentence, and is further amended by removing the semi-colon at the end of the last sentence and adding in its place a period, and by adding three sentences to the end of the paragraph.

■ h. A new paragraph (c)(3)(vi) is added.

■ i. A new paragraph (c)(3)(vii) is added.

The revision and additions read as follows:

§ 273.4 Citizenship and alien status.

(a) * * *

(5) An individual who is:

(i) An alien who has been subjected to a severe form of trafficking in persons and who is certified by the Department of Health and Human Services, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(ii) An alien who has been subjected to a severe form of trafficking in persons and who is under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA;

(iii) The spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(iv) The spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; or

(6) An individual who is both a qualified alien as defined in paragraph (a)(6)(i) of this section and an eligible alien as defined in paragraph (a)(6)(ii) or (a)(6)(iii) of this section.

(i) A qualified alien is:

(A) An alien who is lawfully admitted for permanent residence under the INA;

(B) An alien who is granted asylum under section 208 of the INA;

(C) A refugee who is admitted to the United States under section 207 of the INA;

(D) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(E) An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) of the INA;

(F) An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;

(G) An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered; [2] or

(H) An alien who is a Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980.

(ii) A qualified alien, as defined in paragraph (a)(6)(i) of this section, is eligible to receive food stamps and is not subject to the requirement to be in qualified status for 5 years as set forth in paragraph (a)(6)(iii) of this section, if such individual meets at least one of the criteria of this paragraph (a)(6)(ii):

(A) An alien age 18 or older lawfully admitted for permanent residence under

[2] For guidance, see Exhibit B to Attachment 5 of the DOJ Interim Guidance published at 62 FR 61344 on November 17, 1997.

the INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased.

(*1*) A spouse may not get credit for quarters of a spouse when the couple divorces prior to a determination of food stamp eligibility. However, if the State agency determines eligibility of an alien based on the quarters of coverage of the spouse, and then the couple divorces, the alien's eligibility continues until the next recertification. At that time, the State agency must determine the alien's eligibility without crediting the alien with the former spouse's quarters of coverage.

(*2*) After December 31, 1996, a quarter in which the alien actually received any Federal means-tested public benefit, as defined by the agency providing the benefit, or actually received food stamps is not creditable toward the 40-quarter total. Likewise, a parent's or spouse's quarter is not creditable if the parent or spouse actually received any Federal means-tested public benefit or actually received food stamps in that quarter. The State agency must evaluate quarters of coverage and receipt of Federal means-tested public benefits on a calendar year basis. The State agency must first determine the number of quarters creditable in a calendar year, then identify those quarters in which the alien (or the parent(s) or spouse of the alien) received Federal means-tested public benefits and then remove those quarters from the number of quarters of coverage earned or credited to the alien in that calendar year. However, if the alien earns the 40th quarter of coverage prior to applying for food stamps or any other Federal means-tested public benefit in that same quarter, the State agency must allow that quarter toward the 40 qualifying quarters total;

(B) An alien admitted as a refugee under section 207 of the INA;

(C) An alien granted asylum under section 208 of the INA;

(D) An alien whose deportation is withheld under section 243(h) of the INA as in effect prior to April 1, 1997, or whose removal is withheld under section 241(b)(3) or the INA;

(E) An alien granted status as a Cuban or Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(F) An Amerasian admitted pursuant to section 584 of Public Law 100–202, as amended by Public Law 100–461;

(G) An alien with one of the following military connections:

(*1*) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service. The definition of veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed Forces of the U.S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(*2*) An individual on active duty in the Armed Forces of the U.S. (other than for training); or

(*3*) The spouse and unmarried dependent children of a person described in paragraphs (a)(6)(ii)(G)(*1*) or (a)(6)(ii)(G)(*2*) of this section, including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried dependent child for purposes of this paragraph (a)(6)(ii)(G)(*3*) is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday. For purposes of this paragraph (a)(6)(ii)(G)(*3*), child means the legally adopted or biological child of the person described in paragraph (a)(6)(ii)(G)(*1*) or (a)(6)(ii)(G)(*2*) of this section.

(H) An individual who is receiving benefits or assistance for blindness or disability (as specified in § 271.2 of this chapter).

(I) An individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931; or

(J) An individual who is under 18 years of age.

(iii) The following qualified aliens, as defined in paragraph (a)(6)(i) of this section, must be in a qualified status for 5 years before being eligible to receive food stamps. The 5 years in qualified status may be either consecutive or nonconsecutive. Temporary absences of less than 6 months from the United States with no intention of abandoning U.S. residency do not terminate or interrupt the individual's period of U.S. residency. If the resident is absent for more than 6 months, the agency shall presume that U.S. residency was interrupted unless the alien presents evidence of his or her intent to resume U.S. residency. In determining whether an alien with an interrupted period of U.S. residency has resided in the United States for 5 years, the agency shall consider all months of residency in the United States, including any months of residency before the interruption:

(A) An alien age 18 or older lawfully admitted for permanent residence under the INA.

(B) An alien who is paroled into the U.S. under section 212(d)(5) of the INA for a period of at least 1 year;

(C) An alien who has been battered or subjected to extreme cruelty in the U.S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered;

(D) An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980.

(iv) Each category of eligible alien status stands alone for purposes of determining eligibility. Subsequent adjustment to a more limited status does not override eligibility based on an earlier less rigorous status. Likewise, if eligibility expires under one eligible status, the State agency must determine if eligibility exists under another status.

* * * * *

(c) * * *

(2) * * *

(v) * * * The State agency must use the same procedure to determine the amount of deemed income and resources to exclude in the case of a sponsored alien or a citizen child of a sponsored alien who is exempt from deeming in accordance with paragraphs (c)(3)(vi) or (c)(3)(vii) of this section.

(3) * * *

(iv) * * * Prior to determining whether an alien is indigent, the State agency must explain the purpose of the determination to the alien and/or household representative and provide the alien and/or household representative the opportunity to refuse the determination. If the household refuses the determination, the State agency will not complete the determination and will deem the sponsor's income and resources to the alien's household in accordance with paragraph (c)(2) of this section. The State agency must inform the sponsored alien of the consequences of refusing

this determination. * * * State agencies may develop an administrative process under which information about the sponsored alien is not shared with the Attorney General or the sponsor without the sponsored alien's consent. The State agency must inform the sponsored alien of the consequences of failure to provide such consent. If the sponsored alien fails to provide consent, he or she shall be ineligible pursuant to paragraph (c)(5) of this section, and the State agency shall determine the eligibility and benefit level of the remaining household members in accordance with § 273.11(c).

* * * * *

(vi) A sponsored alien child under 18 years of age of a sponsored alien.

(vii) A citizen child under age 18 of a sponsored alien.

* * * * *

■ 9. Designate §§ 273.5, 273.6, and 273.7 as Subpart C of part 273 and add a subpart heading to read as follows:

Subpart C—Education and Employment

■ 10. Designate §§ 273.8, 273.9, 273.10, and 273.11 as Subpart D of part 273 and add a subpart heading to read as follows:

Subpart D—Eligibility and Benefit Levels

■ 11. Section 273.8 is amended in paragraph (b) after the words "for households including" by adding "one or more disabled members or" and by adding a new paragraph (e)(19) to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) * * *

(19) At State agency option, any resources that the State agency excludes when determining eligibility or benefits for TANF cash assistance, as defined by 45 CFR 260.31 (a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA. Resource exclusions under TANF and Section 1931 programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA shall not be excluded under this paragraph (e)(19). Additionally, licensed vehicles not excluded under Section 5(g)(2)(C) or (D) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(g)(2)(C) or (D)), cash on hand, amounts in any account in a financial institution that are readily available to the household including money in checking or savings accounts, savings certificates, stocks, or bonds shall also not be excluded. The term "readily available" applies to resources that the owner can simply withdraw from a financial institution. State agencies may exclude deposits in individual development accounts (IDAs). A State agency that chooses to exclude resources under this paragraph (e)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded.

* * * * *

■ 12. In § 273.9:

■ a. Paragraph (b)(1)(vi) is amended by adding a new sentence to the end of the paragraph.

■ b. Paragraph (c)(3)(ii) is amended by redesignating paragraphs (c)(3)(ii)(A) and (c)(3)(ii)(B) as paragraphs (c)(3)(ii)(B) and (c)(3)(ii)(C), respectively and adding a new paragraph (c)(3)(ii)(A).

■ c. Paragraph (c)(3)(iii), first sentence is amended by removing the reference "paragraph (c)(3)(ii)(B)" and adding in its place the reference "paragraph (c)(3)(ii)(C)".

■ d. A new paragraph (c)(3)(v) is added.

■ e. New paragraphs (c)(17), (c)(18) and (c)(19) are added.

■ f. Paragraph (d)(1) is revised.

■ g. Paragraph (d)(2) is amended by revising the second sentence.

■ h. Paragraph (d)(5) is revised.

■ i. Paragraph (d)(6) is amended by revising the paragraph heading.

■ j. Paragraph (d)(6)(i) is amended by revising the first sentence and adding a new sentence at the end of the paragraph.

■ k. Paragraph (d)(6)(iii)(C) is amended by adding at the end of the third sentence the words "unless the State agency mandates the use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section".

■ l. Paragraph (d)(6)(iii)(E) is amended by removing the fifth sentence and adding four new sentences after the second sentence.

■ m. Paragraph (d)(6)(iii)(F) is amended by revising the first sentence and by removing the word "However, " at the beginning of the second sentence and capitalizing the next word, "The".

The additions and revisions read as follows:

§ 273.9 Income and deductions.

* * * * *

(b) * * *

(1) * * *

(vi) * * * Earned income from work study programs that are funded under section 20 U.S.C. 1087uu of the Higher Education Act is excluded.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(A) Received under 20 CFR 1087uu. This exemption includes student assistance received under part E of subchapter IV of Chapter 28 of title 20 and part C of subchapter I of chapter 34 of title 42, or under Bureau of Indian Affairs student assistance programs.

* * * * *

(v) At its option, the State agency may exclude any educational assistance that must be excluded under its State Medicaid rules that would not already be excluded under this section. A State agency that chooses to exclude educational assistance under this paragraph (c)(3)(v) must specify in its State plan of operation that it has selected this option and provide a description of the educational assistance that is being excluded. The provisions of paragraphs (c)(3)(ii), (c)(3)(iii) and (c)(3)(iv) of this section do not apply to income excluded under this paragraph (c)(3)(v).

* * * * *

(17) Legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages. However, at its option, the State agency may allow households a deduction for such child support payments in accordance with paragraph (d)(5) of this section rather than an income exclusion.

(18) At the State agency's option, any State complementary assistance program payments excluded for the purpose of determining eligibility under section 1931 of the SSA for a program funded under Title XIX of the SSA. A State agency that chooses to exclude complementary assistance program payments under this paragraph (c)(18) must specify in its State plan of operation that it has selected this option and provide a description of the types of payments that are being excluded.

(19) At the State agency's option, any types of income that the State agency excludes when determining eligibility or benefits for TANF cash assistance as defined by 45 CFR 260.31(a)(1) and (a)(2), or medical assistance under Section 1931 of the SSA, (but not for programs that do not evaluate the financial circumstances of adults in the household and programs grandfathered under Section 404(a)(2) of the SSA). The State agency must exclude for food stamp purposes the same amount of income it excludes for TANF or

Medicaid purposes. A State agency that chooses to exclude income under this paragraph (c)(19) must specify in its State plan of operation that it has selected this option and provide a description of the resources that are being excluded. The State agency shall not exclude:

(i) Wages or salaries;

(ii) Gross income from a self-employment enterprise, including the types of income referenced in paragraph (b)(1)(ii) of this section. Determining monthly income from self-employment must be calculated in accordance with § 273.11(a)(2);

(iii) Benefits under Title I, II, IV, X, XIV or XVI of the SSA, including supplemental security income (SSI) benefits, TANF benefits, and foster care and adoption payments from a government source;.

(iv) Regular payments from a government source. Payments or allowances a household receives from an intermediary that are funded from a government source are considered payments from a government source;

(v) Worker's compensation;

(vi) Child support payments, support or alimony payments made to the household from a nonhousehold member;

(vii) Annuities, pensions, retirement benefits;

(viii) Disability benefits or old age or survivor benefits; and

(ix) Monies withdrawn or dividends received by a household from trust funds considered to be excludable resources under § 273.8(e)(8).

(d) * * *

(1) *Standard deduction*—(i) *48 States, District of Columbia, Alaska, Hawaii, and the Virgin Islands.* Effective October 1, 2002, in the 48 States and the District of Columbia, Alaska, Hawaii, and the Virgin Islands, the standard deduction for household sizes one through six shall be equal to 8.31 percent of the monthly net income eligibility standard for each household size established under paragraph (a)(2) of this section rounded up to the nearest whole dollar. For household sizes greater than six, the standard deduction shall be equal to the standard deduction for a six-person household.

(ii) *Guam.* Effective October 1, 2002, in Guam, the standard deduction for household sizes one through six shall be equal to 8.31 percent of double the monthly net income eligibility standard for each household size for the 48 States and the District of Columbia established under paragraph (a)(2) of this section rounded up to the nearest whole dollar. For household sizes greater than six, the standard deduction shall be equal to the standard deduction for a six-person household.

(iii) *Minimum deduction levels.* Notwithstanding paragraphs (d)(1)(i) and (d)(1)(ii) of this section, the standard deduction in any year for each household in the 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands shall not be less than $134, $229, $189, $269, and $118, respectively.

(2) * * * Earnings excluded in paragraph (c) of this section shall not be included in gross earned income for purposes of computing the earned income deduction, except that the State agency must count any earnings used to pay child support that were excluded from the household's income in accordance with the child support exclusion in paragraph (c)(17) of this section.

* * * * *

(5) *Optional child support deduction.* At its option, the State agency may provide a deduction, rather than the income exclusion provided under paragraph (c)(17) of this section, for legally obligated child support payments paid by a household member to or for a nonhousehold member, including payments made to a third party on behalf of the nonhousehold member (vendor payments) and amounts paid toward child support arrearages. Alimony payments made to or for a nonhousehold member shall not be included in the child support deduction. A State agency that chooses to provide a child support deduction rather than an exclusion in accordance with this paragraph (d)(5) must specify in its State plan of operation that it has chosen to provide the deduction rather than the exclusion.

(6) *Shelter costs.* (i) * * * A State agency may provide a standard homeless shelter deduction of $143 a month to households in which all members are homeless individuals but are not receiving free shelter throughout the month. * * * A State agency that chooses to provide a homeless household shelter deduction must specify in its State plan of operation that it has selected this option.

* * * * *

(iii) * * *

(E) * * * If the State agency chooses to mandate use of standard utility allowances, it must provide a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency also must not prorate a standard utility allowance that includes heating or cooling costs provided to a household that lives and shares heating or cooling expenses with others. In determining whether the standard utility allowances increase program costs, the State agency shall not consider any increase in costs that results from providing a standard utility allowance that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs. The State agency shall also not consider any increase in costs that results from providing a full (*i.e.,* not prorated) standard utility allowance that includes heating or cooling costs to a household that lives and shares heating or cooling expenses with others. * * *

(F) If a household lives with and shares heating or cooling expenses with another individual, another household, or both, the State agency shall not prorate the standard for such households if the State agency mandates use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section. * * *

■ 13. In § 273.10:

■ a. The introductory text of paragraph (d) is revised.

■ b. Paragraph (d)(8) is revised.

■ c. Paragraph (e)(1)(i)(B) is amended by adding a new sentence to the end of the paragraph.

■ d. Paragraph (e)(1)(i)(F) is revised.

■ e. The introductory text of paragraph (f) is revised.

■ f. Paragraph (f)(4) is revised.

The revisions and addition read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) *Determining deductions.* Deductible expenses include only certain dependent care, shelter, medical and, at State agency option, child support costs as described in § 273.9.

* * * * *

(8) *Optional child support deduction.* If the State agency opts to provide households with an income deduction rather than an income exclusion for legally obligated child support payments in accordance with § 273.9(d)(5), the State agency may budget such payments in accordance with paragraphs (d)(2) through (d)(5) of this section, or retrospectively, in accordance with § 273.21(b) and § 273.21(f)(2), regardless of the budgeting system used for the household's other circumstances.

(e) * * *

(1) * * *

(i) * * *

(B) * * * If the State agency has chosen to treat legally obligated child support payments as an income exclusion in accordance with § 273.9(c)(17), multiply the excluded earnings used to pay child support by 20 percent and subtract that amount from the total gross monthly income.

* * * * *

(F) If the State agency has chosen to treat legally obligated child support payments as a deduction rather than an exclusion in accordance with § 273.9(d)(5), subtract allowable monthly child support payments in accordance with § 273.9(d)(5).

* * * * *

(f) *Certification periods.* The State agency must certify each eligible household for a definite period of time. State agencies must assign the longest certification period possible based on the predictability of the household's circumstances. The first month of the certification period will be the first month for which the household is eligible to participate. The certification period cannot exceed 12 months except to accommodate a household's transitional benefit period and as specified in paragraphs (f)(1) and (f)(2) of this section.

* * * * *

(4) *Shortening certification periods.* The State agency may not end a household's certification period earlier than its assigned termination date, unless the State agency receives information that the household has become ineligible, the household has not complied with the requirements of § 273.12(c)(3), or the State agency must shorten the household's certification period to comply with the requirements of § 273.12(a)(5). Loss of public assistance or a change in employment status is not sufficient in and of itself to meet the criteria necessary for shortening the certification period. The State agency must close the household's case or adjust the household's benefit amount in accordance with § 273.12(c)(1) or (c)(2) in response to reported changes. The State agency must issue a notice of adverse action as provided in § 273.13 to shorten a participating household's certification period in connection with imposing the simplified reporting requirement. The State agency may not use the Notice of Expiration to shorten a certification period, except that the State agency must use the Notice of Expiration to shorten a household's certification period when the household is receiving transitional benefits under Subpart H, has not reached the maximum allowable number of months in its certification period during the transitional period, and the State agency has chosen to recertify the household in accordance with § 273.28(b). If the transition period results in a shortening of the household's certification period, the State agency shall not issue a household a notice of adverse action but shall specify in the transitional notice required under § 273.29 that the household must be recertified when it reaches the end of the transitional benefit period or if it returns to TANF during the transitional period.

* * * * *

■ 14. In § 273.11:

■ a. Paragraph (c)(1)(ii) is amended by redesignating paragraphs (c)(1)(ii)(B) and (c)(1)(ii)(C) as paragraphs (c)(1)(ii)(C) and (c)(1)(ii)(D), respectively, and adding a new paragraph (c)(1)(ii)(B).

■ b. Paragraph (c)(2)(iv) is amended by redesignating paragraphs (c)(2)(iv)(B) and (c)(2)(iv)(C) as paragraphs (c)(2)(iv)(C) and (c)(2)(iv)(D), respectively, and adding a new paragraph (c)(2)(iv)(B).

The additions read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(B) Assigning a standard deduction to the household;

* * * * *

(2) * * *

(iv) * * *

(B) Assigning a standard deduction to the household;

* * * * *

■ 15. Designate §§ 273.12, 273.13, and 273.14 as Subpart E of part 273 and add a subpart heading to read as follows:

Subpart E—Continuing Participation

■ 16. In § 273.12:

■ a. The heading is revised;

■ b. Paragraph (a)(1) introductory text is amended by adding a sentence after the second sentence;

■ c. Paragraph (a)(1)(vi) is amended by adding a new sentence to the end of the paragraph;

■ d. Paragraph (a)(1)(vii) is removed and paragraph (a)(1)(viii) is redesignated as paragraph (a)(1)(vii);

■ e. Paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(6) and (a)(7) respectively, and a new paragraph (a)(5) is added;

■ f. Newly redesignated paragraph (a)(6) introductory text is amended by removing the first sentence and by adding four new sentences to the beginning of the paragraph;

■ g. A new paragraph (b)(1)(vi) is added;

■ h. Paragraph (b)(2) is revised;

■ i. The introductory text of paragraph (c) is amended by:

■ 1. Removing the word "shall" in the second sentence and adding in its place the word "may";

■ 2. Removing the word "However," at the beginning of the fourth sentence and capitalizing the next word, "During"; and

■ 3. Adding one new sentence after the first sentence.

■ j. A new paragraph (c)(4) is added;

■ k. Paragraph (f)(4) is removed.

The additions and revisions read as follows:

§ 273.12 Reporting requirements.

(a) * * *

(1) * * * Simplified reporting households are subject to the procedures as provided in paragraph (a)(5) of this section. * * *

* * * * *

(vi) * * * However, the State agency may remove this reporting requirement if it has chosen to use information provided by the State's CSE agency in determining a household's legal obligation to pay child support, the amount of its obligation, and amounts the household has actually paid in accordance with § 273.2(f)(1)(xii).

* * * * *

(5) The State agency may establish a simplified reporting system in lieu of the change reporting requirements specified under paragraph (a)(1) of this section. The following requirements are applicable to simplified reporting systems:

(i) *Included households.* The State agency may include any household certified for at least 4 months within a simplified reporting system.

(ii) *Notification of simplified reporting requirement.* At the initial certification, recertification and when the State agency transfers the households to simplified reporting, the State agency shall provide the household with the following:

(A) A written and oral explanation of how simplified reporting works;

(B) A written and oral explanation of the reporting requirements including:

(*1*) What needs to be reported and verified;

(*2*) When the report is due;

(*3*) How to obtain assistance; and

(*4*) The consequences of failing to file a report.

(C) Special assistance in completing and filing periodic reports to

households whose adult members are all either mentally or physically handicapped or are non-English speaking or otherwise lacking in reading and writing skills such that they cannot complete and file the required report; and

(D) A telephone number (toll-free number or a number where collect calls will be accepted outside the local calling area) which the household may call to ask questions or to obtain help in completing the periodic report.

(iii) *Periodic report.* (A) The State agency may require a household to submit a periodic report on its circumstances from once every 4 months up to once every 6 months. The State agency need not require a household certified for 6 months or less to submit a periodic report during its certification period. However, except for households in which all adults are elderly or disabled with no earned income, a household certified for more than 6 months must submit a periodic report at least once every 6 months. Households in which all adults are elderly or disabled with no earned income must not be required to submit periodic reports more frequently than once a year.

(B) The periodic report form must request from the household information on any changes in circumstances in accordance with paragraphs (a)(1)(i) through (a)(1)(vii) of this section and conform to the requirements of paragraph (b)(2) of this section.

(C) If the household files a complete report resulting in reduction or termination of benefits, the State agency shall send an adequate notice, as defined in § 271.2 of this chapter. The notice must be issued so that the household will receive it no later than the time that its benefits are normally received. If the household fails to provide sufficient information or verification regarding a deductible expense, the State agency will not terminate the household, but will instead determine the household's benefits without regard to the deduction.

(D) If a household fails to file a complete report by the specified filing date, the State agency will send a notice to the household advising it of the missing or incomplete report no later than 10 days from the date the report should have been submitted. If the household does not respond to the notice, the household's participation shall be terminated. The State agency may combine the notice of a missing or incomplete report with the adequate notice of termination described in paragraph (a)(5)(iii)(C) of this section.

(E) The periodic report form shall be the sole reporting requirement for any information that is required to be reported on the form, except that a household required to report less frequently than quarterly shall report when its monthly gross income exceeds the monthly gross income limit for its household size in accordance with paragraph (a)(5)(v) of this section, and able-bodied adults subject to the time limit of § 273.24 shall report whenever their work hours fall below 20 hours per week, averaged monthly.

(iv) *Processing periodic reports.* In selecting a due date for the periodic report, the State agency must provide itself sufficient time to process reports so that households will receive adequate notice of action on the report in the first month of the new reporting period.

(v) *Reporting when gross income exceeds 130 percent of poverty.* A household subject to simplified reporting in accordance with paragraph (a)(5)(i) of this section, whether or not it is required to submit a periodic report, must report when its monthly gross income exceeds the monthly gross income limit for its household size, as defined at § 273.9(a)(1). The household shall use the monthly gross income limit for the household size that existed at the time of its most recent certification or recertification, regardless of any subsequent changes in its household size.

(vi) *State agency action on changes reported outside of a periodic report.* The State agency must act when the household reports that its gross monthly income exceeds the gross monthly income limit for its household size. For other changes, the State agency need not act if the household reports a change for another public assistance program in which it is participating and the change does not trigger action in that other program but results in a decrease in the household's food stamp benefit. The State agency must act on all other changes reported by a household outside of a periodic report in accordance with one of the following two methods:

(A) The State agency must act on any change in household circumstances in accordance with paragraph (c) of this section; or

(B) The State agency must act on any change in accordance with paragraph (c)(1) of this section if it would increase the household's benefits. The State agency must not act on changes that would result in a decrease in the household's benefits unless:

(1) The household has voluntarily requested that its case be closed in accordance with § 273.13(b)(12);

(2) The State agency has information about the household's circumstances considered verified upon receipt; or

(3) There has been a change in the household's PA grant, or GA grant in project areas where GA and food stamp cases are jointly processed in accord with § 273.2(j)(2).

(vii) *State plan requirement.* A State agency that chooses to use simplified reporting procedures in accordance with this section must state in its State plan of operation that it has implemented simplified reporting and specify the types of households to whom the reporting requirement applies.

(6) For households eligible for the child support exclusion at § 273.9(c)(17) or deduction at § 273.9(d)(5), the State agency may use information provided by the State CSE agency in determining the household's legal obligation to pay child support, the amount of its obligation and amounts the household has actually paid if the household pays its child support exclusively through its State CSE agency and has signed a statement authorizing release of its child support payment records to the State agency. A household would not have to provide any additional verification unless they disagreed with the information provided by the State CSE agency. State agencies that choose to utilize information provided by their State CSE agency in accordance with this paragraph (a)(6) must specify in their State plan of operation that they have selected this option. If the State agency chooses not to utilize information provided by its State CSE agency, the State agency may make reporting child support payments an optional change reporting item in accordance with paragraph (a)(5) of this section. * * *

* * * * *

(b) * * *

(1) * * *

(vi) If the State agency has chosen to disregard reported changes that affect some deductions in accordance with paragraph (c) of this section, a statement explaining that the State agency will not change certain deductions until the household's next recertification and identifying those deductions.

(2) The quarterly report form, including the form for the quarterly reporting of the child support obligation, and the periodic report form used in simplified reporting under paragraph (a)(5)(ii) of this section, must:

(i) Be written in clear, simple language;

(ii) Meet the bilingual requirements described in § 272.4(b) of this chapter;

(iii) Specify the date by which the agency must receive the form;

(iv) Specify the consequences of submitting a late or incomplete form including whether the State agency shall delay payment if the form is not received by a specified date;

(v) Specify the verification the household must submit with the form;

(vi) Inform the household where to call for help in completing the form;

(vii) Include a statement to be signed by a member of the household indicating his or her understanding that the information provided may result in a reduction or termination of benefits;

(viii) Include a brief description of the Food Stamp Program fraud penalties;

(ix) Include a statement explaining that the State agency will not change certain deductions until the household's next recertification and identify those deductions if the State agency has chosen to disregard reported changes that affect certain deductions in accordance with paragraph (c) of this section;

(x) If the form requests Social Security numbers, include a statement of the State agency's authority to require Social Security numbers (including the statutory citation, the title of the statute, and the fact that providing Social Security numbers is mandatory), the purpose of requiring Social Security numbers, the routine uses for Social Security numbers, and the effect of not providing Social Security numbers. This statement may be on the form itself or included as an attachment to the form.

* * * * *

(c) * * * However, the State agency has the option to disregard a reported change to an established deduction in accordance with paragraph (c)(4) of this section. * * *

* * * * *

(4) *State agency option for processing changes in deductible expenses.* (i) If the household reports a change to an established deduction amount during the first six months of the certification period, other than a change in earnings or residence, that would affect the household's eligibility for, or amount of, the deduction under § 273.9(d), the State agency may at its option disregard the change and continue to provide the household the deduction amount that was established at certification until the household's next recertification or after the sixth month for households certified for 12 months. When a household reports a change in residence, the State agency must investigate and take action on potential changes in shelter costs arising from this reported change. However, if a household fails to provide information regarding the associated changes in shelter costs within 10 days of the report, the State agency should send a notice to the household that their allotment will be recalculated without the deduction. The notice will make it clear that the household does not need to await its first regular utility or rental payments to contact the food stamp office. Alternative forms of verification can be accepted, if necessary.

(ii) In the case of a household assigned a 24-month certification period in accordance with § 273.10(f)(1) and (f)(2), the State agency must act on any disregarded changes reported during the first 12 months of the certification period at the required 12-month contact for elderly and disabled households and in the thirteenth month of the certification period for households residing on a reservation who are required to submit monthly reports. Changes reported during the second 12 months of the certification period can be disregarded until the household's next recertification.

(iii) If the State agency chooses to act on changes that affect a deduction, it may not act on changes in only one direction, i.e., changes that only increase or decrease the amount of the deduction, but must act on all changes that affect the deduction.

(iv) The State agency may disregard changes reported by the household in accordance with paragraph (a)(1) of this section and changes it learns of from a source other than the household. The State agency must not disregard new deductions, changes in earned income or changes in shelter costs arising from a reported change in residence until the household's next recertification or after the sixth month of a 12-month certification period but must act on those reports in accordance with paragraphs (c)(1) and (c)(2) of this section. When a household reports a change in residence, the State agency must investigate and take action on potential changes in shelter costs arising from this reported change. However, if a household fails to provide information regarding the associated changes in shelter costs within 10 days of the report, the State agency should send a notice to the household that their allotment will be recalculated without the deduction. The notice will make it clear that the household does not need to await its first regular utility or rental payments to contact the food stamp office. Alternative forms of verification can be accepted, if necessary.

(v) A State agency that chooses to postpone action on reported changes in deductions in accordance with this paragraph (c) must state in its State plan of operation that it has selected this option and specify the deductions affected.

* * * * *

■ 17. Designate §§ 273.15, 273.16, 273.17, 273.18, and 273.19 as Subpart F of part 273 and add a subpart heading to read as follows:

Subpart F—Disqualification and Claims

■ 18. Designate §§ 273.20, 273.21, 273.22, 273.23, 273.24, and 273.25 as Subpart G of part 273 and add a subpart heading to read as follows:

Subpart G—Program Alternatives

■ 19. Add Subpart H to read as follows:

Subpart H—The Transitional Benefits Alternative

Sec.
273.26 General eligibility guidelines.
273.27 General administrative guidelines.
273.28 Application for Food Stamp Program recertification.
273.29 Transitional notice requirements.
273.30 Transitional benefit alternative change reporting requirements.
273.31 Closing the transitional period.
273.32 Households who return to TANF during the transitional period.

Subpart H—The Transitional Benefits Alternative

§ 273.26 General eligibility guidelines.

The State agency may elect to provide households leaving TANF with transitional food stamp benefits as provided in this section. A State agency that chooses to provide transitional benefits must state in its State plan of operation that it has selected this option and specify the categories of households eligible for such benefits, the maximum number of months for which transitional benefits will be provided and any other items required to be included under this subpart H. The State agency may choose to limit transitional benefits to households in which all members had been receiving TANF, or it may provide such benefits to any household in which at least one member had been receiving TANF.

The State agency may not provide transitional benefits to a household which is leaving TANF when:

(a) The household is leaving TANF due to a TANF sanction;

(b) The household is a member of a category of households designated by the State agency as ineligible for transitional benefits;

(c) All household members are ineligible to receive food stamps because they are:

(1) Disqualified for intentional program violation in accordance with § 273.16;

(2) Ineligible for failure to comply with a work requirement in accordance with § 273.7;

(3) Receiving SSI in a cash-out State in accordance with § 273.20;

(4) Ineligible students in accordance with § 273.5;

(5) Ineligible aliens in accordance with § 273.4;

(6) Disqualified for failing to provide information necessary for making a determination of eligibility or for completing any subsequent review of its eligibility in accordance with § 273.2(d) and § 273.21(m)(1)(ii);

(7) Disqualified for knowingly transferring resources for the purpose of qualifying or attempting to qualify for the program as provided at § 273.8(h);

(8) Disqualified for receipt of multiple food stamps;

(9) Disqualified for being a fleeing felon in accordance with § 273.11(n); or

(10) Able-bodied adults without dependents who fail to comply with the requirements of § 273.24;

(d) The State agency has the option to exclude households where all household members are ineligible to receive food stamps because they are:

(1) Disqualified for failure to perform an action under Federal, State or local law relating to a means-tested public assistance program in accordance with § 273.11(k);

(2) Ineligible for failing to cooperate with child support agencies in accordance with § 273.11(o) and (p); or

(3) Ineligible for being delinquent in court-ordered child support in accordance with § 273.11(q).

(e) The State agency must use procedures at § 273.12(f)(3) to determine the continued eligibility and benefit level of households denied transitional benefits under this section 273.26.

§ 273.27 General administrative guidelines.

(a) When a household leaves TANF, the State agency may freeze for up to 5 months the household's benefit amount after making an adjustment for the loss of TANF. This is the household's transitional period. To provide the full transitional period, the State agency may extend the certification period for up to 5 months and may extend the household's certification period beyond the maximum periods specified in § 273.10(f). Before initiating the transitional period, the State agency must recalculate the household's food stamp benefit amount by removing the TANF payment from the household's food stamp income. At its option, the State agency may also adjust the benefit to account for:

(1) Changes in household circumstances that it learns about from another State or Federal means-tested assistance program in which the household participates; or

(2) Automatic annual changes in the food stamp benefit rules, such as the annual cost of living adjustment.

(b) The State agency must include in its State plan of operation whether it has elected to make these changes:

(1) At the beginning of the transitional period; or

(2) Both at the beginning and during the transitional period.

(c) When a household leaves TANF, the State agency at its option may end the household's existing certification period and assign the household a new certification period that conforms to the transitional period. The recertification requirements at § 273.14 that would normally apply when the household's certification period ends must be postponed until the end of the new certification period. If the transitional period results in a shortening of the household's certification period, the State agency shall not issue a household a notice of adverse action under § 273.10(f)(4) but shall specify in the transitional notice required under § 273.29 that the household must be recertified when it reaches the end of the transitional benefit period or if it returns to TANF during the transitional period.

§ 273.28 Application for Food Stamp Program recertification.

At any time during the transitional period, the household may apply for recertification. If a household applies for recertification during its transitional period, the State agency shall observe the following procedures:

(a) The State agency must schedule an interview in accordance with § 273.2(e);

(b) The State agency must provide the household with a notice of required verification in accordance with § 273.2(c)(5) and provide the household a minimum of 10 days to provide the required verification in accordance with § 273.2(f).

(c) Households that have met all of the required application procedures shall be notified of their eligibility or ineligibility as soon as possible, but no later than 30 calendar days following the date the application was filed.

(1) If the State agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the State agency shall continue processing the application while continuing the household's transitional benefits.

(2) If the application process cannot be completed due to State agency fault, the State agency must continue to process the application and provide a full month's allotment for the first month of the new certification period. The State agency shall determine cause for any delay in processing a recertification application in accordance with the provisions of § 273.2(h)(1).

(d) If the application process cannot be completed because the household failed to take a required action, the State agency may deny the application at that time or at the end of the 30 days. If the household is determined to be ineligible for the program, the State agency will deny the household's application for recertification and continue the household's transitional benefits to the end of the transitional benefit period, at which time the State agency will either recertify the household or send a RFC in accordance with § 273.31;

(e) If the household is determined eligible for the regular Food Stamp Program but is entitled to a benefit lower than its transitional benefit, the State agency shall encourage the household to withdraw its application for recertification and continue to receive transitional benefits. If the household chooses not to withdraw its application, the State agency has the option to deny the application and allow the transitional period to run its course, or complete the recertification process and issue the household the lower benefit amount beginning with the first month of the new certification period.

(f) If the household is determined eligible for the program, its new certification period will begin with the first day of the month following the month in which the household submitted the application for recertification. The State agency must issue the household full benefits for that month. For example, if the household applied for recertification on the 25th day of the third month of a 5-month transitional period, and the household is determined eligible for the regular Food Stamp Program, the State agency will begin the household's new certification period on the first day of what would have been the fourth month of the transitional period.

(g) If the household is eligible for the regular Food Stamp Program and entitled to benefits higher than its transitional benefits, and the State agency has already issued the household transitional benefits for the first month of its certification period,

the State agency must issue the household a supplement.

(h) Applications for recertification submitted in the final month of the transitional period must be processed in accordance with § 273.14.

§ 273.29 Transitional notice requirements.

The State agency must issue a transitional notice (TN) to the household that includes the following information:

(a) A statement informing the household that it will be receiving transitional benefits and the length of its transitional period;

(b) A statement informing the household that it has the option of applying for recertification at any time during the transitional period. The household must be informed that if it does not apply for recertification during the transitional period, the State agency must, at the end of the transitional period, either reevaluate the household's food stamp case or require the household to undergo a recertification;

(c) A statement that if the household returns to TANF during its transitional benefit period, the State agency will either reevaluate the household's food stamp case or require the household to undergo a recertification. However, if the household has been assigned a new certification period in accordance with § 273.27(c), the notice must inform the household that it must be recertified if it returns to TANF during its transitional period;

(d) A statement explaining any changes in the household's benefit amount due to the loss of TANF income and/or changes in household circumstances learned from another State or Federal means-tested assistance program;

(e) A statement informing the household that it is not required to report and provide verification for any changes in household circumstances until the deadline established in accordance with § 273.12(c)(3) or its recertification interview; and

(f) A statement informing the household that the State agency will not act on changes that the household reports during the transitional period prior to the deadline specified in § 273.29(e) and that if the household experiences a decrease in income or an increase in expenses or household size prior to that deadline, the household should apply for recertification.

§ 273.30 Transitional benefit alternative change reporting requirements.

If the household does report changes in its circumstances during the transitional period, the State agency may make the change effective the month following the last month of the transitional period or invite the household to reapply and be certified to receive benefits. However, in order to prevent duplicate participation, the State agency must act to change the household's transitional benefit when a household member moves out of the household and either reapplies as a new household or is reported as a new member of another household. Moreover, the State agency must remove any income, resources and deductible expenses clearly attributable to the departing member.

§ 273.31 Closing the transitional period.

In the final month of the transitional benefit period, the State agency must do one of the following:

(a) Issue the RFC specified in § 273.12(c)(3) and act on any information it has about the household's new circumstances in accordance with § 273.12(c)(3). The State agency may extend the household's certification period in accordance with § 273.10(f)(5) unless the household's certification period has already been extended past the maximum period specified in § 273.10(f) in accordance with § 273.27(a); or

(b) Recertify the household in accordance with § 273.14. If the household has not reached the maximum number of months in its certification period during the transitional period, the State agency may shorten the household's prior certification period in order to recertify the household. When shortening the household's certification period pursuant to this section, the State agency must send the household a notice of expiration in accordance with § 273.14(b).

§ 273.32 Households who return to TANF during the transitional period.

If a household receiving transitional benefits returns to TANF during the transitional period, the State agency shall end the household's transitional benefits and follow the procedures in § 273.31 to determine the household's continued eligibility and benefits for the Food Stamp Program. This includes processing the application within 30 days. However, for a household assigned a new certification period in accordance with § 273.27(c), the household must be recertified if it returns to TANF during its transitional period.

Dated: January 11, 2010.

Kevin Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

Note: The following attachment will not appear in the Code of Federal Regulations.

Regulatory Impact Analysis—Sections 4101 through 4401

This action is required to implement provisions of the Farm Security and Rural Investment Act of 2002 FSRIA (Pub. L. 107–171), which was enacted on May 13, 2002. This rulemaking amends Food Stamp Program (FSP) regulations to implement 11 provisions of FSRIA that establish new eligibility and certification requirements for the receipt of food stamps. The Department has estimated the total FSP costs to the Government of the FSRIA provisions implemented in the final rule as $2.669 billion in fiscal year (FY) 2010 and $13.541 billion over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

Encouragement of Payment of Child Support—Section 4101

Discussion: Current rules at 7 CFR 273.9(d)(5) provide households with a deduction from income for legally obligated child support payments paid by a household member to or for a non-household member. This provision gives State agencies the option of treating such payments as either an income exclusion or an income deduction. The rule provides that: (1) A household can receive an exclusion or deduction only for legally obligated child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member (vendor payments); (2) no exclusion or deduction is allowed for any amounts the household member is not legally obligated to pay; (3) State agencies may determine what constitutes a legal obligation to pay child support under State law; (4) an exclusion or deduction is allowed for amounts paid toward child support arrearages; (5) if the State agency opts to provide households a deduction for legally obligated child support payments rather than an exclusion, the deduction must be determined before computation of the excess shelter deduction; and (6) State agencies may, in determining a household's legal obligation to pay child support, the amount of its obligation, and amounts the household has actually paid, rely solely on information provided through its State's Child

Support Enforcement agency and not require further reporting or verification by the household.

Effect on Low-Income Families: The effect of this provision on low-income families will depend on their State of residence. Families that live in States that choose to treat child support payments as a deduction from income will see no change in their eligibility or benefit. Some families that live in States that elect to exclude child support payments from countable income may become eligible if the exclusion lowers their gross income below 130 percent of the poverty guidelines.

Cost Impact: The cost to the Government of this provision is minimal (less than $1 million) in FY 2010 and over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

To estimate the effect of this provision, we used a micro-simulation model and data from the U.S. Census Bureau's Survey of Income and Program Participation (SIPP) which includes information on household income and expenses. We simulated the impact of excluding all child support payments, rather than deducting these payments, when determining household FSP eligibility and benefit levels. Among current participants, there is no impact; the effect of treating the payment as an income exclusion or as a deduction is the same in the benefit calculation. However, this provision could make some families newly eligible if their gross income is above 130 percent of the poverty guidelines when the child support payment is counted as income and less than 130 percent when the payment is excluded. Some of these newly eligible families may choose to participate in the FSP, potentially increasing program costs. In our analysis, we found a very small number of un-weighted cases in the SIPP data, affected by this provision. Estimates based on so few un-weighted cases are unreliable, but suggests that the number of affected households is minimal. In addition, the cost impact depends on the number of States that elect to exclude, rather than deduct, child support. As of November 2007, only fourteen States had made this election. Therefore, it is estimated that this provision will have a minimal impact on FSP costs.

Participation Impacts: Very few households will be affected by this provision.

Uncertainty: There is a moderate level of uncertainty associated with this estimate. While the estimate is based on a large national dataset, the small number of un-weighted cases affected by this provision introduces substantial uncertainty. However, the small number of affected cases indicates that the cost to the Government of this provision is likely to be small.

Simplified Definition of Income—Section 4102

Discussion: This provision adds three new categories of income that, at the option of the State agency, may be excluded from household income in determining a household's eligibility for FSP and its benefit levels. The three categories of income are:

(1) Educational loans on which payment is deferred, grants, scholarships, fellowships, veteran's educational benefits and the like that are required to be excluded under a State's Medicaid rules as well as student financial assistance received under 20 U.S.C. 1087uu of the Higher Education Act; (2) State complementary assistance program payments excluded for the purpose of determining eligibility for Medicaid under section 1931 of the SSA; and (3) any types of income that the State agency does not consider when determining eligibility or benefits for TANF cash assistance or eligibility for Medicaid under section 1931. However, the statute provides an extensive list of income types that may not be excluded and gives the Secretary authority to propose other income types that may not be excluded. As a result, the rule provides that a State agency may not exclude the following types of income: benefits under Titles I (Grants to States for Old-Age Assistance for the Aged), II (Federal Old Age, Survivors, and Disability Insurance Benefits), IV (Grants to States for Aid and Services to Needy Families with Children and for Child-Welfare Services), X (Grants to States for Aid to the Blind), XIV (Grants to States for Aid to the Permanently and Totally Disabled) or XVI (Grants To States For Aid To The Aged, Blind, Or Disabled and Supplemental Security Income) of the SSA; wages and salaries; regular payments from a government source (such as unemployment benefits and general assistance); worker's compensation; or legally obligated child support payments made to the household. This rule also allows States to include certain income as earned income if the household is receiving TANF cash assistance or Medicaid.

Discretion was given to USDA to mandate what other types of income could not be excluded by States implementing this option. Of the types of income not explicitly included in the FSRIA, FNS is adding alimony, self-employment income, annuities, and pensions and retirement benefits. FNS could have allowed States to exclude these types of income but decided that they ought to be counted as income because they are very similar to other types of income we count (for example, earnings other than self-employment or child support income).

Effect on Low-Income Families: This provision will reduce reporting burdens and increase benefits for low-income families that have these sources of income to the extent they live in States that take this State option.

Cost Impact: The cost to the Government of this provision is $13 million in FY 2010, and $65 million over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

As stated above, there are three components of this provision. The first excludes education assistance excluded under the SSA Title XIX (Medicaid) and 20 U.S.C. 1087uu of the Higher Education Act. Relatively few current FSP households have income from these sources. Excluding this income would increase total FSP benefits by $12.5 million (0.02 percent of projected benefit costs in fiscal year 2010) if all States adopted the option.

The second component of this estimate is to exclude State Complementary Assistance Programs. Because there is little information on the State programs that fit into this category and the number of people who receive assistance, the provision will have an unknown, but we presume, minimal impact.

The third component is the option to allow States to exclude some types of income excluded in their cash assistance and Medicaid programs. The Congressional Budget Office estimates this provision would cost $2 million a year; USDA has concurred with this estimate.

Each of the estimates shown above represents full-year national costs if all States adopt all options. Since passage of the FSRIA, 29 States have implemented one or more of the options, representing 90.6 percent of total issuance in fiscal year 2006. We therefore take only 90.6 percent of the estimated costs of each provision. Therefore the total impact of this provision is $13 million in FY 2010 and $65 million over the 5 years FY 2010 through FY 2014.

Participation Impacts: We expect minimal effects of these provisions on participation. None of the optional income exclusions are likely to make many more households eligible. Some unknown but small number of current

participants will receive somewhat higher benefits.

Uncertainty: There is a moderate level of uncertainty associated with this estimate. While part of the estimate is based on a large national dataset, the small number of un-weighted cases affected by these provisions introduces substantial uncertainty. However, the small number of affected cases indicates that the cost to the Government of this provision is likely to be small.

Alternatives: FNS considered whether or not to allow States to exclude alimony, self-employment income, annuities, and pensions and retirement benefits from household income. The final rule does not allow States to exclude these types of income because they are believed to be very similar to other types of income that are counted.

Standard Deduction—Section 4103

Discussion: This provision replaces a fixed standard deduction (used in calculating a household's benefit level) with one that is adjusted annually and that varies by household size. This rule provides that: (1) For the 48 contiguous States, the District of Columbia, Hawaii, Alaska, and the U.S. Virgin Islands, the standard deduction will be equal to 8.31 percent of the FSP's monthly net income limit for household sizes up to six; (2) for Guam, the standard deduction will be equal to 8.31 percent of twice the FSP's monthly net income limit for household sizes up to six; (3) for the 48 contiguous States, the District of Columbia, Hawaii, Alaska, the U.S. Virgin Islands, and Guam, households with more than six members must receive the same standard deduction as a six-person household; and (4) the standard deduction for any household must not fall below the standard deduction in effect in FY 2002.

Effect on Low-Income Families: This provision will affect some low-income families not already receiving the maximum FSP benefit by allowing them to claim a larger standard deduction and to obtain higher FSP benefits. Larger households will be affected by the provision at implementation and smaller households will be affected over time as the new values of the standard deduction rise with inflation.

Cost Impact: We estimate that the cost to the Government of this provision will be $424 million in FY 2010 and $2.510 billion over the 5 years, FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

First, the new standard deduction values were projected for each household size (one-person through six or more-persons) for each year. The new standard deduction values were based on monthly poverty guideline values by household size, as calculated by the U.S. Department of Health and Human Services (DHHS) and used for FSP eligibility standards. The poverty guidelines used for setting the FY 2010 FSP net income limits were published on January 23, 2009. The poverty threshold values for use in FY 2011 and beyond were calculated by inflating the FY 2010 values by the Consumer Price Index for All Urban Consumers as forecasted in the Office of Management and Budget's economic assumptions. For each household size and for each year, these values were multiplied by 8.31 percent. Comments received on the proposed rule suggested that the result be rounded up to the nearest whole dollar to ensure that no household be given a standard deduction less than 8.31 percent. This comment is incorporated into the final rule. Therefore, beginning in FY 2008, the result was rounded up to the nearest whole dollar. The rounded product was then compared to the current standard deduction value of $134, the higher of which was adopted as the new standard deduction for each household size. (For example, the monthly poverty threshold for a five-person household is $2,149 in FY 2010. Multiplying this value by 8.31 percent and rounding up yields a product of $179, which is larger than the standard deduction value of $134. The new standard deduction value for these households is $179.

EXPECTED DOLLAR INCREASE IN THE FSP STANDARD DEDUCTION BY HOUSEHOLD SIZE AND FISCAL YEARS 2010 THROUGH 2014

Household size	2010	2011	2012	2013	2014
1 person	0	0	0	0	0
2 persons	0	0	0	0	0
3 persons	0	0	0	1	4
4 persons	19	22	25	28	32
5 persons	45	48	52	56	60
6+ persons	71	74	79	83	88

Second, the number of households affected for each household size and in each year was estimated based on participation projections from the President's budget baseline. The projections were adjusted based on data on the proportion of households of each size not receiving the maximum allotment, from *Characteristics of Food Stamp Households: Fiscal Year 2007.* Households already receiving the maximum allotment are excluded because their benefits cannot increase even though the larger standard deduction decreases their net income. [For example, 5.3 percent of all households included five members in 2007, 18.5 percent of which received the maximum benefit. The projected total number of FSP households in 2010 is 15,896,000. Thus, the number of five-person households affected by the provision in FY 2010 was calculated as 15,896,000 households times 5.3 percent (in five-person households) times 81.5 percent (not receiving the maximum benefit)—equal to 687,000 five-person households.]

The cost of this provision was then calculated for each household size in each year. The cost equaled the product of the change in the standard deduction for each household size, the number of households affected, 12 months, and a benefit reduction rate of 39 percent. This benefit reduction rate represents the average change in benefits for each dollar change in the standard deduction. Because the excess shelter deduction is calculated based on a household's gross income less all other deductions, a change in the standard deduction can change the shelter deduction for some households. In 2007, about 60 percent of food stamp households claimed a shelter deduction that is expected to increase with an increase in the standard deduction. Among these households, the benefit reduction rate is 45 percent. The remaining 40 percent of food stamp households did not claim a shelter deduction or already receive the maximum shelter deduction allowable. Among these households, the benefit reduction rate is 30 percent. Taking the weighted average of these two groups yields a benefit reduction rate of 39

percent. (For five-person households in FY 2010, the cost of this provision was estimated as a $45 change in the standard deduction ($179–$134), times 687,000 households, times 12 months, times 39 percent—equal to about $144,607 million.)

The individual costs for each household size were summed in each year and rounded to the nearest million dollars.

Participation Impacts: While we do not expect this provision to significantly increase FSP participation, we estimate that setting the standard deduction equal to 8.31 percent of poverty by household size will raise benefits among households currently participating. In FY 2010, households with four or more persons will be affected by this provision. Persons in smaller households will be affected in later years, as the indexed values of 8.31 percent of the poverty guidelines for their household size exceed $134. The number of persons affected was calculated from the number of households affected, times the number of persons per households, summed across household sizes. In FY 2010, we expect almost 11.9 million persons to receive an average of $3.57 more per month in food stamp benefits as a result of this provision.

Uncertainty: Because these estimates are largely based on recent quality control data, they have a high level of certainty. To the extent that the distribution of FSP households by household size and income changes over time, the cost to the Government could be larger or smaller. To the extent that actual poverty guidelines are higher or lower than projected, the cost to the Government could be larger or smaller.

Alternatives: The proposed rule stated that the methodology for calculating the standard deduction each fiscal year would be based on 8.31 percent of the monthly net income limits for household sizes one through six, rounded to the nearest whole dollar ("regular rounding rules"). Comments received on the proposed rule pointed out, however, that the regular rounding rules could lead to a calculation that is fractionally less than 8.31 percent of the net income limit because the Department would round down in cases where the number of odd cents in the exact figure is less than 50. As a result, the final rule will "round up" all fractional results to ensure that no household is denied a standard deduction at least "equal to" 8.31 percent of the net income limits.

Simplified Utility Allowance—Section 4104

Discussion: This provision simplifies current rules relating to the SUA when the State agency elects to make the SUA mandatory. The rule provides that State agencies which elect to make the SUA mandatory: (1) May provide a SUA that includes heating or cooling costs to residents of public housing units which have central utility meters and which charge the households only for excess heating or cooling costs; and (2) must not prorate the SUA when a household shares living quarters with others. The rule also provides that in determining if a State agency's mandatory SUAs are cost neutral, the Department must not count any increase in cost that is due to providing a SUA that includes heating or cooling costs to residents of certain public housing units or to eliminating proration of the SUA for a household that shares living quarters and expenses with others.

Effect on Low-Income Households: Relative to current regulations, this provision will increase the shelter deduction and raise FSP benefits among low-income households in shared living arrangements and certain public housing situations to the extent they reside in States with mandatory SUA policies. This provision will decrease the shelter deduction and lower FSP benefits among low-income households with utility expenses greater than the SUA to the extent that they reside in States that adopt mandatory SUA policies as a result of this provision.

Cost Impact: We estimate that the cost to the Government of this provision will be $532 million in FY 2010 and $2.605 billion over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President' budget baseline.

According to individual State SUA plans, there were 11 States with mandatory SUA policies in FY 2002 at the time of enactment. Based on participant data from the National Data Bank, those 11 States contained approximately 25 percent of all food stamp participants in FY 2002. By November 2007, the number of States with mandatory SUA policies had grown to 40. As a result of this provision, roughly 66 percent of FSP participants are now subject to mandatory SUA policies. We consider this provision to be fully implemented by FY 2010 and attribute the increase in States with mandatory SUA policies since FY 2002 to this provision.

The cost impact of this provision includes three components: (1) Savings from limiting households with high utility expenses to the SUA value among States adopting a mandatory SUA policy as a result of this provision; (2) increased costs due to ending the SUA proration requirements; and (3) increased costs due to extending the full heating and cooling SUA to certain households in public housing with shared utility meters.

The national savings impact of limiting households with high utility expenses to a mandatory SUA was estimated using a micro-simulation model with September 2005 SIPP data and current FSP program rules. This model was used because SIPP contains information on household income and expenses, including the information about household utility expenses necessary to estimate changes in household benefits resulting from changes to their excess shelter expense deduction value. We used this model to substitute the mandatory SUA for actual utility expenses. We estimate that this substitution would reduce total FSP benefits by 0.248 percent. We applied this percentage to the baseline cost projections for each year and adjusted the product to reflect the proportion of FSP participants (40 percent) expected to be made newly subject to a mandatory SUA as a result of this provision.

The national cost impact of ending the proration requirement of the heating and cooling SUA was estimated using quality control data prior to enactment. quality control data includes information on household income and expenses and allows us to identify which households received a prorated SUA. Using this data, we calculated the change in each household's benefit as a result of changing the SUA proration rules and estimated a national increase in benefits of 1.509 percent. This percentage increase was multiplied by the baseline cost projections from the President's budget baseline for each year. Since this provision is available only to those households in States with mandatory SUA policies, the costs were adjusted to account for the proportion of FSP participants subject to mandatory SUA policies. As outlined above, we estimate that 66 percent of FSP participants were subject to mandatory SUA policies in FY 2007 and beyond.

The national cost impact of extending the full heating and cooling SUA to certain households in public housing with shared utility meters was based on participation projections from the President's FY 2010 budget baseline. Based on tabulations of control data prior to enactment, 39.2 percent of households reported positive utility expenses lower than their State's SUA.

These were generally households who were claiming actual utility expenses rather than the SUA when determining their excess shelter expense deduction and were likely to be affected by this provision. Their average utility expenses were estimated at $109 and the average SUA value was $244. Based on data from the U.S. Department of Housing and Urban Development (HUD), about 8 percent of these households were assumed to live in public housing. Based on multiple conversations with officials from HUD, the U.S. Department of Energy, utility companies, and building associations, the proportion of those households with shared utility meters was assumed to be five percent. The national cost for the provision was then determined by multiplying the number of affected households (39.2 percent of the baseline number of households in each fiscal year times 8 percent times 5 percent) times the average difference in the utility expenses used for the shelter deduction ($244 less $109 = $135) times 12 months times a benefit reduction rate of 30 percent. The benefit reduction rate represents how much benefits change for each dollar change in the excess shelter deduction. Again, the national cost was then adjusted to reflect the proportion of FSP participants subject to mandatory SUA policies, approximately 66 percent of participants.

The impacts of the three components were summed and rounded to the nearest million dollars.

Participation Impact: In FY 2010, 384,000 persons are expected to gain an average of $127.92 per month in FSP benefits as a result of this provision. In addition, 35,000 persons are expected to lose an average of $139.30 per month in FSP benefits, including 27,000 persons who will be ineligible in 2010 as a result of this provision and not participate in FSP. The number of persons made newly eligible by this provision is expected to be minimal.

Participation effects were estimated using the same methodology as the cost estimate. The simulation results from quality control and SIPP data produced participation impacts for those gaining benefits, losing benefits and losing eligibility for those affected by eliminating the SUA proration requirement and households with high utility expenses made newly subject to a mandatory SUA. The impacts, expressed as a percent change from the model's baselines, were multiplied by the participation projections in the President's FY 2010 budget baseline, and were adjusted according to the methodology outlined for the cost estimate. The number of persons in households affected by the public housing component of the provision was estimated by taking the number of households affected times the average number of persons per household. The estimates from the individual components were then summed.

Uncertainty: The estimate of this provision has a moderate level of certainty. The analyses are largely based on the results of computer simulation models of large national datasets, which yield fairly precise estimates. Data on which States choose to adopt this option is quite strong, as it is based on reports from States about their policy choices. However, the estimate on the impact of ending pro-rationing is based on older QC data, because QC data from after enactment of this provision no longer contains the data needed to make this estimate. The most uncertain part of the estimate is the assumption about the number of households in public housing with shared meters. Despite an extensive search, data on this subject were difficult to obtain. The assumption that 5 percent of families in public housing have shared meters is a best guess, but is fairly uncertain. To the extent that the actual number of households with shared meters is smaller or larger, the cost to the Government of this provision would be lower or higher.

Simplified Determination of Deductions—Section 4106, and State Option To Reduce Reporting Requirements—Section 4109

Discussion: The provision of the rule implementing Section 4106 provides State agencies the option of disregarding until a household's next recertification any reported changes that affect the amount of deductions for which a household is eligible. However, the State agency must act on any change in a household's excess shelter cost stemming from a change in residence and any changes in the household's earned income. The rule provides: (1) The State agency has the option of ignoring changes (other than changes in earned income and changes in shelter costs related to a change in residence) for all deductions or for any particular deduction; (2) the State agency may ignore changes for deductions for certain categories of households while acting on changes for those same deductions for other types of households; and (3) the State agency may not act on changes in only one direction; *i.e.,* if it chooses to act on changes that increase a household's deduction, it must also act on changes that would decrease the deduction.

The provision of the rule implementing Section 4109 provides State agencies the option to extend simplified reporting procedures, which are restricted to households with earnings under current rules, to all FSP households. The rule provides that: (1) The State agency may include any household certified for at least 4 months within a simplified reporting system, except that the state agency may not include households with no earned income in which all adult members are elderly or disabled; (2) households exempt from periodic reporting, including homeless households and migrant and seasonal farm workers, may be subject to simplified reporting but may not be required to submit periodic reports; (3) the State agency may require other households subject to simplified reporting to submit periodic reports on their circumstances from once every 4 months up to once every 6 months; and (4) households subject to simplified reporting must report when their monthly gross income exceeds the monthly gross income limit for their household size. FNS is extending Section 4109 to homeless and migrant workers, with the distinctions noted above. FNS is using discretion here to allow States to put a homeless person into a simplified reporting system. Another final rule, the Non-citizen Eligibility, and Certification Provisions (NECP) of Public Law 104–193, as Amended by Public Laws 104–208, 105–33, 105–185 (the NCEP Rule) allowed homeless and migrant workers with earnings to be in a simplified reporting system identical to this provision, so for consistency with previous rulemaking, FNS is extending simplified reporting to homeless persons and migrant workers without earnings. The final rule allows states to act on all changes without seeking a waiver from FNS, which many States had done after passage of the FSRIA.

Effect on Low-Income Families: Low-income families who reside in States who implement this option may be impacted by this provision. Changes in household circumstances may be disregarded for up to 6 months, which reduces the reporting burden on households.

Cost impact: The cost to the Government of section 4106—simplified determination of deductions is included in the cost estimate of section 4109—simplified reporting. The cost to the Government in FY 2010 is expected to be $336 million. The 5-year total for FY 2010 through FY 2014 is $1.644 million. These impacts are already incorporated into the President's FY 2010 budget baseline.

Section 4106 allows States to disregard changes in deduction amounts. The impact of this provision is assumed to be included in the cost of simplified reporting. Section 4109 extends the State option of simplified reporting to all households, not just earners that existed under regulation prior to the FSRIA. In addition, FNS implemented a universal quarterly reporting system via the Anticipating Income and Reporting Changes proposed rule for some time prior to passage of the FSRIA. The details of these systems are similar enough that we took the estimated cost of universal quarterly reporting and multiplied by 2 (from 3 months to 6 months). Combined those 47 States accounted for 90.6 percent of all benefit costs in fiscal year 2006; we assume by extension that they account for 90.6 percent of the cost of simplified reporting: 90.6 percent of the estimate equals $336 million in fiscal year 2010.

Participation Impact: This provision only affects current participants in the States that opt to implement. All households who are placed in this reporting system benefit by reducing the frequency of reports they must submit. FY 2007 quality control data indicate that 28.69 percent of all households are coded as being in simplified reporting and have no earnings. In 2010, this represents 10.033 million people affected by this provision. They will see about $2.79 per month more in benefits because of this provision in fiscal year 2010. There are no new participants brought onto the program from this provision.

Uncertainty: There is a moderate level of certainty associated with this estimate. This estimate is based on previous reporting estimates that use SIPP longitudinal data to track how much circumstances change because of the new reporting rules. Adjustments based on quality control data have a high level of certainty as well. Some uncertainty is introduced, however, with the use of two different data sources and other out-of-model adjustments.

Alternatives: For consistency with prior rulemaking, the final rule permits States to extend the certification periods of certain homeless and migrant workers to allow them to be included in a simplified reporting system. The costs of this alternative are thought to be minimal because relatively few homeless and migrants participate in the program.

Simplified Definition of Resources—Section 4107

Discussion: The provision amends current rules relating to the FSP's resource limit. The provision increases the resource limit for households with a disabled person from $2,000 to $3,000. It also provides State agencies the option to exclude from resource consideration any resources that the State agency excludes when determining eligibility for TANF cash assistance or medical assistance under Section 1931 of the SSA. State agencies that choose this option may not exclude cash, licensed vehicles, or readily available amounts deposited in financial institutions when determining FSP eligibility.

Effect on Low-Income Households: Under previous law, only households with elderly members were able to exclude the first $3,000 of countable resources; all other households were subject to the $2,000 resource limit. The provision to raise the asset limit for households with disabled members will bring these households in line with those with elderly members. Second, the provision permits States to exclude some resources currently counted in the FSP. By exercising this option, States will reduce the resource total for some households. As a result, both provisions will increase the number of low-income families who are eligible for FSP benefits by either reducing the amount of assets that are countable or by raising the resource limit for eligibility. These provisions will have no impact on those currently eligible for food stamps.

Cost Impact: We estimate that the cost to the Government of the provision to raise the asset limit for households with disabled members will be $33 million in FY 2010, and $163 million over the 5 years FY 2010 through FY 2014. The cost to the Government of the provision to allow States to exclude non-vehicle and non-cash assets in accordance with their TANF or Medicaid program rules will be $67 million in FY 2010 and $326 million over the 5-year period. The impacts of both provisions are already incorporated into the President's FY 2010 budget baseline.

The estimate to raise the asset limit to $3,000 for households with disabled members was derived using FY 2007 quality control data. Because the provision was fully implemented in FY 2007, the quality control data already included disabled households made eligible by the reform so we were able to estimate the impact of this provision on eligibility and benefits by simulating the reversal of the reform. In other words, we examined current quality control data to determine the value of benefits issued to households with non-categorically-eligible disabled members who had assets greater than $2,000 but less than $3,000. The simulation model indicated that reversing the provision would reduce benefits by 0.057 percent. The annual cost of raising the asset limit for these households was calculated as (positive) 0.057 percent times the baseline cost projections from the President's budget baseline for each year.

The estimate to allow States to exclude non-cash non-vehicle assets that are excluded from their TANF or Medicaid programs was derived from a micro-simulation model using SIPP data and FY 2009 program rules. We used this model because SIPP is the only national survey with detailed information about assets for a sample of low-income households, and because we were able to generate a large enough sample to generate a credible estimate.

Because the only non-vehicle, non-cash asset that SIPP collects data on is retirement savings, our estimate is based on the impact of excluding IRA and Keogh retirement accounts. We simulated the effect of the new provision by excluding these retirement savings from countable assets, identifying households made newly eligible, and determining the value of benefits that would be issued to those newly eligible likely to participate. The model estimated that excluding retirement savings would increase total benefits by 1.71 percent. However, we made a few adjustments to the model results.

First, our experience with the SIPP model is that it overestimates the participation rate among new eligibles in simulations of expanding eligibility to asset-ineligible households, who are more likely to be elderly or working than other households. Therefore, we adjusted the estimate by half. The second adjustment was to only count the impact among the three States that chose to exclude retirement savings—Illinois, Ohio, and Pennsylvania after this law was implemented but prior to the implementation of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246), which excluded retirement savings for all States. The three States accounted for 13.32 percent of benefits issued in FY 2008.

Participation Impact: In FY 2010, 25,000 newly eligible persons living in households with disabled members are expected to participate as a result of the increase in the asset limit. Their average monthly FSP benefit is expected to be $110.46. An additional 31,000 newly eligible persons are expected to

participate as a result of the State option to exclude non-vehicle, non-cash assets in fiscal year 2010 with an average monthly FSP benefit of $178.95. Neither provision will have an impact on the benefit size for those who are currently participating.

The participant impact of the provision to raise the asset limit for disabled households was estimated using the same methodology as the cost estimate. The simulation results using quality control data produced an estimated participation drop of 0.072 percent by lowering the asset limit to $2,000 for disabled households. Applying this percentage to the 2010 President's budget baseline yields a decrease of 25,000 participants in 2010. To show the impact of the participation increase, we simply changed the decrease to an increase.

The participant impact of the provision to allow States to use TANF or Medicaid asset rules on FSP participation was estimated using the same methodology as the cost estimate. The simulation results of the SIPP model produced participation impacts for those gaining eligibility. The impacts, measured as the percentage increase in FSP participation in the SIPP database (1.39 percent), were multiplied by the participation projections in the President's FY 2010 budget baseline and were adjusted according to the methodology outlined for the cost estimate.

Uncertainty: There is a small degree of uncertainty associated with the estimate to raise the asset limit for disabled households. The estimate is based on 2007 quality control data. To the extent that asset values are not accurately recorded, this could affect the validity of the result. However, the data are fairly recent and of high quality.

There is a moderate level of uncertainty associated with the estimate to provide States with an option to exclude non-cash and non-vehicle assets that are excluded by States' TANF plans. The estimate is based on a micro-simulation model with SIPP data, and the sample size of newly eligible and participating households and individuals is rather small. Second, the only non-cash, non-vehicle assets that the SIPP data are able to identify are retirement savings; thus these assets are the only ones included in the estimate.

Transitional Food Stamps for Families Moving From Welfare—Section 4115

Discussion: This provision expands the current option to provide transitional benefits to households leaving the TANF program. The rule provides that State agencies: (1) May lengthen the maximum transitional period from up to three months to up to 5 months; (2) may extend the household's certification period beyond the limits established under current rules to provide the household with up to a full 5 months of transitional benefit; (3) must adjust the household's benefit in the transitional period to take into account the reduction in income due to the loss of TANF; (4) may further adjust the household's benefit in the transitional period to take into account changes in circumstances that it learns of from another program in which the household participates; (5) must permit the household to apply for recertification at any time during the transitional period; (6) may shorten the household's certification period in the final month of the transitional period and require the household to undergo recertification; and (7) must deny transitional benefits to households made ineligible for such benefits by law.

Effect on Low-Income Families: This provision impacts low-income families who leave TANF. If the State opts to provide transitional benefits, these families receive up to 5 months of transitional food stamps after they exit from TANF.

Cost Estimate: The cost to the Government of this provision in FY 2010 is $191 million, and it costs $975 million over the 5 years FY 2010 through FY 2014. These impacts are already incorporated into the President's budget baseline.

This estimate uses data on the number of households receiving transitional benefits in the 2007 quality control data and projects it over the 2010–2014 period using expected FSP participation from the President's FY 2010 budget baseline. We assume that about 48 percent of TANF leavers have earnings and other financial changes that offset the loss of the TANF income and therefore their food stamp benefit is not dramatically different from their pre-transitional benefit amount. Therefore we score the cost of the remaining 52 percent whose FSP benefit is now higher due to the loss of TANF.

We estimate that in FY 2010 there are 49,000 leavers eligible for the transitional benefit. The average food stamp benefit for TANF households in FY 2007 was about $303 a month. However, the statute states that the FSP benefit shall be adjusted due to the loss of TANF cash. The average TANF benefit was $352 a month in FY 2007. A $352 decrease in cash assistance times an expected benefit reduction rate of 0.3250 for households with TANF and earned income produces a $114 increase in FSP benefits. Therefore, we assign a monthly transitional benefit for each leaver household of $417 in 2007. Inflating this benefit based on the change in the Thrifty Food Plan equals a $504 monthly benefit in 2010. This amount times the number of leavers produces the gross cost per month. The cost of the transitional period is 4 times this monthly cost. The current process results in an extra month of benefits so the 5-month traditional benefit period results in four extra months of benefits.

The annual cost is the monthly cost times 12 months. However, we know that leavers tend to "churn," that is, return to the program shortly after leaving. In these cases, the cost is reduced because they return to the FSP even in the absence of a transitional benefit. If the case returns in the first month, there is no additional savings since it takes one month to close an FSP case normally. Returners in the second through fifth month, however, do generate savings. Data from DHHS show that 5 percent of leavers return to TANF in the second month, 4 percent return in the third month, 3 percent return in the fourth month, and 2 percent return in the 5th month. After weighting these by the number of months transitional benefits would not be paid, we multiply the percentage returning times the cost for the year.

Prior to the passage of the FSRIA, some States had been operating a three-month transitional benefit option that FNS allowed via regulation. We therefore reduced the cost further to avoid double counting what is already in the baseline. We assumed these States would move to the 5-month option. The full cost of the three-month option was subtracted from the full cost of the 5-month option to get the cost due to the legislative change.

Finally, we make adjustments for the proportion of States that have taken up the option. In FY 2006, 17 States, which account for about 44 percent of food stamp issuance, adopted a transitional benefit option. Therefore, we take 44 percent of the cost in each year.

Participation Impact: We estimate that in FY 2010, an average of 49,000 TANF leavers will receive the food stamp transitional benefit per month.

Uncertainty: There is a moderate level of uncertainty with this estimate. The estimate is based on 2007 quality control data which is considered timely and reliable. Some uncertainty is introduced, however, from our assumptions about recidivism and the portion of transitional benefit caseload that would have otherwise participated in the FSP in the absence of the transitional benefit.

Restoration of Benefits to Legal Immigrants—Section 4401

Discussion: This provision substantially expands eligibility for the FSP for legal immigrants. It restores eligibility to three groups of legal immigrants in three stages. Effective October 1, 2002, legal immigrants who receive blind or disability benefits became eligible to participate in the FSP. Effective April 1, 2003, legal immigrants who have resided for at least 5 years in the United States as a qualified alien became eligible. Effective October 1, 2003, all legal immigrants under age 18 became eligible for benefits, regardless of when they first arrived in the United States. The statute and rule also removes sponsor deeming requirements for immigrant children.

Effect on Low-Income Households: These three provisions affect low-income families who have legal immigrant members who are currently ineligible for benefits but become eligible after the provisions take effect. Many of these households contain U.S. born children who are currently eligible for food stamps but may not be participating. Most households that contain participating U.S. born children will receive larger benefits if the adults become eligible for benefits. Other households will consist entirely of newly eligible persons.

The people benefiting from the provision restoring eligibility to immigrants with 5 years legal residency are mostly living in households with children. About half of new participants live in households with earnings. Households with elderly and disabled are less likely to be affected, since elderly and disabled who were legally resident before August 22, 1996, are eligible under current law. In addition, a few legal immigrants receiving State-funded disability payments qualify for restored FSP eligibility on the basis of receiving blind or disability benefits but legal immigrants have not had eligibility for federal disability benefits restored. Lastly, foreign-born children who have legally resided in the United States for less than 5 years benefited from the provision restoring eligibility to children effective October 1, 2003.

Cost Impact: The cost to the Government of all three provisions will be $1.073 billion in FY 2010 and $5.253 billion over the 5-year period of 2010 through 2014. These costs are already incorporated into the President's Budget baseline.

The estimates for the provisions are based on data from the U.S. Census Bureau's SIPP, a large national data set which incorporates features that permit the simulation of changes in eligibility of immigrants in the FSP. The simulation substitutes new rules for determining the eligibility of immigrants, determines the number of households made eligible by the new rules, and calculates the value of benefits that would be issued to those newly eligible who are likely to participate. The simulation estimated that restoring FSP eligibility to legally resident noncitizen disabled, children, and adults with 5 years legal residency would increase program costs by 1.84 percent. The annual cost of this provision was estimated by multiplying this figure by the cost projections in the 2010 President's Budget.

Participation Impact: We estimate that by 2010, an additional 731,000 legal immigrants will be participating in the FSP. Some will be people who would have been covered by State-funded food assistance benefits. Some others will be individuals who live in a household with participating citizen children. Others will live in households where no one participated in the program prior to the implementation of this provision. Participation effects were estimated using the same methodology as the cost estimate. The simulation results produced a participation impact estimate of 2.09 percent. The impact was multiplied by the participation projections for the FY 2010 President's budget baseline.

We estimate that another 701 million individuals already participating will be receiving larger benefits. These are individuals living in already-participating households with newly-eligible immigrants. These are frequently US-born children of newly-eligible noncitizens parents. A relatively small number of individuals will receive lower benefits or become ineligible. These are typically participating children whose noncitizens parents' income is sufficient to reduce the household benefit or make the household ineligible. We estimate that 14,000 participants will receive lower benefits and 532,000 will become ineligible. We estimate that 1.263 million newly-eligible immigrants will participate, for a net participation gain of 731,000.

Uncertainty: The estimates for restoring eligibility to the three groups of legal immigrants have some degree of uncertainty, because they rely on reported information in the SIPP. Because the SIPP does not collect data on immigrant status, the model has to impute immigrant status, based on external data on the size and characteristics of the undocumented immigrant and refugee populations.

Alternatives: The proposed rule interpreted the extension of eligibility to any qualified alien who has resided in the United States for 5 years or more as a qualified alien to include aliens who were not qualified aliens at the time of arrival in the United States but later attained qualified status. As written, Section 4401 of FSRIA could be read to require that the alien be in a qualified status at the time of arrival in the United States. However, in reviewing the legislative history behind FSRIA, the Department concluded that it was not the intent of Congress to deny the benefits of the provision to those who were not qualified aliens at the time of arrival but later obtained the status.

FNS lacks statistics on the number or percent of legal permanent residents who were non-immigrants or undocumented immigrants at the time of arrival in the United States. A large portion of this group is the group of formerly undocumented immigrants granted legal status under the Immigration Reform and Control Act of 1986. Taking the more narrow interpretation of this provision would significantly reduce costs and make many newly-eligible participants ineligible.

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Part III

Department of Housing and Urban Development

24 CFR Part 242

Federal Housing Administration (FHA): Hospital Mortgage Insurance Program—Refinancing Hospital Loans; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 242

[Docket No. FR–5334–P–01]

RIN 2502–AI74

Federal Housing Administration (FHA): Hospital Mortgage Insurance Program—Refinancing Hospital Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise the regulations governing FHA's Section 242 Hospital Mortgage Insurance Program (Section 242 program) for the purpose of codifying, in regulation, FHA's implementation of its authority that allows hospitals to refinance existing loans, without requiring such refinancing to take place only in conjunction with the expenditure of funds for construction or renovation, which is the existing program requirement. The current downturn in the economy, which has reduced the availability of private financing, has not only adversely affected the housing industry, but has had a serious impact on hospitals across the Nation. At a time when the demand for health care services is on the rise, the lack of access to capital has made it difficult for hospitals to obtain financing for facility, equipment, and technology needs, as well as to meet obligations on existing debt. By expanding FHA's Hospital Mortgage Insurance Program to allow for refinancing of existing debt without conditioning such refinancing on new construction or renovation, HUD believes it can contribute to alleviating financial stress on hospitals and maintaining the availability of hospitals in many communities. This refinancing authority is specifically for the refinancing of non-FHA-insured loans of hospitals. Hospitals currently insured under FHA's Section 242 program may refinance under the National Housing Act.

In order to allow eligible hospitals seeking to refinance debt the opportunity to immediately apply for a refinanced loan under the Section 242 program, FHA proceeded to implement this authority by notice issued on July 1, 2009, and, as subsequently revised by a January 2010 notice. This proposed rule provides the regulatory format for such implementation and seeks comment on the implementation. Comments received in response to this rule will be taken into consideration in the development of a final rule that will codify in regulation FHA's refinancing authority for hospitals.

DATES: *Comment Due Date:* March 30, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 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 Web 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: Roger E. Miller, Director, Office of Insured Health Care Facilities, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–0599 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background—The Section 242 Hospital Mortgage Insurance Program

Section 242 of the National Housing Act (12 U.S.C. 1715z–7) authorizes FHA to insure mortgages to finance the construction or rehabilitation of public or private nonprofit and propriety hospitals, including for major movable equipment, as well as to refinance existing debt. Section 242 of the National Housing Act (NHA) provides this authority to FHA to: (1) Assist in maintaining the availability of hospitals needed for the care and treatment of persons who are acutely ill or who otherwise require medical care and related services of the kind customarily furnished only (or most effectively) by hospitals (see 12 U.S.C. 1715z–7(a)); and (2) encourage the provision of comprehensive health care, including outpatient and preventive care, as well as hospitalization. In the case of public hospitals, Section 242 of the NHA (Section 242) is designed to encourage programs to provide health care services to all members of a community regardless of ability to pay. (See 12 U.S.C. 1715z–7(f).)

Entities that are insured under FHA's Section 242 program include health-care facilities that range in size from large urban teaching hospitals to small rural hospitals, and critical access hospitals (hospitals with 25 beds or less that have received designation as such by states and the U.S. Department of Health and Human Services). To be eligible for mortgage insurance under the Section 242 program, facilities must be properly licensed, provide primarily acute patient care, and be able to demonstrate the need for the project. Key program criteria include a maximum loan-to-value of 90 percent and a loan term of 25 years.[1]

[1] More information about HUD's Section 242 program can be found at: *http://portal.hud.gov/portal/page?_pageid=73,1826910&_dad=portal&_schema=PORTAL.*

The regulations for the Section 242 program are codified in 24 CFR part 242. In 2005, HUD initiated rulemaking to update the Section 242 program regulations and to bring them in conformity with current hospital financing practices of that time. Prior to the initiation of the 2005 rulemaking, the regulations were last amended in 1995. (See proposed rule published on January 10, 2005, at 70 FR 17250.) That rulemaking resulted in final regulations being promulgated on November 28, 2007. (*See* final rule published on November 28, 2007, at 72 FR 67524.) Although HUD has long had the authority, under section 223(f) of the NHA,[2] to provide for refinancing of hospital debt without conditioning such refinancing on new construction or renovation, and HUD has implemented this authority for multifamily rental housing and health care facilities, HUD has not implemented this authority for hospitals. To date, it has been HUD's view that private capital to help hospitals refinance debt was sufficiently available, and that the demand for this type of refinancing was not as great as was the need for financing for new construction, renovation and rehabilitation, and equipment purchases.

Since HUD initiated rulemaking to update its Section 242 program regulations, the availability of credit has rapidly declined. Just as HUD has initiated programs and initiatives to assist troubled homeowners, through this rule, HUD believes it can provide relief to hospitals that are experiencing increased debt-services costs. A report issued by the American Hospital Association on January 6, 2009, describes the financial problems facing hospitals and health care facilities today, and recommends actions that could be undertaken to alleviate the financial stress on hospitals. One of those recommendations is for FHA to implement its authority in section 223(f) of the NHA (Section 223(f)) to refinance existing hospital debt. (*See http://www.aha.org/aha/content/2009/pdf/090106-economic-recovery-mo.pdf.*) HUD has considered this recommendation and has determined that implementing the refinance authority in section 223(f) of the NHA for hospitals is an action that could and should be taken at this time.

II. This Proposed Rule

This rule proposes to amend FHA's recently updated Section 242 regulations (which were subject to public comment) to provide for the regulatory codification of FHA's authority to refinance hospital debt under Section 223(f), without conditioning the refinancing on new construction or renovation. The Section 223(f) refinancing authority as a component of the Section 242 program is referred to as the Section 242/223(f) program. This refinancing authority is for hospitals without FHA-insured loans. Hospitals with FHA-insured loans are eligible for refinancing of debt (without conditioning refinancing on new construction or renovation) under section 223(a)(7) of the NHA. Specifically, the amendments proposed by this rule would modify the regulations in 24 CFR part 242, as described in this section of the preamble, to reflect the authority already implemented by notice that allows for refinancing without the necessity for new construction or renovation. As noted earlier in this preamble, FHA proceeded to implement this authority by notice issued on July 1, 2009, and, as subsequently revised by a January 2010 notice, which can be found at *http://www.hud.gov/offices/adm/hudclips/notices/hsg/files/09-05hsgn.doc.* All regulations in 24 CFR part 242 would be applicable to Section 242/223(f) refinancing—those proposed to be modified by this rule and those not modified by this rule.

Definitions (Section 242.1)

This proposed rule adds a definition of "hard costs" to mean the costs of the construction and equipment, including construction-related fees such as architect and construction manager fees. The rule amends the definition of "substantial rehabilitation" to provide that it includes "cases where the hard costs of construction and equipment are equal to or greater than 20 percent of the mortgage amount."

While Section 242 is principally a construction program, HUD has allowed up to 80 percent of the mortgage amount to be used for refinancing, provided that at least 20 percent is used for construction and/or equipment. In determining how to address the issue of repairs, renovations, and/or equipment in a Section 242/223(f) case, which is directed solely to refinancing debt, HUD decided that, for Section 242/223(f) refinancing, it would allow loan proceeds to be used for repairs, renovations, and/or equipment, the cost of which is less than 20 percent of the mortgage amount. The statute makes a distinction between "substantial rehabilitation," which cannot be carried out under Section 223(f) authority, and the relatively less substantial work that is allowed under Section 223(f). For this reason, the definition of substantial rehabilitation was revised to make clear the difference between the work performed in a Section 242 project (20 percent or more of the mortgage amount) and the work allowed in connection with a refinance mortgage under Section 223(f) (under 20 percent of the mortgage amount). Since the revision to the definition of "substantial rehabilitation" includes a reference to "hard costs," HUD added this definition for clarity purposes.

Eligibility for Insurance and Transition Provision (Section 242.4)

This rule expands eligibility for insurance to include "refinancing of the capital debt of an existing hospital pursuant to section 223(f) of the NHA (Section 242/223(f))."

Limitation on Refinancing of Existing Indebtedness (Section 242.15)

This rule adds a new paragraph (b) to § 242.15 to provide that, in the case of a loan insured under Section 242/223(f), there is no requirement for hard costs. However, if there are hard costs, such costs must total less than 20 percent of the total mortgage amount.

Applications (Section 242.16)

The rule amends § 242.16(a)(2) to make certain amendments to the regulatory provisions concerning financial eligibility of hospitals seeking refinancing under Section 242/223(f). The proposed rule would establish threshold requirements designed to determine the need of the hospital for refinancing that would not be available through other sources, and to screen out hospitals that would have little or no chance of having a formal application approved, based on their financial performance. HUD specifically seeks comments on these threshold requirements.

To receive consideration for Section 224/223(f) refinancing, the hospital must meet two financial thresholds. First, the hospital must have a 3-year aggregate operating margin of at least 0 percent and a 3-year average debt service coverage ratio of at least 1.4. Also, the proposed rule provides that the hospital must demonstrate that its financial health depends upon refinancing its existing capital debt and that it provides an essential service to

[2] Section 223(f)(1) provides that "Notwithstanding any of the provisions of this Act, the Secretary is authorized, in his discretion, to insure under any section of this title a mortgage executed in connection with the purchase or refinancing of an existing multifamily housing project or the purchase or refinancing of existing debt of an existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof)." (12 U.S.C. 1715n(f).)

the community in which it operates. This demonstration is met by providing documentation of the following:

(1) If the hospital were no longer in operation, the community in which it presently operates would suffer from inadequate access to an essential service that the hospital presently provides;

(2) There are few alternative affordable financing vehicles available to the hospital; and

(3) The hospital meets three of the following seven criteria: (i) The proposed refinancing would reduce the hospital's total operating expenses by at least 0.25 percent; (ii) the interest rate of the proposed refinancing would be at least 0.5 percentage points less than the interest rate on the debt to be refinanced; (iii) the interest rate on the debt that the hospital proposes to refinance has increased by at least one percentage point at any time since January 1, 2008, or is very likely to increase by at least one percentage point within one year of the date of application; (iv) the hospital's annual total debt service is in excess of 3.4 percent of total operating revenues, based on its most recent audited financial statement; (v) the hospital has experienced a withdrawal of its credit enhancement facility, or the lender providing its credit enhancement facility has been downgraded, or the hospital can demonstrate that one of the events is imminent; (vi) the hospital is party to overly restrictive or onerous bond covenants; or (vii) there are other circumstances that demonstrate that the hospital's financial health depends upon refinancing its existing capital debt.

The inclusion of these threshold factors to determine hospitals eligible for consideration for Section 242/223(f) refinancing is designed to assure that HUD is assisting those hospitals that merit serious consideration based on their financial strength and on need—theirs and that of the communities in which they serve.

In offering this new insurance product, and as the proposed threshold requirements may reflect, HUD is taking a conservative approach intended to attract those hospital applicants that already meet the minimum operating margin and debt-service coverage ratios required for application approval under the current Section 242 program.

The rule amends § 242.16(b)(5) to provide that the study of market need may not be required, subject to HUD's discretion, for an application for Section 242/223(f) mortgage insurance. In most cases, however, HUD does require this study. Although HUD may determine not to require a study of market need with respect to a Section 242/223(f) mortgage, HUD will always consider market need in the preliminary threshold requirement phase, as discussed in § 242.16(a)(4).

The importance of market need varies from case to case. For example, an in-depth review of market need might not be necessary for a hospital with historically strong utilization and financial statistics that is seeking a pure refinancing or a refinancing with minor repairs. However, an in-depth review is likely needed in the case of a hospital that is using close to 20 percent of the mortgage proceeds (the maximum allowed under Section 242/223(f)) for construction and equipment in order to expand the services it provides to the public in a competitive market area. Other examples of cases where a study may not be needed are geographically remote critical access hospitals and sole community provider hospitals. These designations by Centers for Medicare and Medicaid Services are strong indicators of market need. HUD will consider the characteristics of each case in determining whether the study must address market need.

In addition to the amendment to § 242.16(b)(5), this rule amends § 242.16(b)(3) to require that, in applications for Section 242/223(f) refinancing, the applicant must provide a description of any repairs, renovations, and/or equipment to be financed with mortgage proceeds, and how those repairs, renovations, and/or equipment will affect the hospital. The rule amends § 242.16(b)(6) to provide that the required architectural plans and specifications are not required of an application for Section 242/223(f) mortgage insurance, except when requested by HUD. This rule also amends § 242.16(d) to provide that an application for Section 242/223(f) mortgage insurance shall be on an approved FHA form, submitted jointly by an approved mortgagee and the prospective mortgagor.

Commitments (Section 242.17)

This rule amends § 242.17(a) (Issuance of Commitment) to add a new paragraph (a)(2) to provide that in the case of an application for Section 242/223(f) mortgage insurance where advances are not needed for funding any repairs, renovations, or equipment, a commitment for insurance upon completion shall include the mortgage amount, interest rate, mortgage term, date of commencement of amortization, and other requirements pertaining to the mortgage.[3]

Section 242.17(a) provides for insurance of advances in cases where there is a need for advances to fund construction activities and the purchase of equipment. This is the case in Section 242 projects and Section 242 projects pursuant to Section 241. However, in Section 242 projects pursuant to Section 223(f), the circumstances of each case will determine whether the commitment will be for insurance of advances or insurance upon completion. In a pure refinancing, or a refinancing with minor repairs, renovations, and/or equipment that the hospital can fund from its operations and cash reserves, there is no need for advances and the commitment will be for insurance upon completion. However, if a significant portion of the mortgage proceeds (subject to the 20 percent limitation) is to be used for repairs, renovations, and/or equipment, and the hospital cannot fund these from its own cash, then the commitment may provide for insurance of advances.

Inspection Fee (Section 242.18)

This rule amends § 242.18 to provide that in the case of mortgages insured under Section 242/223(f), the inspection fee shall be paid at endorsement, as described in the amendments to § 242.39, as discussed below.

In the traditional Section 242 program, the inspection fee is generally 50 basis points on all loans. This fee covers such activities as review of architectural plans and specifications, and periodic inspection as the construction gets under way. For applicants seeking refinancing only, an inspection fee that would involve generally no more than a site visit by HUD architects and engineers will not exceed 10 basis points on the loan.

Maximum Mortgage Amounts and Cash Equity Requirements (Section 242.23)

One of the more significant amendments made to the regulations in 24 CFR part 242 is made to § 242.23, to establish the maximum mortgage amounts and cash equity amounts for mortgages insured under Section 242/223(f).

The rule adds a new paragraph (b) to § 242.23 to provide that, in addition to meeting the requirements of § 242.7 (which addresses maximum mortgage

[3] Note that since there is an existing paragraph (a)(2) in § 242.17, the existing paragraph ((a)(2)) and the paragraphs that follow will be redesignated accordingly). This rule amends § 242.17(b) (Type of Commitment) to provide that in the case of a commitment for Section 242/223(f) insured refinancing, at HUD's discretion the commitment may provide for insurance upon completion.

amounts applicable to all mortgages insured under the Section 242 program)[4], if the existing hospital debt is to be refinanced by the insured mortgage (*i.e.,* without a change in ownership or with the hospital sold to a purchaser who has an identity of interest, as defined by the FHA Commissioner, with the seller), the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness.

The rule provides that the existing indebtedness will consist of the following items, the eligibility and amounts of which must be determined by the FHA Commissioner: (1) The amount required to pay off the existing indebtedness; (2) reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 242.22; (3) the estimated costs, if any, of repairs, renovation, and/or equipment totaling less than 20 percent of the mortgage amount; and (4) architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

The rule also provides in the new paragraph (b) added to § 242.23, that, in addition to meeting the requirements of § 242.7, if mortgage proceeds are to be used for an acquisition, the maximum mortgage amount must not exceed the cost to acquire the hospital, which will consist of the following items, the eligibility and amounts of which must be determined by the FHA Commissioner: (1) The actual purchase price of the land and improvements or HUD's estimate (prior to repairs, renovation, and/or equipment replacement) of the fair market value of such land and improvements, whichever is the lesser; (2) reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 242.22; (3) the estimated costs, if any, of repairs, renovation, and/or equipment totaling less than 20 percent of the mortgage amount; and (4) architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

Because § 242.23 already has a paragraph (b), the existing paragraph (b) and the paragraphs that follow will be redesignated accordingly.

[4] Section 242.7 (24 CFR 242.7) provides: "The mortgage shall involve a principal obligation not in excess of 90 percent of HUD's estimate of the replacement cost of the hospital, including the equipment to be used in its operation when the proposed improvements are completed and the equipment is installed."

Insurance Endorsement (Section 242.39)

This rule amends § 242.39 to divide this section into two main parts. The existing section is designated as paragraph (a) and entitled "New Construction/Substantial Rehabilitation." New paragraph (b), entitled "Section 242/223(f) Refinancing," provides that in cases that do not involve advances of mortgage proceeds, endorsement shall occur after all relevant terms and conditions have been satisfied, including, if applicable, completion of any repairs, renovations, and/or equipment, or upon assurance acceptable to the FHA Commissioner that all required repairs will be completed by a date certain following endorsement. New paragraph (b) provides that in cases where advances of mortgage proceeds are used to fund repairs, renovation, and/or equipment, endorsement shall occur as described in § 242.39(a) immediately above for new construction/substantial rehabilitation.

Labor Standards (Section 242.55)

This rule amends § 242.55(c) to reflect that the labor standards referenced in that regulatory section are applicable to a refinancing loan under section 223(f) of the NHA.

Eligibility of Refinancing Transactions (Section 242.91)

This rule amends § 242.91 to consolidate the existing section into a new paragraph (a), and to add a new paragraph (b) that provides that a mortgage given to refinance the debt of an existing hospital under Section 242 of the NHA may be insured pursuant to Section 223(f) of the NHA. The new paragraph (b) also provides that a mortgage may be executed in connection with the purchase or refinancing of an existing hospital without substantial rehabilitation. In addition, the new paragraph (b) provides that the FHA Commissioner shall prescribe such terms and conditions as the Commissioner deems necessary to assure that: (1) The refinancing is employed to lower the monthly debt-service costs (taking into account any fees or charges connected with such refinancing) of such existing hospital; (2) the proceeds of any refinancing will be employed only to: retire (a) the existing indebtedness; (b) pay for repairs, renovation, and/or equipment totaling less than 20 percent of the mortgage amount; and (c) pay the necessary cost of refinancing on such existing hospital; (3) such existing hospital is economically viable; and (4) the applicable requirements of Section 242 for certificates, studies, and statements have been met.

III. Corresponding Implementation Notice

As noted earlier in this preamble, in an effort to immediately address the lack of adequate private financing available to hospitals, HUD issued a notice on July 1, 2009, as recently amended in January 2010, which can be found at *http://www.hud.gov/hudclips/,* that implemented FHA's longstanding refinance authority under section 223(f) of the NHA to hospitals. The issue of the availability of hospitals and other health care facilities in communities is one of the important health care issues to be addressed. With an aging population, and health care demands on the rise, hospitals need access to capital to expand and improve facilities, technology, and equipment. Without access to capital, hospitals and facilities will close or needed improvements in facility, technology, and equipment will not be addressed.

While HUD recognizes that all financing needs of the hospitals and health-care facilities will not be addressed by extending to hospitals, through the Section 242 program, the refinancing authority of Section 223(f) of the NHA, HUD believes that through the action taken initially in the implementing notice of July 1, 2009, as amended in January 2010, and by following through with this rulemaking, it may be able to contribute to alleviating the financial stress faced by many hospitals today. Additionally, the action taken is consistent with HUD's statutory purpose under Section 242, which includes assisting in the availability of needed hospitals for the care and treatment of persons who are acutely ill or who otherwise require medical care and related services of the kind customarily furnished only (or most effectively) by hospitals.

HUD determined that with minimal amendments to its regulations in 24 CFR part 242 (recently the subject of public comment and revised, in part, in response to such comment), HUD could commence receiving applications for Section 242/223(f) mortgage insurance, and that is what the July 1, 2009, implementing notice allowed.

Although HUD determined to proceed to implement, through notice, the Section 223(f) refinancing authority for hospitals, HUD recognizes the value and importance of public input in determining final policy and developing final application and review procedures. It has always been HUD's strategy to supplement its implementing notice with a proposed rule that would solicit

public comment and commence the process of development of a final regulatory structure that will govern the Section 242/223(f) refinancing authority. Before HUD issued its companion proposed rule to the July 1, 2009, notice, HUD received informal feedback from hospitals and hospital representative organizations that the threshold requirements presented a "refinancing only" bar that is too high. In response to such feedback, HUD has amended the threshold requirements, which, again, were designed to determine refinancing need, but not serve as a substitute for the insurance eligibility requirements of the Section 242 program. Those requirements and standards remain in place. This proposed rule, therefore, not only solicits comment specifically on the threshold requirements presented in the companion notice and proposed to be codified by this rule, but on all other aspects of the changes made to the Section 242 regulations to codify the implementation of FHA's Section 223(f) refinancing authority for hospitals with non-FHA-insured loans. The final rule, when issued and in effect, will apply to applications submitted for Section 242/223(f) refinancing authority following the effective date of the rule.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the order (although not an economically significant regulatory action under the order). 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 appointment to review the docket file 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 via TTY by calling the Federal Information Relay Service at 800–877–8339.

This Section 242/223(f) program is specifically for the refinancing of non-FHA loans. In offering this new insurance product, and as the proposed threshold requirements reflect, HUD is taking a conservative approach intended to attract hospital applicants that already meet the minimum operating margin and debt-service coverage ratios required for application approval under the current Section 242 program. The rule is not structured to address all financing needs. The goal in implementing HUD's Section 223(f) refinancing authority for hospitals is to assist those hospitals saddled with unexpectedly high interest rates, and where refinancing is urgently needed for the hospital to continue to remain open and adequately serve its surrounding community. The primary beneficiaries of this rule are the hospitals that receive an FHA-insured loan to refinance debt, and, through such loan insurance, are able to reduce their capital costs by refinancing into a lower interest rate loan through the proposed program. The economic effect constitutes a transfer from the public to hospitals that would not otherwise have been able to refinance out of their current high-cost loans.

HUD estimates that the average decrease in the annual interest cost resulting from an eligible hospital's refinancing its current loan with an FHA loan is 2 percentage points. After the cost of the insurance premium is deducted, the net benefit is 1.5 percentage points. The average loan size from FHA's construction loan portfolio is $60 million, which is used as an estimate of the size of the principal of loans to be refinanced. Assuming the hospital's current interest rate is 7.75 percent, and it is refinanced down to 5.75 percent (effectively 6.25 percent when the insurance premium is factored in), the annual savings to the hospital would be $688,740.

The program has not been designed for the entire industry of 5,000 hospitals. As noted earlier, the pool of applicants is limited by the proposed threshold restrictions. Industry experts have estimated that there would be a lead time of approximately 3 months while hospitals and lenders organized their efforts and began to prepare applications. After that (starting, in all likelihood, early in calendar year 2010), they estimated that FHA would receive from 35 to 50 applications during the first year of the program. Assuming that the maximum of 50 applications are received in the first year, that they arrive steadily during the year (4.17 applications per month), and that the average time to process them to commitment is 60 days, 10 months' worth of applications received (approximately 41) could receive insurance commitments in 2010. The economic impact would amount to approximately $28.2 million annually.

In addition to commenting on the rule, HUD welcomes comment on its assessment of costs and benefits, as set out in this section of the preamble, and on the number of applications HUD expects to receive upon implementation of the Section 223(f) refinancing authority, as further revised by the January 2010 notice.

Information Collection Requirements

The information collection requirements contained in this rule were reviewed by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2502–0518. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) 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)). The FONSI 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 FONSI 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 via TTY by calling the Federal Information Relay Service at 800–877–8339.

Unfunded Mandates Reform Act

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 a federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (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. The amendments proposed by this rule will expand the availability of financing for hospitals and health care facilities, both large and small, under FHA's Section 242 program, based on regulations that were recently the subject of notice and comment. HUD defines a small hospital entity similar to the definition used by the Health Care Financing Administration of the U.S. Department of Health and Human Services: as a hospital of 50 or fewer beds. As noted earlier in this preamble, hospitals, large or small, currently receiving Section 242-insured financing, large or small, are eligible for refinancing under section 223(a)(7) of the NHA. Currently, 21 (approximately 25 percent) of the hospitals with Section 242-insured financing have 50 or fewer beds. HUD has approached development of its eligibility for section 223(f) refinancing to take into consideration criteria that all hospitals, large or small, can meet. The basis for FHA's implementation of its refinancing authority, as has been discussed in this preamble, is to assist hospitals that provide valuable services needed by the communities in which they are located, and for which other refinancing sources are not available. HUD believes that the criteria presented in this rule strikes the appropriate balance.

Accordingly, it is HUD's view that this rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, as provided in HUD's analysis under Executive Order 12866 (Regulatory Planning and Review), the impact of this rule on the economy is not anticipated to be significant. This impact encompasses large and small hospital entities, and the impact on small entities does not rise to a level of a significant economic impact on a substantial number of small entities; in this case, small hospitals.

Notwithstanding HUD's determination that this rule does not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments from all entities, including small entities, regarding less burdensome alternatives to this rule that would meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments 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 nor preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 242 to read as follows:

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

1. The authority citation for 24 CFR part 242 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715n(f), and 1715u; 42 U.S.C. 3535(d).

2. In § 242.1, definitions for "hard costs" and "Section 242/223(f)" are added, and the definition of "substantial rehabilitation" is revised to read as follows:

§ 242.1 Definitions.

* * * * *

Hard costs means the costs of the construction and equipment, including construction-related fees such as architect and construction manager fees.

* * * * *

Section 242/223(f) refers to a loan insured under Section 242 of the Act pursuant to Section 223(f) of the Act.

* * * * *

Substantial rehabilitation means additions, expansion, remodeling, renovation, modernization, repair, and alteration of existing buildings, including acquisition of new or replacement equipment, in cases where the hard costs of construction and equipment are equal to or greater than 20 percent of the mortgage amount.

* * * * *

3. In § 242.4, the section heading and paragraph (a) are revised to read as follows:

§ 242.4 Eligible hospitals.

(a) The hospital to be financed with a mortgage insured under this part shall involve the construction of a new hospital, the substantial rehabilitation (or replacement) of an existing hospital, or the refinancing of the capital debt of an existing hospital pursuant to Section 242/223(f), or the acquisition of an existing hospital pursuant to Section 242/223(f).

* * * * *

4. In § 242.15, the existing text of this section is redesignated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 242.15 Limitation on refinancing existing indebtedness.

* * * * *

(b) In the case of a loan insured under Section 242/223(f), there is no requirement for hard costs. However, if there are hard costs, such costs must total less than 20 percent of the total mortgage amount.

5. In § 242.16:

a. Paragraphs (a)(3) through (a)(5) are redesignated paragraphs (a)(4) through (a)(6), respectively;

b. New paragraph (a)(3) is added;

c. Newly redesignated paragraph (a)(6) introductory text is revised; and

d. Paragraphs (b)(3), (5), and (6) and paragraph (d) are revised to read as follows:

§ 242.16 Applications.

(a) * * *

(3) *Threshold requirements—refinancing candidates.* For an application to be considered for refinancing pursuant to Section 223(f), a hospital must meet the following requirements in lieu of those described in paragraph (a)(2) of this section:

(i) The hospitals must have an aggregate operating margin of at least 0 percent, when calculated from the three most recent annual audited financial statements.

(ii) The hospitals must have an average debt service coverage ratio of at least 1.4 when calculated from the three most recent annual audited financial statements.

(iii) HUD may, at its discretion, recast the operating margin and debt service coverage ratio for prior periods by using its estimate of the projected interest rate in lieu of the historical interest rate(s).

(iv) The hospital must demonstrate that its financial health depends upon refinancing its existing capital debt and that it provides an essential service to the community in which it operates. This demonstration is met by providing documentation of the following:

(A) If the hospital were no longer in operation, the community in which it presently operates would suffer from inadequate access to an essential service that the hospital presently provides;

(B) There are few alternative affordable refinancing vehicles available to the hospital.

(C) The hospital meets three of the following seven criteria:

(*1*) The proposed refinancing would reduce the hospital's total operating expenses by at least 0.25 percent;

(*2*) The interest rate of the proposed refinancing would be at least 0.5 percentage points less than the interest rate on the debt to be refinanced;

(*3*) The interest rate on the debt that the hospital proposes to refinance has increased by at least one percentage point at any time since January 1, 2008, or is very likely to increase by at least one percentage within one year of the date of application;

(*4*) The hospital's annual total debt service is in excess of 3.4 percent of total operating revenues, based on its most recent audited financial statement;

(*5*) The hospital has experienced a withdrawal or expiration of its credit enhancement facility, or the lender providing its credit enhancement facility has been downgraded, or the hospital can demonstrate that one of these events is imminent;

(*6*) The hospital is party to overly restrictive or onerous bond covenants; and

(*7*) There are other circumstances that demonstrate that the hospital's financial health depends upon refinancing its existing capital debt.

* * * * *

(6) *Preapplication meeting.* The next step in the application process is the preapplication meeting (this step is optional, at HUD's discretion, in Section 242/223(f) cases). At HUD's discretion, this meeting may be held at HUD Headquarters in Washington, DC, or at another site agreeable to HUD and the potential applicant. The preapplication meeting is an opportunity for the potential mortgagor to summarize the proposed project, for HUD to summarize the application process, and for issues that could affect the eligibility or underwriting of the project to be identified and discussed to the extent possible. Following the meeting, HUD may:

(b) * * *

(3) A description of the project, the business plan of the hospital, and how the project will further that plan, or, for applications pursuant to Section 223(f), a description of any repairs, renovations, and/or equipment to be financed with mortgage proceeds and how those repairs, renovations, and/or equipment will affect the hospital;

* * * * *

(5) A study of market need and financial feasibility, addressing the factors listed in paragraphs (a)(1)(ii), (a)(2), and (a)(3) of this section, with assumptions and financial forecast clearly presented, and prepared by a certified accounting firm acceptable to HUD, except that in the case of an application for Section 242/223(f) mortgage insurance, at HUD's discretion, the study may not be required to address market need and, at HUD's discretion, there may be no requirement for involvement of a certified accounting firm;

(6) Architectural plans and specifications in sufficient detail to enable a reasonable estimate of cost (not applicable to a Section 242/223(f) application, except when architectural plans and specifications are requested by HUD);

* * * * *

(d) *Filing of application.* An application for insurance of a mortgage on a project shall be submitted on an approved FHA form, by an approved mortgagee and by the sponsors of such project, to the FHA Office of Insured Health Care Facilities. An application for insurance of a mortgage pursuant to Section 223(f) shall be submitted on an approved FHA form by an approved mortgagee and by the proposed mortgagor.

* * * * *

6. In § 242.17, paragraphs (a)(2) through (5) are redesignated as paragraphs (a)(3) through (6), a new paragraph (a)(2) is added, and paragraph (b) is revised to read as follows:

§ 242.17 Commitments.

(a) * * *

(2) In the case of an application for Section 242/223(f) insurance where advances are not needed for funding any repairs, renovations, or equipment, a commitment for insurance upon completion, reflecting the mortgage amount, interest rate, mortgage term, date of commencement of amortization, and other requirements pertaining to the mortgage that will be issued.

* * * * *

(b) *Type of commitment.* The commitment will provide for the insurance of advances of mortgage funds during construction. In the case of a commitment for Section 242/223(f)-insured refinancing, at HUD's discretion the commitment may provide for insurance upon completion.

* * * * *

7. Section 242.18 is revised to read as follows:

§ 242.18 Inspection fee.

The commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. The inspection fee shall be paid at the time of initial endorsement. In the case of mortgages insured pursuant to section 223(f), the inspection fee shall be paid at endorsement, as described in § 242.39 of this subpart. For applicants seeking refinancing only, an inspection fee that would involve a site visit by HUD architects and/or engineers, or their review of a site visit report prepared by the architects and/or engineers of the applicant hospital, will not exceed 10 basis points on the loan.

8. In § 242.23, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is added to read as follows:

§ 242.23 Maximum mortgage amounts and cash equity requirements.

* * * * *

(b) *Section 242/223(f) refinancing—additional limit.* (1) In addition to meeting the requirements of § 242.7, if the existing hospital debt is to be refinanced by the insured mortgage (i.e., without a change in ownership or with the hospital sold to a purchaser who has an identity of interest, as defined by the FHA Commissioner, with the seller), the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the FHA Commissioner:

(i) The amount required to pay off the existing indebtedness;

(ii) Reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 242.22;

(iii) The estimated costs, if any, of repairs, renovation, and/or equipment totaling less than 20 percent of the mortgage amount;

(iv) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

(2) In addition to meeting the requirements of § 242.7, if mortgage proceeds are to be used for an acquisition, the maximum mortgage amount must not exceed the cost to acquire the hospital, which will consist of the following items, the eligibility and amounts of which must be determined by the FHA Commissioner:

(i) The actual purchase price of the land and improvements or HUD's estimate (prior to repairs, renovation, and/or equipment replacement) of the fair market value of such land and improvements, whichever is less;

(ii) Reasonable and customary legal, organization, title, and recording expenses, including mortgagee fees under § 242.22;

(iii) The estimated costs, if any, of repairs, renovation, and/or equipment totaling less than 20 percent of the mortgage amount;

(iv) Architect's and engineer's fees, municipal inspection fees, and any other required professional or inspection fees.

* * * * *

9. In § 242.39, the introductory text is removed and paragraphs (a) and (b) are revised to read as follows:

§ 242.39 Insurance endorsement.

(a) *New construction/substantial rehabilitation.* Initial endorsement of the mortgage note shall occur before any mortgage proceeds are insured, and the time of final endorsement shall be as set forth in paragraph (a)(2) of this section.

(1) *Initial endorsement.* The FHA Commissioner shall indicate the insurance of the mortgage by endorsing the original mortgage note and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(2) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to HUD's satisfaction, HUD shall indicate on the original mortgage note the total of all advances approved for insurance and again endorse such instrument.

(3) *Contract rights and obligations.* The FHA Commissioner and the mortgagee or lender shall be bound from the date of initial endorsement by the provisions of the Contract of Mortgage Insurance stated in subpart B of part 207, which is hereby incorporated by reference into this part.

(b) *Section 242/223(f) refinancing.* (1) In cases that do not involve advances of mortgage proceeds, endorsement shall occur after all relevant terms and conditions have been satisfied, including, if applicable, completion of any repairs, renovations, and/or equipment, or upon assurance acceptable to the FHA Commissioner that all required repairs will be completed by a date certain following endorsement.

(2) In cases where advances of mortgage proceeds are used to fund repairs, renovation, and/or equipment, endorsement shall occur as described in paragraph (a) of this section immediately above, for new construction/substantial rehabilitation.

* * * * *

10. In § 242.55, paragraph (c) is revised to read as follows:

§ 242.55 Labor standards.

* * * * *

(c) Each laborer or mechanic employed on any facility covered by a mortgage insured under this part (except under 24 CFR 242.91(a), but including a supplemental loan under section 241 of the Act or a refinancing loan under section 223(f) of the Act made in connection with a loan insured under this part) shall receive compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in any workweek in excess of 8 hours in any workday or 40 hours in the workweek.

* * * * *

11. Section 242.91 is revised to read as follows:

§ 242.91 Eligibility of refinancing transactions.

(a) A mortgage given to refinance an existing insured mortgage under Section 241 or Section 242 of the Act covering a hospital may be insured under this subpart pursuant to Section 223(a)(7) of the Act. Insurance of the new, refinancing mortgage shall be subject to the following limitations:

(1) *Principal amount.* The principal amount of the refinancing mortgage shall not exceed the lesser of:

(i) The original principal amount of the existing insured mortgage; or

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added loan closing charges associated with the refinancing mortgage, and costs, as determined by HUD, of improvements, upgrading, or additions required to be made to the property.

(2) *Debt service rate.* The monthly debt service payment for the refinancing mortgage may not exceed the debt service payment charged for the existing mortgage.

(3) *Mortgage term.* The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which HUD determines that the insurance of the mortgage for an additional term will inure to the benefit of the FHA Insurance Fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, and the remaining economic life of the property.

(4) *Minimum loan amount.* The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

(b) A mortgage given to refinance the debt of an existing hospital under Section 242 of the Act may be insured under this subpart pursuant to Section 223(f) of the Act. The mortgage may be executed in connection with the purchase or refinancing of an existing hospital without substantial rehabilitation. A mortgage insured pursuant to this subpart shall meet all other requirements of this part. The FHA Commissioner shall prescribe such terms and conditions as the FHA Commissioner deems necessary to assure that:

(1) The refinancing is employed to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of such existing hospital;

(2) The proceeds of any refinancing will be employed only to retire the existing indebtedness; pay for repairs, renovation, and/or equipment totaling less than 20 percent of the mortgage amount; and pay the necessary cost of refinancing on such existing hospital;

(3) Such existing hospital is economically viable; and

(4) The applicable requirements of Section 242 for certificates, studies, and statements have been met.

Dated: December 19, 2009.

David H. Stevens,

Assistant Secretary for Housing—Federal Housing Commissioner.

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H.R. 4462/P.L. 111–126
To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the earthquake in Haiti. (Jan. 22, 2010; 124 Stat. 3)

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